Modernity and the General Philosophy of Islamic Law: (*MAQĀSID AL-SHARI'AH*)

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I dedicate this book to

To late al-Hajj Naleem JP and my parents.

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Forward:
The joint academic report of my external examiners

Dr M. Izzi Dien, University of Wales Lampeter.

and Dr Bustami Khair, University of Birmingham.

This thesis is an examination of the principles of Islamic Jurisprudence that tempt to respond to social changes. Its focus is on the objectives of Islamic law Maqāsid, as developed by Muslim scholars with special reference to the well-known legal reformist al-Shātibī of the eighth/fifteen century. In its introduction, the thesis highlights the significance of the topic in modern times and gives a critical review of the relevant literature…. Throughout the thesis the candidate reflects a good research ability with good familiarity with the field of knowledge. This is a revised version of my PhD at SOAS. I've made a lot of changes to my original thesis. This edition includes some extra chapters on the development of the general philosophy of Islamic law. Neither my internal supervisor nor my external examiners have read this.

Contents

Preface:

Why am I writing this book on the legal philosophy of Islamic law? Much has been written on Islamic legal philosophy and thousands of books have been written on this subject in different languages. Several Islamic scholars have produced books on this topic from different perspectives and yet, why do we need one more book on the same subject? It is not my objective here to repeat what has already been written or give any descriptive narrative for what has already been said about Islamic legal philosophy rather I would like to put forward some new ideas and new concepts in this study. It has been argued that the civilizational development of the Muslim world should be re-constructed on the foundation of Islamic legal philosophy once again. It has been generally debated that the Muslim world is suffering from an intellectual crisis. In his book, (Crisis of Muslim mind, 1981) Abu Sulayman argues that the Muslim world has been inflicted by some intellectual crisis. He argues that the Muslim mind today has failed to appreciate dramatic changes that have taken place in this modern world. Moreover, the Muslim community has failed to read the inner dimensions of its own sacred texts of the Holy Qur'an and Hadith literature.

The chaotic socio-economic, religious and political conditions of Muslim world today are nothing but clear reflection of the crisis of the Muslim mind. Lack of creativity, stagnation of thought, and backwardness of the Muslim world in development support this claim. Today the Muslim world is in a socio-religious and political pandemonium. Politically, the Muslim world is lagging far behind in democratic values. Religiously, the Muslim world is polarised into many ideological groups. All this illustrates the acute nature of crisis of the Muslim mind in this modern world. Some academics blame the Muslim history for this crisis. Some others blame the religious thought of the Muslim community for this crisis. From late Fazlul Rahman, to the contemporary scholar Tariq Ramadan, hundreds of modern Islamic scholars demand a radical reformation of the Muslim mind. In a recent study, Hossein Askari and his colleagues have initiated Islamcity program to assess economic and human development of Muslim countries and to venture some strategic plans to develop the Muslim countries in line with Islamic teaching. Hossein Askari (2017) vividly illustrate the pathetic conditions of the Muslim world in this way. "Since ww2, the political, economic and social progress of Muslim countries has been inadequate for building thriving communities. The state of Muslim countries, poverty alongside opulence, inequality of opportunities in education and general advancement, economic and social malaise, pervasive injustice, political oppression and, above all, ineffective institutions-has created resentment, anger, and hopelessness. In turn, these realities have contributed to the growing East-West divide and the rising menace of worldwide terrorism with the United States engulfed in an endless war the world over since 9/11. Short-term initiatives, which have included western support for oppressive Muslim rulers and a variety of covert and military options, have, if anything made conditions worse and likely to make a turnaround ever more difficult over the long run". (Hossein Askari, 2017. P.1).

What is the way out from these pathetic conditions? How could the Muslim world come out of these social evils? Muslim academics have proposed many strategic plans to come out of this social mess. Some argue that the Muslim reformation should be done through political revolutions, some others argue it should be done through education development, some others contend it should be done through economic development and yet, another group of Muslim intellectuals argues that it should be done through religious reform. Ismael al-Farouqi and his associates , with their Islamization of knowledge model, Shiekh al-Yamani and his associates,

with their reformation of Islamic legal theory model, Tariq Ramadan and his associates, with their Islamic ethical legislation model, Ahamad Raisūni and his associates, with their Islamic legal philosophical study model, Mukhtar al-Shanqithi and his associates, with their political reformation model, Jaser Sultan and his associates , with their reconstruction of Islamic knowledge model, Hossein Askari and his associates, with their economic and human development model, Ibrahim Al-Buleihy and his associates , with their liberalization of Islamic thought model, Muhamed Arkoun and his associates, with their secularization of Islamic thought model, all except Muhamed Arkoun and his associates, have attempted to create some strategic plans sincerely to free the Muslim community from the grip of stagnation and underdevelopment. Muslim scholars have a profound knowledge of traditional Islamic sciences and yet, their knowledge about modern world, its economy, geopolitics, new world order, science and technology is very much shallow. A large percentage of Muslim clerics, scholars and jurists have failed to appreciate and acknowledge rapid modern changes that take place around them in this age of globalization. They have failed to identify and examine the huge socio-economic and political phenomenon that takes around them. They have also failed to recognise the huge challenges that the humanity faces today. Without appreciating all these modern changes most of Muslim clerics, scholars, and jurists try to find solutions for the problems of Muslim communities today in historical precedents of past the Muslim intellectual heritage. This study explores the different aspects of Islamic legal philosophy (*Maqāsid al-Shari'ah)* from historical and practical dimensions. The sources of Islamic law are limited in certain scriptural texts, historical legal precedents and supplementary legal sources. Yet, human challenges and problems are unlimited.

This study is an attempt to explore the intriguing relationship between social and legal changes in Islamic law. First part of this book analyses the historical, social, and theological factors that contributed to the marginalization of the *Maqāsid al-Shari'ah* in classical Islamic legal theory. The original idea of *maqāsid* stems from the scholastic endeavours of the early jurists who interpreted the scriptural texts to understand the *ratio legis* of the texts. This book evaluates the ideas of classical scholars on the subject matter of the general philosophy of law and explores the inherent relationship of *maslaha* to the general philosophy of Islamic law. The second part of this book examines the contribution of Imām al-Shātibī to the general philosophy of Islamic law. It also traces the political, economic and social background of Muslim Spain to understand al-Shātibiīs legal thought in an historical context. The focus is given to the chapter of *maqâsid* from his monumental work of *al-Muwāfaqāt* to examine al-Shātibī's methodology in creating the doctrines of *maqāsid*. The significance of the internal relationship of the texts in al-Shātibī's legal interpretation has been highlighted here. Most Islamic reformists and modernists consider al-Imām al-Shātibī as an architect of Islamic legal philosophy: *(Maqāsid al-Shari'ah).* They believe that his legal thought provides us with many legal precedents to incorporate the social changes of modern days. we also analyse the extent of al-Shātibī's influence in the writing of modern Muslim scholars.

Modern Islamic scholars provide some fascinating definitions and meanings to the doctrines of *maqāsid* incorporating social changes. This book highlights that the legal philosophy of Islamic law *(Maqāsid al-Shari'ah)* can be used as an overriding legal mechanism that bridge the gap between social and legal changes in Islam. The third part of this book examines the modern development in the study of the general philosophy of Islamic law. It evaluates the contribution of the contemporary Muslim scholars to the development of the general philosophy of Islamic

law with a special focus on the works of 11 contemporary Muslim scholars. This book also examines some modern areas of human development such as social welfare, human rights, politics of Muslim world, social justice, and human resource development of the Muslim world. All this has been done in view of the general philosophy of Islamic law. Moreover, this book examines how far does the Muslim world apply the ideals of the general philosophy of Islamic law? It also evaluates the contention of Hossein Askari who argues that many Non-Muslim countries are more Islamic in application of Islamic teaching on human welfare than many so-called Muslim countries. Today, the western world is outstanding in many of its developmental indices from education, economy, health, science, technology, space science social justice, human rights and in many other fields. Classical Islamic scholars devised the legal philosophy of Islamic law to guide the Muslim community in its developmental strategies. They argued that Islamic legal philosophy was created to promote human interest.

Islamic teaching has been a driving force of Muslim development in early Islamic history and yet, today, the Muslim community does not get much needed impetus from these instrumental driving of Islamic sources. They no longer function as developmental inspirations for the Muslim community. Islamic scholars such as Muhammad Kamal Imam, al-Qaradāwi, Omer Chapra, Hossein Askari, Tariq Ramadan, Jasser Auda, Jamal Atiyah, Taha Jabir Alwani and many others argue that the general philosophy of Islamic law can be an instrumental guide for the development of the Muslim world. They argue that all developmental policy strategies of the Muslim world should be in line with the general philosophy of Islamic law. This book explores some of these ideas and compares the core values of the general philosophy of Islamic law with that of some the social values of the modern western world.

Among all projects and programmes proposed by different Muslim academics to save the Muslim world from these pathetic socio-economic and political conditions, I find three projects have more practical values and credentials. Mahbud ul-Haq, the architect of Human development report has indeed, highlighted the welfare of people should be the focus of socio-economic development. This is exactly what the classical Muslim jurists proposed through the theories of the general philosophy of Islamic law and yet, Muslim economists and social scientists failed to develop the ideas of late Dr Mahbub-ul-Haq in line with the general philosophy of Islamic law. More recently, Dr Hossein Askari has proposed to develop Islamcity index to evaluate socio-economic and human development of the Muslim world in line with the general philosophy of Islamic law. He argues for this turnaround or to change the Muslim world from these pathetic conditions, "Muslims would have to better understand Qur'anic teachings and strive to establish effective institutions based on the Qur'an and the Hadiths to replace the pronouncements of corrupt rulers, co-opted clerics and terrorists in Muslim countries. Effective institution building, as recognised by Douglass North and others, take much time. The condition of Muslim countries is path dependent and has been the result of centuries, or at least many decades, of missed opportunities, and unhelpful policies and practices. The institutional scaffolding that is recommended in Islam…. requires a much higher degree of morality and justice" (Askari. 2017. P1).

Hossein Askari contends that he has created Islamcity indices to make some changes in socio-economic and pollical conditions of the Muslim world. He says that "We believe that Islamcity indices provide the compass and the basis for establishing effective institutions, restoring hope, achieving sustainable development and for strengthening global order. These indices are based on the teaching of the Qur'an and the life of the and practice of the Prophet Muhammad" (Ibid,

p1). Moreover, recently, Dr Tariq Ramadan initiated the centre for the study of Islamic legislation and Ethics (CILE) in Doha. The mission of this centre is to evaluate modern human development in all human sciences from Islamic ethical perspectives, so that Islamic values and morals could be protected from harmful human innovation and manipulation. This book examines all these ideas and proposes that all these innovative ideas could help us to develop the general philosophy of Islamic law into a fully-fledged strategic policy making machoism. This is a revised version of my Ph. D thesis that I submitted to SOAS, University of London in 2004. I have made many amendments to my original work on this subject.

Part one:
Chapter one: 1

The significance of the general philosophy of the Islamic law:

Literally, the term *Maqāsid al-Shari'ah* has been translated as objectives of Islamic law by many Islamic scholars and yet, this term has been technically and theoretically used as a new legal doctrine in Islamic legal studies. This term has been used in a wider meaning with new implications. It has been named as a general philosophy of Islamic law and has evolved as an independent Islamic branch of legal science in Islamic legal studies. The subject matter of the Islamic legal philosophy of law *(Maqāsid al-Shari'ah)* has been more vigorously debated and discussed today than ever before in the legal history of Islamic law. In recent times, a genre of literature on the legal philosophy of Islamic law has dramatically increased. Islamic conferences, talks and seminars are frequently held in many parts of the Muslim world on the theme of Islamic legal philosophy. Unlike traditional methods of learning Islamic law in the past, present Muslim students of Islamic law have begun to read Islamic law, focusing on the subject matter of Islamic legal philosophy. Traditionally, the legal philosophy of Islamic law (*Maqāsid al-Shari'ah*) is regarded as a part of Islamic legal studies. Primarily, it was developed to understand and appreciate the rationale of Islamic law. Initially, this aspect of Islamic legal study has been only a branch of traditional studies in the legal theories of Islamic jurisprudence. *(Usul al-fiqh*). However, today, this branch of study in Islamic law has grown dramatically. It has become a fully-fledged branch of Islamic science. Islamic centres and Islamic universities have begun to teach Islamic legal philosophy as one of their core subjects in Islamic studies. But, most of the writing on Islamic legal philosophy has been theoretical and historical. Most these works on the legal philosophy are repetitive and are copied from one generation to another generation. Traditionally, it is assumed that Islamic legal philosophy is a subject that deals purely with some aspects of Islamic laws: namely the laws of Islamic rituals, Islamic forms of worships, Islamic punishment laws, Islamic laws of marriage and divorce, Islamic laws of inheritance and endorsement, or Islamic laws of business transactions. Yet, today an attempt has been made to relate Islamic legal philosophy to all aspects of life in the Muslim community.

Islamic legal philosophy has been used to evaluate all human developments in the light of Islamic teaching and moral values. Today, modern Islamic scholars have developed a new comprehensive system of researching into the Islamic legal philosophy. They have examined many modern problems and challenges in the light of general philosophy of Islamic law. Unlike in the past, people today do not have any difficulty to accessing for information on any subject, information is easily available, yet, what is important today is how do we analyse it and how do we relate the information to our modern problems and challenges? Likewise, there is a wealth of information on Islamic legal philosophy today. For the last fourteen hundred years, Muslim scholars, jurists, and academic have produced a genre of Islamic literature on the legal philosophy of Islamic law. It is not all about how much information we have about Islamic law today but how do we assess it and how do we relate it to this complicated modern world? The Muslim world produces thousands of Muslim scholars each year and many of them are experts on Islamic studies and yet, they find it difficult to relate what they learn to the modern social condition of this complicated world. The science of the general philosophy of Islamic law provides some vibrant and dynamic mechanisms to relate Islamic teaching to modern social conditions without distorting or twisting the pure teaching of the divine message. It bridges the gap between the historical legacies of Islamic past and the scientific development of the modern world. It relates the past legacy of Islamic heritage with the present-day realities of modern world. It directs Muslim jurists to read and understand modern social conditions in a holistic approach in light of the divine texts taking into account both the literal and contextual

meaning of the texts. Therefore, this science of the legal philosophy of Islamic law can be a dynamic and vibrant research methodology for studying the challenges of the modern Islamic world. It is argued that Islamic civilization is enshrined with all the potential for civilizational progress and development. Yet, all developmental statistics and indexes tell us that the Muslim world is lagging all other nations in the areas of progress and development. Why is it that the Muslim world is lagging? The past glories of the Islamic civilization are still vivid in the minds of the Muslim community and yet, why cannot they make such developmental progress in the modern world as they did 800 years ago in the middle ages? What went wrong with Muslim minds? Why are Muslim minds no longer as productive as they had been in the past?

Muhammad al-Ghāzalī (d.1999) argues that "The Muslim world will never reclaim its historical and intellectual legacy unless it excels in worldly sciences. As it excels in the religious sciences of traditional branches of Islamic knowledge it should excel in the physical sciences that enhance the progress and development of world civilizations. Enhancing the knowledge of the physical sciences is imperative to the nation building process of any civilization. These branches of knowledge are indispensable for the survival of civilization in this modern world. Seeking these branches of knowledge should exceed all types of optional Islamic rituals. Allah will not accept optional rituals until we fulfil our obligations in religion. So, a Muslim man who is busy with his optional religious rituals at the expense of learning the skills of agriculture, industry, engineering, physics, chemistry or any medical sciences is indeed, ignorant in Islam" (Muhammad al-Ghāzalī, 2003, p.62).It is very often said by some Muslim clerics that the Muslim world is falling behind all other world civilizations because we do not follow the teachings of Islam. This claim that we do not follow Islamic teaching is a contentious and debatable one. But, in fact we follow Islamic teachings not as the Qura'n and Prophetic traditions demand from us, but rather as we understand Islamic teachings. Today, the Muslim world follows Islamic teaching in its distorted form. The Islam of Salafi groups is somewhat different from the Islam of moderate groups and the Islam of mystical groups is somewhat different from the Islam of Salafi groups; likewise, the Islam of moderate groups is somewhat different from the Islam of Salafi and mystical groups. So, it can be realistically argued that there is nothing wrong in the teaching of Islam, but the error lies in the minds of Muslims who read the teaching of Islam differently in accordance with their level of intelligence and understanding. Some Muslims read the religion of Islam as a set of religious rules and regulations that have been enshrined in divine revelation to enhance the spiritual development of Muslims. Some others read Islam as a set of divinely inspired rules and regulations that are revealed by Almighty Allah that regulate the entire life of the Muslim community in preparation for the success of the next life. For them all human affairs, worldly or otherwise spiritual, are regulated by the teaching of Islam: This Muslim group reads the Islamic teaching as a set of religious and social values that Allah revealed to the Prophet Muhammad to guide humanity. For them the religion of Islam is not merely a set of spiritual rules and regulations, rather that Islam is a set of civilizational guidance and social values. This type of polarised reading into Islamic teaching has left its impact and implications on Muslim communities today.

It is very often asked how Islamic civilization descended to this level of decay and decline? How did the Muslim world descend to this level of backwardness? Why does the Muslim world suffer this long-time stagnation in all fields of development? All other nations or civilizations such as Indian, Chinese and many Far East countries have progressed in all aspects of development and yet, many Muslim countries have not? Traditionally, some Islamic groups have been saying that the Muslim world is lagging because it does not follow divine guidance as it should. The Muslim world has deviated from the true path of Islamic faith that is why it is falling behind many nations. Yet, some academics and intellectuals question such postulations. They argue that it is not the religion of Islam that we should blame rather a

distorted form of Islam that some Muslim groups invented and innovated. The Muslim world, to some extent, has failed to apply Islamic ethical, social and religious values or methodological and systematic order. It has failed to appreciate and apply the physical laws of this universe to enhance its development process. Sheikh Taha Jabir al-'alwani who has been living in US for the last three decades has noticed this problem accurately and comprehensively. He says that neither classical Islamic legal treatises nor pre- Islamic literatures give any ready-made answers for hundreds of issues the Muslims face today in this modern world. This does not mean we should undermine or belittle the contribution of classical Islamic jurists rather their contributions, scholastic works, and legal reasoning are time constrained. Their ideas, legal opinions and legal perspectives may have been suitable and fitting for their time and age but, today we live in a different world with different human problems. (al'alwani: 2012.pp 20-22). Hence, he proposes that we must return to the Holy Book of Allah and His Prophet to find solutions to the problems of humanity. Why? he argues that the Qur'an is a universal book, that deals with universal issues and problems. It speaks about the cosmos and its functions, it speaks about human actions and activities, it speaks about animate and inanimate objects of this universe. Its guidance is not limited to any place or any time rather its universal guidance is for all humanity. It is the only book that could correct all distorted divine messages of all previous prophets, therefore, 'Alwani argues that we should return to the Book of Allah to resolve ever-increasing problems of humanity. (Ibid: 2012.p 20-23). Indeed, there is nothing wrong in seeking guidance and getting lessons from the past intellectual heritage of Muslim past. Yet, those historical precedents and intellectual heritage do not always give ready-made solutions for the problems of contemporary Muslim community. The challenges and problems that the Muslim community faces today are totally different from that of our previous generations and communities. Mere adherence to sacred texts of Holy Qur'an and Prophetic traditions would not be always viable and practical rather Muslim intellectuals should read and understand the texts considering the general philosophy of Islamic law, taking into account the modern social changes.

This book may appear seemingly contentious and yet, I will substantiate my contentions with evidence and logical reasoning. The legal philosophy of Islamic law has been theoretical doctrine for many centuries in Islamic legal history. Initially, the legal theories or methodologies of Islamic law (*Usūl al-fiqh*) were designed by *Imam Al-Shāfi'i (d.204/ 825)* to facilitate the subtraction of rules from primary and subsidiary sources of Islamic law and yet, modern Islamic scholars find many shortcomings and defects in the functional nature of (*Usūl al-fiqh.* The primary contention of this book is that the doctrines of Islamic legal philosophy could be devised as strategic developmental tools to meet the challenges of social changes in modern times. New ideas of Islamic legal philosophy created by modern Islamic scholars can serve as instrumental legal and social tools for the development of the Muslim community in all fields. These ideas could fill in the rupture between the glorious past of Islamic civilization and the challenges of modern times. The focus of the study on the general philosophy of Islamic law should shift from legal studies into all-inclusive study of Islamic civilization. It should focus how to create a modern model of Islamic civilization in the age of digital technology and artificial intelligence. Islam is a complete way of life and Islamic teaching regulates all aspects of human life. Its guidance is universal guidance. Its guidance is applicable in all ages and places. So, the general philosophy of Islamic law should be developed as a holistic civilizational strategic development tool to guide the Muslim community in all walk of life. Islamic law constitutes less than 10% of broader Islamic teaching and yet, the focus of Islamic jurists has been mainly on legal interpretation at the expense of socio-economic, political and development studies. Many classical and modern Muslim jurists failed to present

Islam as complete way of life. The legal philosophy of Islamic law has been a theoretical doctrine for many centuries in Islamic legal history. Islamic legal philosophy could have been a driving tool for the socio-political, economic and educational development of Muslim world and yet, contemporary Muslim scholars have failed to develop the general philosophy of Islamic law as a fully-fledged developmental mechanism. Initially, legal theories or methodologies of Islamic law (*Usūl al-fiqh*) were created by *Imam Al-Shāfi'i (d.204/ 825)* to facilitate the subtraction of rules from primary and subsidiary sources of Islamic law but modern Islamic scholars find many defects in the functional nature of (*Usūl al-fiqh*). For this reason, they propose to replace or substitute the legal methodology of (*Usūl al-fiqh*) with legal philosophy of Islamic law *(Maqāsid al-Shari'ah).* They propose to replace or substitute the legal methodology of (*Usūl al-fiqh*) with legal philosophy of Islamic law. The arguments for and against this proposal have been ranging for many decades among modern Islamic legal scholars and yet, the primary objective of this book is not to deal with those theoretical arguments. My intention here is to examine to what extent the general philosophy of Islamic law could be enhanced and developed as a fully-fledged developmental mechanism for the Muslim world. After all, many classical Islamic scholars argued that the central themes of general philosophy of Islamic law is to promote and protect public interest and welfare of Muslim community in its educational, economic, socio-religious and environmental development and progress. What is the uniqueness of this book? In what ways, this book is different from all what has been written on Islamic legal philosophy. First, we do not limit the scope and leverage of Islamic legal philosophy *(Maqāsid al-Shari'ah studies)* in Islamic law alone, rather the scope and leverage of Islamic legal philosophy (*Maqāsid al-Shari'ah)* encompasses and covers entire human life in all aspects.

This study explores the different aspects of Islamic legal philosophy (*Maqāsid al-Shari'ah)* from historical and practical dimensions. The sources of Islamic law are confined and limited to certain scriptural texts, historical legal precedents and supplementary legal sources. Yet, the human challenges and problems are unlimited. This study is an attempt to explore the intrigue relationship between social and legal changes in Islamic law. The introductory chapter analyses the historical, social, and theological factors that contributed to the marginalization of the *Maqāsid al-Shari'ah* in the classical Islamic legal theory. The original idea of *maqāsid* stems from the scholastic endeavours of the early jurists who tried to rationalise or rationally interpret certain parts of the scriptural texts to understand the *ratio legis* of the texts. Thus, our thesis evaluates the ideas of classical scholarship on the subject matter of the general philosophy of law considering the different views of classical scholars prior to al-Shātibī's. Moreover, we endeavour to explore the inherent relationship of *maslaha* to the general philosophy of Islamic law considering various opinions of classical scholars. We also examine the political, economic and social background of Muslim Spain to understand al-Shātibiīs legal thought in an historical context and to see the extent of his influence from his social environment. The focus is given to the chapter of *maqâsid* from his monumental work of *al-Muwāfaqāt* to discuss al-Shātibī's methods and methodologies in creating the doctrines of *maqāsid*. The significance of the internal relationship of the texts in al-Shātibī's legal interpretation is examined here. Most Islamic reformists and modernists consider al-Imām al-Shātibī as an architect of Islamic legal philosophy: *(Maqāsid al-Shari'ah).* They believe that his legal thought provides us with many legal precedents to incorporate the social changes of modern times. Here, we analyse the extent of al-Shātibī's influence on the writings of modern scholarship. Modern Islamic scholars provide some fascinating definitions and meanings to the doctrines of *maqāsid* in a modern paradigm incorporating social changes. We examine the scope and structure of the doctrines of *maqāsid* in the writings of modern Islamic scholarship. This research highlights the fact that

the legal philosophy of Islamic law (*Maqāsid al-Shari'ah)* can be an overriding legal mechanism that bridges the gap between social and legal changes in Islam. This is an all-inclusive legal mechanism that incorporates all social changes in Islamic law considering basic public interest and the welfare of the Muslim community and humanity.

Above all, the Islamic legal philosophy of *Maqāsid al-Shari'ah* could be an Islamic tool and guiding source for the development and progress of Muslim countries. After all, the central themes of *Maqāsid al-Shari'ah* deal with issues of *human* resources development and progress. yet, the definition of development and progress in Islam is slightly different from the notion of development and progress in western countries. Often the concept of development and progress in western countries are mostly affiliated with material development and progress at the expense of spiritual, moral, ethical and religious development and fulfilment. Spiritual and religious development take precedence in the notion of Islamic development. The Islamic notion of development takes both worldly and eschatological success into account. It fulfils the requirement and needs of body and soul. The Islamic notion of development is designed to meet the physical and spiritual needs of human beings. In that sense, the notion of Islamic development is a holistic concept. I have attempted to primarily deal with two research questions. Why do we need a general philosophy of Islamic law today? How do we try to apply it in the modern world? Or what mechanism should we apply in implementation of the legal philosophy of Islamic law? Moreover, I have contended in this book that the central themes of legal philosophy are applied more in Non-Muslim western countries today than in Muslim countries. Today, the western world is shining in many of its developmental indices from education, economy, health, science, technology, space science social justice, human rights in many fields. The classical Islamic scholars originated the legal philosophy of Islamic law to guide the Muslim community in its all aspects of developments. They argued that the Islamic legal philosophy was created to promote human interest and welfare in this life and in the next life to come. The Holy Qur'an and Islamic teachings have been driving forces of Muslim development in many epochs of early Islamic history and yet, today, the Muslim community does not get much needed impetus and incentives from Islamic sources and they no longer function as developmental inspirations for the Muslim community. Islamic scholars such as Muhammad Kamal Imam, Ahmad Raisūni, Yousuf al-Qaradāwi, Tariq Ramadan, Jasser Auda, Jamal Atiyah, Taha Jabir, 'Alwani and many others argue that Islamic legal philosophy of Islamic law can be an instrumental guide for the development of the Muslim world. They argue that all developmental policy strategies of the Muslim world should be in line with general philosophy of Islamic law. This book explores some of these ideas and compares the core values of general philosophy of Islamic law with that of some of the social values of the modern western world. As a prelude to this study, I have given some reasons why we need to have profound knowledge in the general philosophy of Islamic law. I have outlined some reasons why we should learn about it and highlighted the relevance of the legal philosophy of Islamic law to the modern Islamic world.

a) The general philosophy of Islamic law and its relevance to modernity.

In his recent article (Tech world: welcome to the Digital Revolution) Kevin Drum (2018) argues that modernity, modern development, democracy, capitalism, colonization, modern war, nationalism, human equality, modern discoveries, inventions, and geopolitics of the nineteenth and twentieth centuries are mere footnotes of the Industrial Revolution. He further contends that the world is right now "at the dawn of a second Industrial Revolution, this time a digital revolution, even greater than that of the first. That said, this revolution hasn't started yet. The marvels of modern technology are everywhere, but so far, all that has been invented are better toys. ……...Artificial intelligence, or AI, has been an obsession of technologists practically since the computers were invented, …. Even today, AI is still in its prenatal phrase-answering jerky! Questions, wining at chess, finding the nearest coffee shop-but real thing is not far. To get there, what's needed is hardware that's as powerful as the human brain and software that can think as capably…… In a survey of AI experts published in 2017, two thirds of respondents agreed that progress "in AI" had accelerated in the second half of their careers. And they predicted about a 50 percent chance that AI would be able to perform all human tasks by 2060". (Kevin Drum. 2018. Pp.43-46). It can be said that a huge technological revolution takes place in the world of artificial intelligence. This digital revolution will have a far-reaching affect and impact on the human civilization. This dramatical social change will need legal change to protect humanity from harms and danger of digital revolution. The tools, machineries and machines of digital revolutions could not only able to perform routine work, but also, "they will be as capable as any person at everything from flipping burgers to writing novels to performing heart surgery. Plus, they will be far faster, never getting tired, have instant access to all the world's knowledge, and boast more analytic power than any human. ……. The digital revolution is going to be the biggest geopolitical revolution in human history. The industrial revolution changed the world, and all it did was it replaced human muscle. Human brains were still needed to build, operate, and maintain the machines…...But the digital revolution will replace the human brain. Anything, a human can do, human -level AI will also be able to do-but better. Smart robots will have both the muscle to do the work and the brainpower to run themselves" (Ibid. P. 46).

Nandan Nilekani brilliantly describes that Data technology or digital technology will control world economy replacing oil and physical or natural resources. He argues that "Data….is the new oil. It is the fuel of the modern economy, a valuable commodity that can be bought, and sold, and a strategic resource for nations. Indeed, digital assets now matter for more than physical ones". (Nandan Nilekani. 2018. P.19). Quoting Tim Goodwin who says that "Uber, the world's largest taxi company, owns no vehicles. Facebook, the world's most popular media owner, creates no content. Alibaba, the most valuable retailer, has no inventory. And Airbnb, the world's largest accommodation provider, own real estate" digital technology is going to influence human life in all aspects of life. It not only influences world economy, security, education, politics but today's big technology companies can influence what people think" (Ibid, p. 19). This is a short description of the digital world that the humanity is going to encounter in coming decades. If AI would be able to perform most of human task in future what would be implications of that on Islamic law? How do Muslim countries prepare for these changes? Above all, how would Muslim jurists respond to this new development?

Klaus Schwab (2017), and Philip Larrey (2017) in their recent books argue that humanity is going through a period of dramatic changes in the fields of digital technologies. "We are at the beginning of a revolution that is fundamentally changing the way we live, work, and relate to one another. In its scale, scope and complexity, what I consider to be the fourth industrial revolution is unlike anything humankind has experienced before …… think about the

staggering confluence of emerging technology breakthroughs, covering wide-ranging fields such as artificial intelligence (AI), robotics, the internet of things (IOT), autonomous vehicles, 3D printing, nanotechnology, biotechnology, materials science, energy storage and quantum computing, to name a few. Many of these innovations are in their infancy, but they are already reaching an inflection point in their development as they build on and amplify each other in a fusion of technologies across the physical, digital and biological worlds." (Klaus Schwab ,2017, p.1).

Highlighting the influence of modern technology Philip Larrey notes "Examine almost any field and you will discover that digital technology has had some impact in that sector, often to a profound degree. The International financial system is now inconceivable without computers. Most financial translations are not completed by human beings, but rather by 'intelligent' software programs. The popular image of the 'floor' at the New York stock exchange has become anachronistic. Investors and traders may be hundreds of miles away from Wall Street, and yet, oversee robotic transactions worth of billions of dollars each day. Doctors, surgeons and nurses are adopting new technological advances to offer better healthcare to their patients, such as minimally invasive surgery using robotic systems including the Da Vinci Surgical System…….. Interactive video-conferencing allows doctors to examine patients (and in some cases, to treat them as well), even though they are miles away. IBMs artificial intelligence system, Watson (Which defeated the reigning champions of Jeopardy in 2011), is being used at several hospitals in order to provide treatment recommendations for patients suffering from lung cancer and other illnesses.In terms of the military use of digital technology, there is no longer any doubt of the usefulness of certain technological advances in order to provide assistance to every type of military interest. Drones are now commonplace around the world, receiving processing information, but also intervening directly in different theatres of war. The New York Times reported on a device manufactured by Lockheed Martin that can choose its own targets, based on the artificial intelligence system contained aboard the missile itself. These missiles are often referred to as 'Fire and Forget' for the missile will select the best target to strike, given all the parameters involved. The United nations is trying to implement a set of ethical principles that should be used to control legal autonomous weapon system (LAWS) and hosted a convention in April 2015 in Geneva to discuss how to provide such ethical rules to these weapons ……. most military leaders are not moving in the direction of developing completely autonomous system, because they want to maintain control of various weapon systems. ……The popular media has recently published many sound bites from prominent people in various sectors, warning us of the potential risks and dangers of general AI. Such voices range from the brilliant astrophysicist Stephen Hawking, who stated that "the development of full artificial intelligence could spell the end of the human race "to the Space X and Teslea Fonder, Elon Musk, who believes that "artificial intelligence is potentially more dangerous than nukes" (Philip Larrey (2017. pp3&4)

Klaus Schwab argues that "The fourth Industrial revolution, however, is not only about smart and connected machines and systems. Its scope is much wider. Occurring simultaneously are waves of further breakthrough in areas ranging from gene sequencing to nanotechnology, from renewable to quantum computing. It is the fusion of these technologies and their interaction across the physical, digital and biological domains that make the fourth industrial revolution fundamentally different from previous revolutions". (Klaus Schwab 2017. P8), Klaus Schwab classifies the megatrends of the technological drivers of the fourth industrial revolution

in three clusters: physical, digital and biological. He gives many examples to illustrate the dramatic changes take place in many fields.

a) **physical manifestations of the technological megatrends**

1) Autonomous vehicles: "There are now many other autonomous vehicles including trucks, drones, aircrafts and boats. As technologies such as sensors and artificial intelligence progress, the capabilities of all these autonomous machines improve at a rapid pace. It is only a question of a few years before low-cost, commercially available drones, together with submersibles, are used in different applications. As drones become capable of sensing and responding to their environment (altering their flight path to avoid collisions), they will be able to do tasks such as checking electric power lines or delivering medical supplies in war zones. In agriculture, the use of drones- combined with data analytics- will enable more precise and efficient use of fertilizers and water, for example.

2) 3D printing: Also called additive manufacturing, 3D printing consists of creating a physical object by printing layers upon layer from digital 3D drawing or model. This is the opposite of subtractive manufacturing, which is how things have been made until now, with layers being removed from a piece of material until the desired shape is obtained, by contrast, 3D printing starts with loose material and builds an object into a three-dimensional shape using a digital template. The technology is being used in a broad range of applications, from large (wind turbines) to small (medical implants). For the movement, it is primarily limited to applications in the automotive, aerospace and medical industries.

3) Advanced robotics: Until recently, the use of robots was confined to tightly controlled tasks in specific industries such as automotive. Today, however, robots are increasingly used across all sectors and for a wide range of tasks from precision agriculture to nursing. Rapid progress in robotics will soon make collaboration between humans and machines an everyday reality. ……. Advances in sensors are enabling robots to understand and respond better to their environment and to engage in a broader variety of tasks such as household chores.

4) New materials: Take advanced nanomaterials such as graphene, which is about 200 times stronger than steel, a million-times thinner than a human hair, and an efficient conductor of heat and electricity. When graphene becomes price competitive (gram for gram, it is one of the most expensive materials on earth, with a micrometre-sized flake costing more than $1000), it could significantly disrupt the manufacturing and infrastructure industries. It could also profoundly affect countries that are heavily reliant on a commodity.

b).Digital manifestation of the fourth industrial revolution: In its simplest form, it can be described as a relationship between things (products, services, places, etc) and people that is made possible by connected technologies and various platforms. Sensors and numerous other means of connecting things in the physical world to virtual networks are proliferating at the astounding pace. Smaller, cheaper and smarter sensors are being installed in homes, clothes and accessories, cities, transport and energy networks, as well as manufacturing processes. ……The digital revolution is creating radically new

approaches that revolutionize the way in which individuals and institutions engage and collaborate. For example, the blockchain, often described as a "distributed ledger" is a secure protocol where a network of computers collectively verifies a transaction before it can be recorded and approved. The technology that underpins the blockchain creates trust by enabling people who do not know each other (and thus have no underlying basis for trust) to collaborate without having to go through a neutral central authority-ie a custodian or central ledger. The blockchain is a shared, programmable, cryptographically secure and therefore trusted ledger which no single user controls and which can be inspected by everyone.

c). Biological manifestation of the fourth industrial revolution: innovations in the biological realm- and genetics in particular- are nothing less than breath-taking. In recent years, considerable progress has been achieved in reducing the cost and increasing the ease of genetic sequencing and, lately, in activating or editing genes. It took more than 10 years, at a cost of $2.7 billion, to complete the Human Genome Project. Today, a genome can be sequenced in a few hours and for less than a thousand dollars. With advances in computing power, scientists no longer go by trial and error, rather, they test the way in which specific genetic variations generate traits and diseases. Synthetic biology is the next step. It will provide us with the ability to customize organisms by writing DNA. Setting aside the profound ethical issues this raises, these advances will not only have a profound and immediate impact on medicine but also on agriculture and the production of biofuels……. The ability to edit biology can be applied to practically any cell type, enabling the creation of genetically modified plants and animals, as well as modifying the cells of adult organisms including humans. ……. It is now far easier to manipulate with precision the human genome within viable embryos means that we are likely to see the advent of designer babies in the future who possess traits or who are resistant to a specific disease." (Klaus Schwab 2017. P28)

Tipping points expected to occur by 2025

10% people wearing clothes connected to internet	
90% people having unlimited and free (advertising supported) by storage	
1 trillion sensors connected to internet	
The first robotic pharmacist in the US	
10% of reading glasses connected to the internet	
80% people digital presence in the internet	
The first 3D printed car in production	
The first government to replace its census with big data sources	
The first implantable mobile phone available commercially	
5% of consumers products printed in 3D	
90% the population using smartphones	
90% of the people will have regular access to the internet	
Driverless cars equalling 10% of all cars in US roads.	
First transplant of a 3D printed liver	
30% corporate audits preformed AI	
Tax collected first time by a government via a blockchain	
Over 50% internet traffic to home for appliances and devices	
Globally more trips/journeys via car sharing than in private cars.	

The first city with more than 50.000 people and no traffic lights	
10% of global gross domestic product stored on blockchain technology	
The first AI machines on a corporate board of directors	

Sources: The Fourth Industrial Revolution: p26

Thus, the fourth industrial revolution is expected to bring dramatic changes to human life. The impact and effect of the fourth industrial revolution is enormous in many ways. " The scale and breadth of the unfolding technological revolution will usher in economic, social and cultural changes of such phenomenal proportions that they are almost impossible to envisage……..one of the biggest impacts will likely result from a single force: empowerment- how government relate to their citizens; how enterprises relate to their employees; shareholders; and customers: or how superpowers relate to smaller countries. The disruption that the fourth industrial revolution will have on existing political, economic and social models will therefore require that empowered actors recognise that they are part of a distributed power system that requires more collaborative forms of interaction to succeed. (Klaus Schwab 2017. P28). Because of the fourth industrial revolution, the machines are getting more powerful, stronger and more intelligence than human beings. Today, AI and digital technology have more capabilities and power not only to control human life but also to wipe out it entirely. Philip Larrey argues that "In many ways, machines are already more "intelligence" than we are, if you examine certain benchmarks: the speed of executing logical calculations; the speed and extent of memory recall; capacity to search and analyse huge databases of information; amount of storage of information. Machine with special sensors can "visualize" sub-automatic realities, distant galaxies and objects within light frequencies that far exceed the human eye's capacity. The same is true for the range of 'hearing' different sounds, the detection of radiation in the environment……. the moisture of the soil in a field, temperatures of the air or water, and the list goes on" (Philip Larrey (2017. pp3-5) yet, many experts point out these autonomous intelligence systems could bring many risks and danger for humanity. Philip Larrey notes that "by definition, an 'autonomous system' is one in which the designer has not predetermined the responses to every condition. Such systems would require deep safety measures to ensure that they would not become harmful to human beings, and many people in the field are working to ensure that these systems never harm society. A common response to the creation of such intelligent systems is that they must be contained in a secure environment, served from any contact with networks or other machines. (Ibid, p7).

It has been argued that AI and digital technologies will create so many ethical problems for humanity. It is believed that these super intelligent systems will post existential threat to human race in the future. It is reported that the leading scientists such as Stephan Hawking, Stuart Russell, Max Tegmark and Frank Wilczek have already predicted the dangers and risks of AI. "Whereas the short-term impact of AI depends on who controls it, the long-term impact depends on whether it can be controlled at all…. All of us should ask ourselves what we can do now to improve the chances of reaping the benefits and avoiding the risks" (Ibid, 99). Klaus Schwab further argues that "We may see designer babies in near future, along with a wholes series of other edits to our humanity -from eradicating genetic diseases to augmenting human cognition. These will raise some of the biggest ethical and spiritual questions we face

> as human beings…… technological advances are pushing us to new ethical frontiers of ethics. Should we use the staggering advances in biology only to cure disease and repair injury, or should we also make ourselves better human beings? If we accept the latter, we risk turning parenthood into an extension of the consumer society, in which case might our children will become commoditized as made-to- order-objects of our desire.? …….. consider the possibility of machines thinking ahead of us or even outthinking us. Amazon and Netflix already possess algorithms that predict which films and books we may wish to watch and read. Dating and job placement sites suggest partners and jobs- in our neighbourhood or anywhere in the world- that their systems figure might suite us best. What do we do? Trust advice provided by an algorithm or that officered by family, friends or colleagues? Would we consult an Al-driven robot doctor with a perfect or near perfect diagnosis success rate -or stick with the human physician with the assuring bedside manner who has known us for years? When we consider these examples and their implications for humans, we are in uncharted territory- the dawn of a human transformation unlike anything we have experienced before…. Another substantial issue relates to the predictive power of artificial intelligence and machine learning. If our own behaviour in any situation becomes predictable, how much personal freedom would we have or feel that we have to deviate from the prediction? Could this development potentially lead to a situation where human beings themselves begin to act as robots? This also leads to a more philosophical question. How do we maintain our individuality, the sources of our diversity and democracy, in the digital age? (bid 100).

In addition to the above-mentioned impacts and consequences, the fourth industrial revolution is going to some create economic and financial impacts as well. Philip Larrey argues that some of ethical concerns about the new digital era have to do with job loss due to the widespread use of robots and Al products. Today machines produce machines as in cases of processing plants of motor vehicles. It is expected that machine laour would become cheaper than human labour. Companies would prefer cheaper labour over expensive in the world of business completion. It is suggested by some academics that human labour will be comparable to work done by a horse in the future. It is sarcastically said that If someone were to offer to give you a horse free of charge many people would not accept such an offer because it would be expensive to look after it. It is predicted that hiring a human being in the future would be like hiring a horse? It is even suggested some governments will begin to pay people not to go to work because letting machines do all work would be cheaper. Such a scenario is not an impossible one (Philip Larrey 2017. P 8). It is expected that Al and digital technology will become highly sophisticated and advanced many times more than human brains. Some people suggested that God should ensoul machines in the future. Will God endow an artificial intelligent machine with a soul? Today some IT experts have been debating this has been an ethical question in many countries. It is difficult to agree with a such hypothetical question and yet, some academics have been debating it for sometimes now. Philip Larrey makes this quote from Alan Turing from his influential pater "computing machinery and intelligence. "It is admitted that there are certain things that God cannot do, such as making one equal to two, but should we not believe that He has freedom to confer a soul on an elephant if He sees fit? We might expect that He would only exercise this power in conjunction with a mutation which provided the elephant with an appropriately improved brain to minster to the needs of this soul. An argument of exactly similar form may be made for the case of machines. It may seem different because it is more difficult to

'swallow'." (Philip Larrey 2017. P 9). Both Klaus Schwab and Philip Larrey outline some of ethical problems and concerns that digital technology and AI could bring to humanity.

> "The mind -bogging innovations triggered by the fourth industrial revolution, from biotechnology to AI, are redefining what it means to be human. They are pushing the current thresholds of life span, health, cognition and capabilities in ways that are previously the preserve of science fiction. As knowledge and discoveries in these fields progress, our focus and commitment to have ongoing moral and ethical discussions is critical. As human beings and as social animals, we will have to think individually and collectively about how we respond to issues such as life extension, designer babies, memory extraction and many more.". …….. "we are confronted with new questions around what it means to be human, what data and information about our bodies and heath can or should be shared with others, and what rights and responsibilities we have when it comes to changing the very genetic code of future generations. …….. The social, medical, ethical and psychological challenges they pose are considerable and need to be resolved or at the very least, properly addressed". (Klaus Schwab, 2017, pp23& 98)

How do we evaluate and gauge all these dramatic digital and artificial revolutions in the light of the general philosophy of Islamic law? To what extent, these dramatic intellectual revolutions are acceptable in accordance with the principles of the general philosophy of Islamic law? one of the fundamental principles of the general philosophy of Islamic law is to promote and enhance human intellect and yet, today, the development of supper intelligent software, AI and digital technologies is posting an existential threat to humanity. Moreover, they have created many ethical and moral problems and concerns to humanity. Therefore, to what extent, these digital technologies are acceptable in Islamic law? Take for instance, the case of designer babies. Does this clash with Qur'anic prediction of "surely they will change Allah's creation" (Qur'an: 4: 119)? Prof Zaghlool al-Najjar one of leading Islamic scientists argues that "Human cloning or designer babies' projects" are some intellectual attempt to alter and change Allah's creation. Allah created human beings with some biological characteristic and traits. Human reproduction is one of divine signs in this universe. Allah created some emotional, psychological, physical and romantic bond between man and woman to produce babies in a natural and pleasant way. To go against this divinely designed biological system is not acceptable in Islam. Moreover, in the context of the above-mentioned Qur'anic verse, it is a handy work of devils to make any change in the creation of Allah. So, can we describe the human cloning activities or designer baby activities are works of devil? Some religious scholars may come to such a conclusion. Likewise, the production of the autonomous weapon systems to some extent, are unethical in Islamic law. Some products of artificial intelligence and digital technologies are not only challenging human identities they are indeed, challenging mere existence of human race. Therefore, some of these products go against some basic ethical and moral teaching of Islamic law.

What is the relevance of the general philosophy of Islamic law to the modernity? What kind of connection that the general philosophy of Islamic law has with modernity? How far the general philosophy of Islamic law agrees with the notion of the modern development? What kind of modernity the general philosophy of Islamic law promotes and what kind of modernity, it does not promote? The focus of this book is not about modernity. Rather this book examines

the general philosophy of Islamic law and its response to the social changes. The general philosophy of Islamic law is designed to respond to any modern challenges and the social realities that the Muslim community encounters anytime. In this sense, the general philosophy of Islamic law is integrated with the modernity that protect and promote Islamic ethics and moral values. Today, modern digital technology influences entire human life. It influences world's economy, education, culture, religion, security, politics, finance, and people's way life. It can be argued that the ethical, moral, religious and social values of the humanity is challenged by the modern digital technology. Yet, it can be argued that there is no antipathy between the general philosophy of Islamic law and the digital technology if the products and inventions of the digital technology go along with the moral values and standards of the general philosophy of Islamic law. Neither Muslim countries nor Muslim academics have control over modern technologies in this modern technological world, yet, they could highlight the advantages and disadvantages of modern digital technology not only merely protect Muslim communities but the humanity from the existential threat from it. It was reported that when TV was introduced into the Kingdom of Saudi Arabia in 1970s, many clerics opposed the idea of watching TV. They argued that TV could bring immorality into Saudi society. So, they claimed watching TV is Haram in Islam. Yet, King Faizal, opened a TV station with recitation of the Holy Qur'an to send a message to clerics that TV can be used for both for good and bad purposes. To tell them there is nothing wrong in these new human inventions rather it is responsibility of human begins to use it for good or bad purposes. Since then, Saudi has seen dramatic modernization process. It can be said humanity cannot avoid the influence of modernity and modern development. One could argue that by promoting development of human skills, intellect, education, and needs, the ideals of the general philosophy of Islamic law is designed to promote modern development, discovery and invention. Because, the progress and development are nothing but outcomes of the human intellectual efforts. Therefore, modernity, modern development, progress and advancement in the fields of science, technology, industries, and other fields are do not go against the ideals of the general philosophy of Islamic law. The Holy Qur'an repeatedly encourages, persuades and directs man to use human intellect to discover wonders and secrets of the universe.

Therefore, it could be said that that the outcomes of the modern civilization are nothing but a manifestation of human intellect. However, the modern development has produced many human values and human habits that go against the ideals of the general philosophy of Islamic law. There are so many positive and negative aspects to the modern civilization. The general philosophy of Islamic law could be used as yardstick or measurement tools to gauge the positive and negative aspects of modern development and modernity. This could help us to know what aspects of the modernity is compatible with Islamic teaching and what are not. The contribution of the modern civilization is unpreceded in human history. The human civilization has created many wonders in the past in the field of arts, building works, artefacts, pyramids and yet, modern man has produced some wonders and innovations that are unparallel and unprecedented in human history. Medical inventions, discoveries, information revolutions, technological advancement, space technology are unpreceded in human history. These are nothing but advancement of human knowledge. The general philosophy of Islamic law does encourage humanity to seek knowledge in experimental, empirical and physical sciences. Modernity has facilitated human life in many ways. It has made human life easy, comfortable and convenient. Today, modernity and modern development has intruded human life in many ways. Some of these intrusions has created positive and negative impact on human life. Today, technology controls entire human life. The humanity cannot live today without technology, modern facilities. Internet, game, gambling additions and many other forms of human addiction are nothing but intrusion of modernity in human life. Moreover, the modernity has created some innovative public administrative, economic, political and judicial systems

that are unpreceded in human history.Traffic laws, aviation laws, immigration laws, border controls, custom laws, income tax laws, insurance laws, health and safety laws, civic rights, racial discrimination laws, gender equality laws, social welfare rules, diplomatic protocols, foreign policies, political conventions and democratic rights, environmental laws, animal right protection laws, child protect laws, commercial laws and so many the modern protocols and laws are nothing but outcome of modernity and modern development. These are identical human values that the general philosophy of Islamic law aims at promoting. Of course, there are some aspects of modernity that do not go along with Islamic teaching. For instance, modernity has produced some unnatural human relationship such as lesbianism, homosexual culture, single parenthood, civic marriage, alcoholism, individualism, and unlimited freedom, freedom to enact laws against religious values and ethics. These go against Islamic values and Islamic ethical teaching. The general philosophy of Islamic law would not agree with these aspects of modernity and modern development.

When we speak about social changes and modernity we speak about the positive aspects of modern civilization. Many aspects of modernity and modern social changes are compatible with the general philosophy of Islamic law. So, this book deals with those aspects of modernity that is compatible with Islam and Islamic teaching. yet, some aspects of modernity are destructive for human civilization such as GM food production, production of weapons of mass destruction, legalization of some drugs, euthanasia, abortion and so many other issues of modern civilization are unethical in Islam.so, this book deals only with positive dimensions of modernity in accordance with the general philosophy of Islam. 21th century human skills are going to be totally different from human skills of previous generations of humanity. The digital technology, Artificial intelligence and scientific innovations are expected to influence human life in many ways. It is expected that the humanity is going to live in a competitive world in coming decades. It is expected that "Great power competition will be basically be a competition between different countries' AI technology" (Kevin Drum, 2018 p. 48,).

The more educated and more skilled people have greater access for job market and career prospects. People will have technological tools and equipment to work with robots and modern technologies. Moreover, the mass communication networks will play greater role in communication between people and nations. Furthermore, the arts of living in the modern world will be shaped with modern concepts of citizenship, personal and social responsibilities. People's actions, activities and behaviours will be controlled by social, religious, legal and citizenship norms. How will the Muslim world react to all these social, technical, and scientific changes that are predicted in the world? What role the general philosophy of Islamic law could play in meeting all these changes? How could Islamic teachings encounter all these modern challenges without compromising the religious values of divine message in the age of digital revolution and Artificial Intelligence? It has been argued that the general philosophy of Islamic law has got flexible legal principles to adapt Islamic teachings for all ages. Unlike any other religious teachings, Islamic teachings have got some universal principles and doctrines to familiarise Islamic teachings at all ages. It has been contended that the legal changes should be made in Islamic law in accordance with social changes. al-Shātibī, the architect of the general philosophy of Islamic law argued the rules of law must be changed in accordance with the social changes. He demanded that the legal changes must be made to meet social changes during his time before 600 years ago. Today, in this modern time, so many social changes take place in the fields of science and technology. Unless, Muslim jurists create legal changes to meet the social changes of modern time, the flexible nature of Islamic law will be disputable. Moreover, some inventions of the digital technology and AI may clash with Islamic religious values. In some cases, modern technology may interfere with nature as we have seen in animal and human cloning. The general philosophy of Islamic law does not allow such human interference with nature. Moreover, protecting moral and religious values in this age of digital

technology is very much important to protect the spirituality of the Muslim community. The modern digital technology with its bad influences can destroy the ethical, moral and religious values of any community in the world.

The role of Muslim jurists is to gauge the dangers of this technology in line with the general philosophy of Islamic law and propose legal changes in law to protect the Muslim community. The Muslim world needs the doctrines of general philosophy of Islamic law and flexible legal theories to regulate human actions and activities. The focus of Muslim jurists has been to interpret and deduce rules from limited divine texts, prophetic traditions, and historical legal precedents. Yet, human life is full events, actions, activities, human inventions, and creations. Human life always evolves and progresses. Humanity creates new inventions in each decade. People come up with new discoveries, new social issues, problems and findings. So, Muslim jurists while dealing with limited divine texts and legal precedents should employ the flexible and adaptable Islamic legal devices to regulate the ever-increasing human activities considering general philosophy of Islamic law. otherwise, Islamic teaching and Islamic law will be marginalised from the realities of human life. More importantly, digital technologies and AI are going to bring a lot of change in human life. They are going to control government and its public relations, they are going to control employers and employees' relations and they are going to control diplomatic and international relations between countries and nations. They are going to control humanity in its all walks of life. therefore, it is important that Muslim academics and jurists examine and evaluate ethical, moral, political, economic and religious impacts of these modern technological evaluations to relate Islamic teaching to the modern contemporary world. The deeper knowledge and insight of the general of Islamic legal philosophy is imperative to gauge the impacts of all these technological impacts on Muslim world because, neither the primary sources of Islamic law nor classical Islamic texts deal with these issues.

b) The nature of social and legal changes in Islamic law.

al-Shātibī attempts to relate the legal doctrines of *maqāsid* and its related legal device of *maslaha* to the changing circumstances of his society in a historical context. It is generally argued by modern Islamic scholars that the legacy of legal theories still constitutes a historical precedent to the changing social conditions of contemporary world. However, since al-Shātibī formulated his legal theories and up to the present, there have been tremendous social changes in the socio-political and economic conditions of the modern world. Such social changes in all aspects of life demand dramatic legal changes. The central themes of *maqāsid* have obvious relevance to the debate on the mutability of Islamic law: what aspects of Islamic law can be adaptable to the changing needs and circumstances of society? How does one draw the line between the divine and human elements in Islamic law? What areas of Islamic law are immutable? These are some of the primary research questions of this book. al-Shātibī has in one way or another dealt with these issues in his brilliant legal works of *al-Muwāfaqāt* and *al-I'tisām*. It is these two pieces of his legal treatises that we primarily use to examine and evaluate his legal thought. What is the significance of the general philosophy of Islamic law to the legal interpretation of the texts? If the laws are abstract and derived from the apparent meaning of the scriptural texts, why should one learn the higher objectives and purposes of Islamic law? This intrigue connection between the rules of Islamic law and its rationale will be examined in this book. The legal interpretation ought to change from time to time and from circumstance to circumstance. Nevertheless, the higher objectives of Islamic law are not subjected to such changes. They are constant and invariable in all places and all ages. Therefore, upholding the higher objectives of law in the legal interpretation of the texts constitutes an essential element in Islamic law. Otherwise, the legal interpretation may differ and vary and sometimes, they may go against the general philosophy of the law itself. You can notice this discrepancy in the application of Islamic law in some Muslim countries today. For instance, take the example of

its application in Saudi Arabia today. Upholding unconditional justice is one of the core themes of Islamic legal philosophy as expounded by many classical Islamic scholars. For this reason, any legal interpretation of the divine texts should be concurrent with this general principle of the Islamic legal philosophy and yet, the clerics in Saudi Arabia interpret the texts of the Holy Qur'an and Sunnah literally without considering this intriguing relationship between the apparent meaning of the divine texts and their rationale in application.That is why some modern Islamic scholars demand an immediate moratorium on the application of capital punishment in Saudi Arabia. Because, the application of Islamic capital punishment in Saudi Arabia does not go along with the notion of unconditional justice as stipulated in the Islamic legal philosophy. The purpose of law is to achieve justice and equity. If these are not achieved by law, there is no point in the application of law at all. They argue that when a poor man steals some thousands of dollars in Saudi, they chop off the hands of the accused at the wrist and yet, when millions of dollars of public money are looted by Saudi elites, the legal system does not apply this harsh capital punishment on them. These scholars claim such a selective application of law is inconsistent with the legal philosophy of Islamic law. The political system of most Muslim countries does not go along with the ideals of the general philosophy of Islamic law. Basic human freedom is one of the fundamental ideals of the general philosophy of Islamic law and yet, what we see in many Muslim countries is mere modern-day political slavery. The Public have not been given full political freedom. Often, historical precedents are cited in support of the political system in these Muslim countries. It is my contention that failure to understand the true ideals of the general philosophy of Islamic law is one of the main reasons why Muslim countries suffer from political chaos.

Indeed, the relationship between traditional legal theories and changing social practices has been a challenging issue for Islamic intellectual history and legal philosophies. Exploring such a relationship between social changes and legal changes was the central theme in the general legal philosophy of al-Shātibī. Thus, al-Shātibī proposes a *maqāsid*-oriented approach to the methodology of legal reasoning. Moreover, by using this method, he endeavoured to integrate the legal changes to the ever-increasing social changes of his time. Today, in this modern age of globalization and information technology, the Muslim world is going through some radical changes in modern life. The Muslim legal jurists should take all these modern changes into consideration when they interpret the divine texts, legal precedents and classical legal theories. Otherwise, the Muslim world will end up in a more chaotic and self-contradictory situation than what we see today in the Muslim world. Many Muslim writers on Islam provide mere literal interpretation to the texts of Quran and Hadith without contextual understanding of the underlying meanings of the texts. Consequently, we have seen a rapid growth of extremism throughout the Muslim world today. The challenges of Muslim radicalism should be analysed rationally, intellectually and theologically in light of the general philosophy of Islamic law. The general philosophy of Islamic law demands an unconditional justice, love, compassion, human dignity, equality, and universal human brotherhood. These are the core teaching of Islam and yet some Muslim extremist groups have distorted this central theme of Islamic teaching with their literal interpretation into some Islamic theological doctrines. These universal Islamic values should be the fundamental principles of inter-community relationship between different nations. The innovativeness of al-Shātibī's legal philosophy is that he realised the failure of law in meeting the socio-economic needs and demands of his time. He therefore attempts to explore the adaptable and flexible nature of law in meeting the needs of changing social conditions. It was also his firm conviction that such a failure stems not from the nature of divine source of law but rather is due to human piecemeal attitudes and approaches to the texts (Masud. K. 1977, p. 34) Thus, what concerns him was the methodological and comprehensive approach to the texts. This is what the Muslim world lacks today in modern Islamic scholarship.

Very often the Islamic divine texts are treated, interpreted and understood in isolation from their historical context and the realities of modern-day life. For the most part of Islamic legal history, Muslim jurist gave piecemeal interpretation to many parts of divine texts. That created some misunderstanding about Islamic law in the Muslim world. Because many Muslim experts failed to appreciate the link between the letters of divine words and the spirit of divine laws: The divine texts may dictate something and yet, the spirit of divine law or the rationale of law may dictate something else. The general philosophy of Islamic law is developed to make some sort of reconciliation between the letters of divine law and their spirit, and between the letters of divine law and their rationale. Otherwise, the application of Islamic law would become irrelevant today in this modern contemporary world which is going through some radical technological and scientific changes that human race was ever seen in human history. The evolutionary nature of Islamic law and its integrated relationship between social and legal changes can be further elaborated based on the sociological theories of Ibn Khaldun. Ibn Khaldun's social theory states, "The conditions, customs and sects of the world and nations do not continue according to any specific pattern or stable program. There is always change from time to time and from one condition to another. Since this applies to people, times, and provinces, it applies likewise to countries, ages and states. Such is God's order amongst his creatures". (Ibn Khaldun, 1977 *Muqaddima,* p.24). Seven hundred years ago Ibn Khaldun predicted this dramatic sociological change in human race. Today, apparently, we notice this rapid social change in all walks of life. Therefore, the demand for legal change in accordance with social change is logically justified. Mahmasāni argues that people's interests vary as the social structure changes. He contends that the welfare and interests of people are the foundation of all laws. Hence, it is logical and more convincing to say that the rules of *Sharī'ah* should also be subjected to changes to suit the changing times. (Mahmasāni.1946, P.172). He further enhances his argument with quotations from Ibn Qayyim in support of his thesis. Ibn Qayyim articulates, "Legal interpretation should change with the change in times, places, conditions, and customs."(Ibn Qayyim. 1961. Vol 3, p 14).

Mahmasāni further develops his thesis to argue that since the interests are the cause and basis of rules and if such interests change, the rules based upon them should also change. This contention is supported by the following legal maxim. "A *Sharī'ah* rule is based upon its cause; when it ceases the rule ceases.(Mahmasāni, 1946, p.173). It can be convincingly argued that literal adherence to the words of divine texts is not always viable in all circumstances and ages. Mahmasāni cites several cases for the justification of his argument. Al-Imām al-Shāfi'i overlooked his old Iraqi legal school with a new legal school in Egypt. This was due to the fact different social circumstances demanded different legal approaches. The land tax was decreased in the days of Abū Yusuf from the amount of land tax in the days of Caliph Umar due to a change in local and social conditions. Moreover, it is reported that the leading classical scholars of the Hanafi school disapproved of offering a regular wage for teaching the Holy Qur'an. This disapproval was based on the custom and tradition of people who used to offer a profusion of gifts and rewards to the teachers of the Qur'an. Once this tradition changed in the later ages, jurists endorsed and approved of taking wages for the teaching of the Qur'an. Thus, rules change according to the change in traditions and customs. (Ibid, p.173). There were numerous precedents for such changes in legal verdicts of the formative period of Islamic legal history. Nevertheless, the principle of legal evolution and the changeable nature of the legal rules do not mean changing the texts themselves. The divine elements of the texts are unquestionable and cannot be changed in any case. The real meaning of change here is a change in the interpretation of the texts in the light of necessity and the change in customs or in the effective causes upon which they are based. The flexibility and adaptability of the *Shari'ah* profoundly depend on the relationship between the social and legal changes. Hence, the notion of the development of *Sharī'ah* greatly depends on accommodating such changes. Yet, some literalists among Muslim jurists do not agree with this notion of accommodating such changes. In this debate around the social and legal changes,

scholars often draw a line between the spheres of *Ibādāt* and *Mu'āmalāt.* Ridā more precisely draws the line between these two spheres of law. According to him, the pure religious doctrines, i.e. creeds, acts of worship and religious permission and prohibitions are exclusively from the clear-cut texts of the Qur'an and authentic Sunnah. There is no way it is possible under any circumstances whatsoever to introduce (*ihdāth*) a new act of worship either by the use of *Qiyās* or on the basis of *maslaha* or *Ijmā'*'.Therefore, whoever makes any addition in theology or Islamic rituals they are making some religious innovation in the name of change and development. However, he asserts the legitimacy of these legal devices to make new laws in the sphere of social transactions.(Ridā.R.1956.P.155).The main argument of Ridā is that Islam has two dimensions or there are two spheres in Islamic teaching. One set of Islamic law deals with divine theological instructions and the other set of Islamic law deals with the divine instructions in relation to human interaction and human transactions. In the second set of Islamic law there is room for human reasoning and hence the introduction of new laws in this area is not only permissible but also it is a necessity in some cases. Yes, all these additional new laws should be in accordance with the legal philosophy of Islamic law. This second area of Islamic law covers a wide range of all worldly and mundane matters such as marriage contracts, business transactions, issues in international relations, issues in economics and politics and so forth. Therefore, an important question arises here. How does Islamic law revolve around the ever-increasing legal issues with these limited legal texts in the sphere of *Mu'āmalāt*? Ridā' somehow resolves this ambiguity. He argues that the texts of Qur'an and Sunnah in relation to matters of worship are infallible. No one could change any forms of worship in Islam. God has perfected all matters of worship and belief once and for all. Hence, they do not change in time and place. But this is not the case in worldly matters. They do change from time to time and from place to place. For instance, business transaction methods today are different from those of business methods during the time of the Prophet. Likewise, many socio-economic, technological, scientific and political aspects of life are totally different today from the time of the Prophet. So, social changes are inevitable in all these areas of modern life. Therefore, God has laid down only general principles and broad outlines according to which worldly affairs can be resolved. The details of those general principles remain within the province of human reasoning. Moreover, according to his legal thought, *al-Manār* has advocated the sciences of the age and the laws of nature (*funūn al-'asr wa sunan al-khalq*) in the matters pertaining to governance and power. Thus, Muslims are entrusted by God to run their worldly affairs on their own. So, the changes in socio-political, economic, and all other worldly affairs are necessary according to Ridā's understanding of Islamic law.

In support of his argument on this matter he further alludes to a legal maxim which reads "*al-asl īi al-ashya' al-ibāha*": This means that mundane matters are basically permitted (for Muslims) unless divine texts prohibit any subject matter. The implications of this legal maxim are that prohibited things in the worldly matters are very limited unless they are sanctioned by the texts. Accordingly, permitted areas are widely open for Muslims in all aspects of mundane affairs (*Mu'āmalāt*). (Ibid, pp. 24-28). Thus, Ridā argues that prohibited spheres are very much limited in Islamic law. For any matter to be prohibited in Islamic law, there must be a clear-cut divine text that refers to such prohibitions. The logical conclusion of this argument is that all human transactions are permitted in Islamic law unless divine texts prohibit any human action. Take for instance, the post mortem on dead bodies, this method of medical examination was not available during the time of the prophet and neither the prophet nor his companions said anything about it. This is a new medical phenomenon in human history. Neither Islamic texts nor Islamic historical precedents have any reference to this practice and yet, today, the post mortem medical examination has become a medical and legal necessity to find the primary cause of death in cases of an accidental death or murders. Therefore, many contemporary Muslim jurists have issued a religious verdict stating that the

post mortem examination on the dead body of a Muslim person is allowed in Islamic law today although there are some religious texts that demand to protect the sanctity of human body after death. Therefore, it can be said with conviction that the mixture of the immutable and mutable elements of *Sharī'ah* is a special feature of the uniqueness of the *Shari'ah* . This special feature of the *Sharī'ah* needs to be explored with a dynamic quality of intellectual scrutiny in the sphere of *Mu'āmalāt* in the light of modern developments. Moreover, since human reason is being recognised as an instrument source of Islamic law to understand the *Sharī'ah,* the divine nature of *Sharī'ah* and the human element are intertwined in the scope of *Sharī'ah.* This intertwined nature of *Sharī'ah* between divine and human elements facilitates an evolving and dynamic mechanism within the *Sharī'ah* to incorporate social and legal changes in every age. According to Imam al-Ghāzalī, the Muslim community is blessed with two kinds of guidance. With external and internal guidance. He contends that divine revelation is an external guidance and human intellect, or human reason is an internal guidance for humanity. For him to enrich human life on earth, humanity needs both guides. Unfortunately, the Muslim community has greatly failed to enrich and enhance human intellect as Imam al-Ghāzalī, contends. In fact, the interrelated nature of social and legal change was first acknowledged precisely by Abū Ishāq al-Shātibī of Muslim Spain in the fourteenth century. He distinguishes between two kinds of change: *bid'a* and *'āda.* Indeed, the notion of bid`a is a change in religious practices, beliefs, and tenets. Such change is not allowed at all. He contends that making any changes in pure religious rites and rituals is not acceptable at all: The forms of worship Almighty Allah revealed are universal and those universal religious rites and rituals are not subject to any changes at all. For instance, The Muslim community prayed five times a day during the time of the Prophet. Today, the Muslim community prays five time a day as they did1400 years ago. This form of worship would not change at all in any time and any place.

On the contrary, *'āda* is a change in habits, customs, and behaviour of people. Al-Shātibī contended that such a type of change is permitted in the *Sharī'ah.* His theory is that when a change occurs in an area of *''āda,* it will affect the rule of the *Sharī'ah* . In his definition of *bid'a,* al-Shātibī has very succinctly differentiated between these two types of changes. (al-Shatibi, 1961 *Al-I'tisám, p.* 36-45). However, if the subject matter of the text refers to *ibādāt* and the principles of faith, then strict adherence and submission are demanded. However, if the subject matter of the text refers to worldly transactions ('*adat*: *mu'āmalāt),* a consideration should be given to the meaning and underlying causes of such texts to reconcile the relationship between social change and legal change (al-Shatibi, vol 2. P 232) Imam al-Shatibi proposes his legal doctrines are created to reconcile these social and legal changes in Islamic law. Indeed, he noticed hundreds of social changes during his time and proposed some legal changes in Islamic law to meet the realities of his time. Since his time, in our modern world, we have seen thousands of social changes in all fields of life. Today, many modern Muslim jurists contend that to meet these realities of modern-day life, we should use the doctrines of the general philosophy of Islamic law to facilitate legal changes with social changes. They argue that Islam was revealed in Arabia 1400 hundred years ago, in an Arabian social context. Today, we are living in a totally different social context. When we apply some aspects of Islamic teachings today, we need to consider Time and Space factors in our application of Islamic law to our modern social contexts. We would not be able to apply all aspect of socio-political, and cultural aspects of 7th century Arabia to our modern social settings and contexts. Although, the basis of Islamic theology remains the same for all ages and times, time and space factors should be considered in the application of some aspects of Islamic law. We can notice hundreds of social changes between now and medieval Islamic ages. I have highlighted some of these social changes between the present and medieval Islamic epochs so that we could appreciate the importance of legal changes in accordance with these social changes.

The world order of modern time is different today from that of 1400 years ago in many ways. The world economy of the present time is different from medieval time in many ways. The politics of the modern time is different than that of the medieval time in many ways. International relations between nations today are different from those of the medieval times. The communication methods of now are different than that of those of the medieval times in many ways. The geographical map of modern world is different from that of the medieval time in many ways. The scientific and technological developments of the modern world are dramatically different than those of the medieval time. Today, the modern world is controlled and monitored with GPS systems and modern technologies that were unprecedented in the past. Today, humanity is living in a virtually globalised world unlike in the past. Moreover, peoples' habits, customs and thinking patterns have greatly changed with all these social changes and developments. So, no longer we could depend on any classical ideas for the problems of the modern-day Muslim communities. In the field of finance and banking a lot of changes have taken place. During the time of the prophet and his companions or during the medieval time money was used in some coin forms and even a bartering system was prevalent mechanism for food and good exchange. Today, most businesses are run on line money transaction, stock exchanges, share market and many modern forms of business which have no parallel or historical precedents in Islamic legal theories. The Islamic law dictates that goods should be presented in the market before selling to make sure no defect or cheating is involved in the business transaction yet today business people do not see or meet each other; however, billion-dollar business transactions take place without goods are being seen neither by buyers nor the sellers. Today, even money is in the form of digital transaction. (Yamani, 2009, p. 7) Moreover, the modern system of insurance does not have any historical or legal precedent in Islamic law and yet, Muslim communities across the globe are bound to insure their business and properties with modern insurance systems whether they like it or not. This is the true reality of the financial world we are living in today. All these social changes demand legal changes in Islamic law and yet, we do not find historical legal solutions for all these modern problems. The classical Muslim jurists did not encounter these types of social issues during their life time. How does this social change affect Islamic law? What does this change do to Islamic legal philosophy? For instance, today the world economy is controlled by global financial markets and stock exchange systems of the modern world. Today, the fiscal system of all countries relates to these financial market and stock exchange systems. Most of these financial institutions are based on modern day interest rates and financial speculations. Financial market crashes take place frequently around the global due to this speculative nature of modern finance. How far does Islamic financial philosophy fit into this modern speculative financial system of modern world? Taking and giving interest in any form is strictly prohibited in Islam. Today, the Muslim world with all its financial ethics and principles is compelled to work under financial jurisdiction of the modern financial and banking system. All modern banking and financial markets are based on interest. How does one reconcile these two-dichotomous financial systems? Does Islamic legal philosophy have some special provision to adopt the western model of finance under pressured conditions? Or otherwise, can the Muslim world follow the principles and ethos of ideal Islamic finance by ignoring all modern financial markets and banking systems? How does Islamic legal philosophy react and reconcile itself with this modern social change in financial and economic development? Can an alternative Islamic banking and financial market withstand with these huge financial and banking changes? What could it mean to protect and promote Islamic economy as stipulated in classical Islamic legal philosophy in modern economic conditions?

Similarly, we notice that a dramatic development has taken place in the field of health and safety. Yet, some traditional Islamic scholars have been reluctant to accept or

appreciate these changes. Some of them have been arguing that heart, kidney, eye or any part of human body transplantation is not permitted in Islamic law. Yet, most Islamic legal scholars have argued that these transplantations are allowed for such medical treatments. Yet, progress in medical science tells us that a lot of dramatic changes have taken place in health education. Modern day human life would be difficult without all these medical and health facilities. After all, the primary objective of Islamic legal philosophy is to enrich and protect human life from all hardships and difficulties. Therefore, I think adopting all these social changes in healthcare and medical science are not against the spirit of Islamic law and its higher objectives. Likewise, more dramatic changes have taken place in politics in our modern time than previous centuries. Today, a new world order has made some dramatic changes in politics and international relations between countries. The two world wars have made dramatic changes in geopolitics, geography and in the balance of power in the world. Unlike in the past, today world is controlled and dominated by the super powers of the present time. Unlike in the classical period of Islam, today, many international organizations such as UN, NATO, EU, Human rights commission and international agreements between countries regulate military, trade and diplomatic relations.

The countries with veto powers control politics and military affairs of the modern world. To apply some classical Islamic ideas in politics or war in modern conditions would not be appropriate and viable at all. It could be a collective suicide and disaster for the Muslim world. The utopian ideas of Muslim radical groups are taken from some classical books on Islam and some of these ideas have no relevance to the modern world we live in today. Therefore, it would not be appropriate to adopt some of those outdated classical juristic ideas to modern time. That is why we should review all these classical ideas of medieval Muslim scholars in the light of current developments in our modern world and choose whatever goes alone with the general philosophy of Islamic law. All these differences should be considered when Muslim jurists address modern contemporary problems and challenges in the light of the general philosophy of Islamic law today. The mere adherence to the Qur'anic texts and prophetic traditions would not do any good without considering these social changes in the application of divine texts. No doubt Qur'anic teachings in theological matters are universal and unchangeable and yet, in the sphere of politics, science, technology, the economy, international relations and social traditions there have been a lot of changes. The Muslim communities are subjected to all these changes like all other communities. Muslims are not excluded from this general social phenomenon. When we apply Islamic teachings to our modern conditions, we are restricted and controlled by some international laws, politics and legal systems of the modern world. This does not mean that we ignore all Islamic laws and Islamic teachings today and yet, we are compelled by these social changes to choose what we could apply and what we cannot apply from the corpus of Islamic law. Unfortunately, many Muslim clerics and scholars do not make this distinction between what the Muslim world could and what it cannot do today. Hence, they live in a utopian world away from the realities. So, they either distort the teaching of Islam or go against the social realities of the modern world. In medieval times, kings of different empires controlled the boundaries of their empires. They decided the geographical boundaries of their empire by continuous wars. The battles won over their enemies gave them automatic legitimacy to rule over the lands of enemies they conquered. In medieval times, wars between empires had been an accepted social norm between the humanity. The human history is full of wars between kings struggling for geographical domination and control. We read how European dynasties fought for many centuries for control and domination. likewise, people of all other civilizations fought for centuries for geographical control of borders. We could say it had been a way of life for the survival of regimes and dynasties in the past. Today, the geopolitics of the modern world has dramatically changed. Today, the national boundaries of the countries and their

maritime waters have been defined and demarcated by international law. The sovereignty of each nation has been protected by international laws. The International courts of justice could act against any country that violates international laws except a few countries that have veto powers which could be used to overrule UN Security Council rules in some cases. Yet, today, the international laws and regional security agreements between nations are used by many countries as a legal and defensive mechanism to protect their sovereignty. (Ustaz Mansoor, 2018)

Islamic radical groups did not take into consideration all these changes when they decided to wage war in many Muslim countries. Many radical groups such as Al-Qaeda, Taliban and ISIS and many other groups imitated some classical ideas of warfare into modern times. They copied the ideas of classical Islamic scholarship of the medieval time on warfare without considering all the changes that have taken place in the modern world in the fields of politics, international relations and modern warfare. Some of these groups wanted to take on the US and its western allies without realizing all the changes in all these areas in the modern world. The Muslim world now encounters a huge destruction and disaster due to the hasty and unwise actions of all these radical groups in many Muslim countries today. Killing innocent people in the name of Islam has no legitimacy in Islamic law at all. These Muslim radicals have used the peaceful religion of Islam to suit their radical ideological agendas. They understood some aspects of Islamic teaching from the classical Islamic texts away from the realities of modern-day life and away from the teaching of the general philosophy of Islamic law. As result of this misreading and misinterpretation of classical Islamic texts these radials have caused a huge destruction in the Muslim world today from Afghanistan to Yemen. Here comes the significance of knowing the general philosophy of Islamic law. If this science is rightly taught and comprehended by millions of Muslim students across the globe it can make a difference in relating Islamic teaching to the modern world. It could be used as one of the viable means to deradicalize millions of Muslim youth today. Yet, a literal school of legal thought dominates the Muslim world today in the field of Islamic studies and the rational school of legal thought in Islamic study has been greatly marginalised in the Muslim world. That is why these innovative ideas in Islamic studies are given prominence in many Muslim countries.

Classical Islamic legal scholars made a distinction between Islamic and non-Islamic worlds. They called the Muslim world Darul *Islam*: an abode of Islam and the Non-Muslim world *Darul of Harb* namely an abode of war. This classification was done by some classical Muslim scholars more than thousand years ago, in their social, political and geographical contexts. No sane person would agree with such a demarcation today in this modern age of globalization. Today, the entire world is like a global village and the whole humanity virtually interacts with one another without any social or communication barriers. So, it would be inappropriate to divide this world by this sort of classical classification. One of the biggest social changes that humanity experiences today is that it lives in a global village today unlike in the past. Today, the communication networks, transport facilities and technologies have made this world virtually one. Today, people of different faiths, ethnicities and cultures live side by side, work together, interact together and do business together. Cities like London, New York, Paris, and Melbourne are some classic examples of multiculturalism and community cohesion. This is the social reality of modern world. This human interaction is very much closer today than ever before in the business and service sectors. To divide the modern global world into *Darul Islam* and *Darul Harb* in line with classical Islamic classification would be inappropriate and meaningless. Radical Islamic groups such as ISIS and Taliban, al-Qaeda and some other groups still maintain such a demarcation between the Muslim and non-Muslim world. It can be argued that today the so called of abode of war (*Darul harb)* applies and implements the ethical and social values that are enshrined in the general philosophy of Islamic law than any Muslim countries. The socio-economic equality,

unconditional justice, rule of law, freedom of expression and many more ethical values that are enshrined in the general philosophy are more comprehensively applied in western countries than any Muslim country. On the other hand, political opponents are persecuted, tortured and killed in many Muslim countries for just expressing political opinions against the ruling political parties. Killing of Saudi journalist Jamal al-Khashogi is a typical example for this. Such a killing is against the basic teaching of the general philosophy of Islamic law. J. Auda argues under this political condition, the migration from Muslim countries into non-Muslim western countries has become a religious duty for all those persecuted political opponents. He argues that protecting life, and family is one of the higher objectives of Islamic law. Therefore, migrating into lands of peace and protection is a religious duty for all who those are persecuted in Muslim countries. yet, migration for business, education, or medical treatment or tourism adventure are different from migration for survival. The Islamic ruling may differ on these cases of migration. (J. Auda. 2015, p190). Therefore, it can be argued that dividing this virtual world into an abode of war and peace does not make any sense in this modern world.

Why do these radical groups come into such impracticable and unviable conclusions in their reading into Islamic texts and classical legal schools of thought? Because they follow the texts literally words by words and fail to consider all the social changes that have taken place in the modern world. Moreover, they de-contextualise the texts from their historical contexts. Most Quranic texts and prophetic traditions are reported to have been revealed in some historical contexts. some prophetic traditions are reported to have been narrated in some specific social and historical contexts. It would be a sociological mistake to copy them all from those social and historical contexts and apply them to our modern social conditions without any consideration into modern social changes. We need to read them in their historical context to understand them fully and yet, these Muslim radicals do not consider their historical context but try to apply classical ideas as they understand them literally. That is why or that is how they come to some wrong conclusions on many modern geopolitical issues. Most of these groups give a literal reading of the Islamic texts. They have failed to understand and appreciate the general philosophy of Islamic law in the light of the rapid changes that take place around us in this modern time. Some modern Islamic scholars argue to apply some aspects of Islamic law to the modern condition one should take the following three aspects into consideration. 1) an appropriateness of texts of the Islamic script, 2) the realities of the current world around us, 3) The consequences of human actions. Not all texts of Islamic scripts and statements of classical Islamic legal schools are always appropriate and viable to the modern world that we are living in today. So, Islamic scholars must be selective in application of Islamic teaching in some modern conditions. Moreover, they should consider all the changes that taken place in many fields in modern day as we noted. We could show hundreds of examples to illustrate how these radicals failed to rightly appreciate the general philosophy of Islamic law in their reading and application of Islamic script. For instance, take Taliban's reading into the notion of Jihad in this modern time. I do not deny that the Holy Quran speaks about different kinds of Jihad in Islam. Indeed, the Qur'an encourages to do struggle for any just causes with some good outcomes. Yet, to apply verses of jihad literally in our modern time would be unrealistic and unviable to our modern time. They have used many verses of Jihad out of context to justify their actions and moreover, today one needs to consider international repercussion and international laws. Taliban and Al-Qaeda groups do not have any clue about these realities when they went to war with western nations. This unwanted war has done huge damage to Afghanistan and many Muslim countries. Millions of people have been affected and thousands of people have been killed. Millions of people have become refugees. They neither read the divine script in light of the general philosophy of Islamic law nor do they consider the far-reaching consequence of their action. Their common sense should have guided them to

avoid following this disastrous path and yet, their literal reading into the religious texts mislead them into this disaster of causing chaos in the Muslim world. Today so-called ISIS have repeated the same mistake in the footsteps of Al-Qaeda and Taliban. They went to war without seeing all these consequences. Unlike in the past, today warfare is very dangerous. Weapons that are used in modern warfare are very destructive and they could make some far-reaching damage for infrastructure and properties of any country that engages in war. The Human and financial cost of war is huge. All these groups do not have any clue about these realities and consequences of modern-day wars. Because of their short sightedness in understanding of the divine texts, they have inflicted unimaginable damage on the Muslim world today. This is what happens when Islamic radicals and groups do not have good understanding of the general philosophy of Islamic law and its teaching. In addition to this, they should envisage the consequences and repercussions of their religious verdicts on the current affairs of the Muslim community. It was imam al-Shātibī who had extensively written about the subject matters of the consequence of human actions. Moreover, people's habits, customs and thinking patterns have greatly changed and with these all kinds of social changes and development. Today, many international organizations such as UN, IMF, World Bank, NATO and many other international and regional organizations influence major policy and the decision-making process of world affairs. Whether the Muslim world like it or not Muslim countries too have come under the jurisdiction and legal obligations of many outside international political, economic and military organizations. Islamic legal rulings and jurisdictions in some cases clash and conflict with the jurisdiction of some these organizations. For instance, the notion of equality between man and woman, notion of lesbianism, homosexuality, the consumption of alcohol, business transaction with interest, and absolute power to legislate with the support of majority of MPs in parliament and in many other issues Islamic social and religious values clash with western social values. How does the Muslim community make some sort of reconciliation? Many traditional Islamic scholars have failed to scrutinise these changes in time and space in application of Islamic laws and consequently the Muslim world is either compelled to come under alien legal justification or clash with those alien legal jurisdictions.

All these differences should be considered when Muslim clerics and jurists address modern contemporary problems and challenges. The mere adherence to Qur'anic texts and prophetic traditions would not do any good without considering these social changes in the application of divine texts. No doubt Qur'anic teachings in the theological matters are universal and unchangeable and yet, in the sphere of politics, science, technology, economy, international relation and social tradition, there have been a lot of changes. Muslims are subjected to all these changes like all other communities. Muslims are not exempt from this general social phenomenon. When we apply Islamic teachings to modern conditions, we are restricted and controlled by some international laws, politics and the legal system of the modern world. Traditional Islamic scholars are confused by many contemporary modern issues since they have failed to appreciate the realities of the modern world we are living in today. They give many Islamic legal rulings that are irrelevant to the world now. They have isolated some elements of the Islamic teachings due to their failure to grasp these time and space factor differences. This is very much clear in the legal verdicts of traditional scholars such as Sheikh ibn Baz, Sheikh al-Bani and many Salafi scholars who belong to the traditional school of legal thought. It's not their fault rather that they have been trained in the literal understanding of divine texts and they are not exposed to modern ideas in the areas of world politics, financial markets, economic theories, modern international diplomacy, and many other areas of science and technology. So, they come to hasty conclusions without understanding the reality in the contemporary world. After decades of literal adherence in Saudi Arabia, the newly appointed crown prince Muhammed Ibn Salman announced some radical changes recently. Saudi Arabia has been under the strict jurisdiction

of some literal Salafi and Wahabi form of Islam for many decades. Whether we agree or not with the agenda of reformation, the crown prince is trying to do some reformation in Saudi, freeing people from the grip of dogma of literalism is a great step forward in Saudi. Limiting the freedom of people, banning women from driving, working and participating in the decision-making process of Saudi, discriminating against foreign workers, and forcing people into any kind of religious school of thought are not in line with the general philosophy of Islamic law. Yet, the Saudi government's plans for reformation come under heavy criticism. They argue that the opening of gambling clubs, pubs, dance clubs, cinemas, and letting ladies mix with men in social clubs are against the basic teaching of Islam. So, they argue that these reformation agendas are done not in line with Islamic teaching rather to improve the economy of the kingdom at the expense of Islamic teaching. It is expected that a backlash and religious tension could increase in Saudi dramatically due to this conflict between the proponents and opponents of reform. This tells us people in Saudi find it hard to reconcile between the changes that modernity as brought in recent time and their faith and practice. It is not any literal reading of the divine texts and prophetic traditions that provide a mechanism to reconcile this tension between the change of modernity and religious practice, but beyond the literalism they should reconcile this in light of the broader principles of the general philosophy of Islamic law. So, that they will know what changes are compatible with Islamic teaching and what are not.

The modernist Islamic scholars such as T. Ramadan, A. Raisūni, A. ibn Bayyah, Y. al- Qaradâwi and hundreds of modernists have argued that (*Usûl al-fiqh) Islamic legal methodology and (Maqāsid al Shraiah)* the general philosophy of Islamic law has taken the facts of social changes into account within their scope and legal framework. They argue that the time and space factors are considered in Islamic legislation. It is a well-established natural law that changes take place in all walks of life, so, legal changes are needed in accordance with the social changes. Y. al- Qaradâwi explores the flexible nature of Islamic law to our modern time considering all these social changes in his legal theories. He argues that no change has taken place in the immutable aspect of Islamic theology and law: He reconciles between these social and legal changes in Islamic law follow in the same footstep of Imam al-Shātibī. We can very convincingly argue that Y. al- Qaradâwi is not a dogmatic legal scholar like many traditional Islamic scholars rather he is a pragmatic Islamic scholar who lives with the realities of the modern world. I think the students of the Islamic law should contextualise the legal thought of Y. al- Qaradâwi considering this difference between these two contrasting trends in the reading of the scriptural texts in our modern time: The first school of legal thought reads the texts of Islamic scripture literally without considering the time and space factors we are living in today. The second school of thought reads the scriptural texts in light of the general philosophy of Islamic law taking into account the modern changes we have seen in life in recent times. I think that al- Qaradâwi has greatly succeeded in his reconstruction of Islamic legal thought in this aspect. Y. al- Qaradâwi's legal theories and principles are purely innovative thoughts in the legal history of Islamic legal philosophy. It has been contented that the legal process of rationalization of Islamic rulings: (تعليل الأحكام) began with the legal thought of second Caliph Omar ibn Khatab. Most of the legal edicts of Omer ibn Khatab were based on the necessities of change in law in accordance with the social changes of his time. This process of legal changes in accordance with the social changes continued until today. Some leading Islamic jurists such as al-Imam Juwaini, al-Ghazālī, Imam al- al-Qarāfi and Imam al-Shātibī had thoroughly made some studies on this interconnection between social and legal change in Islamic law: This process of social and legal changes has been extensively studied by modern Islamic scholars in the present time given the urgency of legal changes in the modern time in accordance with dramatic social changes taking place in recent time in the human history. Abdallah ibn

Bayyah and Y. al- Qaradâwi are two of the leading Islamic jurist consultants who expanded the legal theories in these aspects: They can be described as the architects of modern Islamic legal thought in the contemporary Islamic world. Sheikh al-Qaradawi's contribution to Islamic law is more or less equivalent to the contribution of al-Ghazālī in his time or al-Shātibī in his time: As al-Ghazālī understood the legal challenges of his time and al-Shātibī understood the necessities of legal change at his time, sheikh al- Qaradâwi understands the contemporary challenges of the Muslim world in the light of the general philosophy of Islamic law: Thus, in term of epistemology of the Islamic legal thought sheikh al- Qaradâwi is no different from al-Shātibī in his Islamic legal theory, methods and scope of legal interpretation.

The rationalization methods are identical between all these three Islamic legal jurist consultants. Of course, these classical and Islamic scholars had different challenges and problems that were unique to their time and place and yet, the challenges faced by modern Islamic legal jurists are different from the classical challenges and yet, one can notice some sort of concurrence in the legal interpretation and process of rationalization or the legal reasoning between all these three scholars. To make Islamic legal theories relevant to the modern time, sheikh al-Qaraḍāwī has created some legal mechanisms and adaptive legal strategies. He calls these a renewal of Islamic legal theories or process of Islamization of Islamic law. Sheikh al-Qaraḍāwī has attempted to give modern Islamic legal interpretation without violating the fundamental of Islam. One of the architects of modern Islamic legal thought the late Fazlur Rahman (1919-1988) has written extensively on the renewal of modern Islamic legal thought and yet, ironically, has not done much research into Islamic legal philosophy. It may be that his knowledge of classical Arabic was not good enough to read the legal works of Imam al- al-Shātibī. yet, he has called to review Islamic legal thought as Muhammed Iqbal did. Fazlur Rahman (1995. P176) argues that "when new forces of massive magnitude—socioeconomic, cultural-moral or political—occur in or to a society, the fate of that society naturally depends on how far it is able to meet the new challenges creatively. If it can avoid the two extremes of panicking and turning in upon itself and seeking delusive shelters in the past on the one hand and sacrificing or compromising its very ideals on the other, it can react to the new forces with self-confidence". This description is fitting for the contemporary Muslim world today. Some segments of the Muslim community resort to the past glories of Islamic civilization today to encounter the challenges of the present-day Muslim community. On the other hand, some other segments of the Muslim community try to ignore all intellectual legacies of the past Muslim civilization to reconstruct modern Islamic identity.Fazlur Rahman asks this hypothetical question "Should a society begin to live in the past—however sweet its memories—and fail to face the realities of the present squarely—however unpleasant they be, it must become a fossil; and it is an unalterable law of God that fossils do not survive for long: "We did them no injustice; it is they who did injustice to themselves" (Qur'an: 101; XVI: 33, etc.). He further says that the contemporary Muslim community could reconstruct its past glory and yet, move forward into a progress path if only it can provide a new and vibrant interpretation into the primary sources of Islam. (F. Rahman 1995. P 179) contends that "there is only one sense in which our early history is repeatable—and, indeed, in that sense it must be repeated if we are to live as progressive Muslims at all, viz., just as those generations met their own situation adequately by freely interpreting the Qur'an and Sunnah of the Prophet—by emphasizing the ideal and the principles and re-embodying them in a fresh texture of their own contemporary history—we must perform the same feat for ourselves, with our own effort, for our own contemporary history. This re-interpretation of Qur'an and Sunnah in the modern time needs some mechanisms, systems and frame works. I think that the legal philosophy of Islamic law offers such a frame work and system how to interpret Islamic teaching today to keep Islamic

guidance intact. Indeed, there is nothing wrong in seeking guidance and getting lessons from the past intellectual heritage of the Muslim past. Yet, those historical precedents and their intellectual heritage do not always give ready-made solutions for the problems of the contemporary Muslim community. The challenges and problems that the Muslim community faces today are totally different from that of our previous generations and communities. Therefore, there is no point in trying to seek readymade answers in the past historical precedents of the glorious Muslim history. Rather, contemporary Muslim scholars should find solutions to the problems of the Muslim community considering the reality of the modern social context. Abdullah ibn Bayyah contends that there are three dimensions and components for any Islamic solution of contemporary Islamic issues. He argues that the Muslim jurists should have a profound knowledge on these three components if they want to address any Muslim contemporary issue today.

1)Primary sources: Texts of Qur'an and Hadith. Subsidiary source of Islamic law	2) Realities of modern world: Socio-political, economic, scientific and technological realities of modern world	3The consequences of human action: Consideration for our action in any of issue.

Diagram 1:

Sheikh Abdullah Bayah (2014. pp-20-40.) argues that the modern social contexts and conditions the Muslim community lives today are different in many ways from the time of the formative period of Islam. Today, our social realities are different in many ways from the classical periods of the Islamic history. He argues that the Islamic jurists and legal theorists should consider all these social realities in the application of Islamic law to modern conditions. Moreover, he argues that the Islamic jurists should examine the consequences of their legal rulings and verdicts. Sheikh Abdullah Bayah critically analyses many problems that the Muslim community faces today in the light of the general philosophy of Islamic law. His legal reformation is based on three fundamental principles: namely, the legal interpretation of the text, (تأويل), knowing the rationales of text (تعليل)and application of the text (تنزيل). This he claims is a classical methodology inherent in the Islamic tradition. The first one is that modern Muslim scholars should know how to interpret the primary sources of Islam, secondly, they should know the cause of Islamic ruling or the intention of the text and thirdly they should know how to apply those Islamic rulings to the modern context. He argues by these three steps or by these three approaches to the divine texts we could respond to the literal school of legal thought, or any radical groups that follow the literal interpretation of the text. He argues with these three approaches to the divine text we can reformulate the Islamic methodology to understand and extrapolate the modern concepts. For instance, he asks what is the concept of political authority in this modern world? What is the concept of election today in this modern world? What is the concept of citizenship today? How do we understand the concept of political obedience today in this modern world? How we understand modern financial concepts? How do we understand the "concept of inflation"? How do we understand the "concept of minority" today? Sheikh Abdullah Bayah proposes these methodologies to provide Islamic solutions for all these modern problems, but he contends that these methods are not new rather he says they are classical methodologies inherent in the classical Islamic legacies and go alone with the general philosophy of Islamic law. Yet, many Islamic groups do not acknowledge or appreciate these three components of contemporary Muslim problems. You may find some Muslim clerics who have profound knowledge in Islamic theology or on some aspects of Islamic law and yet, they do not have a thorough knowledge of the contemporary modern world or modern sciences in order to relate Islamic teaching to the modern world. As a result of this disparity and

knowledge gap many Islamic groups do not appreciate the social changes we see today in this modern world. One of the prominent orientalists (Gibb H. A. R. 1961, p 91) argues that "The Koran (Qur'an) and the tradition are not, as it is often said the basis of Islamic legal speculation, but its only sources. The real foundation is to be sought in the attitude of mind which determined the method of utilising the sources." It is how the Muslim community uses and places the teachings of Qur'an and Hadith in these modern social contexts of our time is which makes the teaching of Islam more relevant and viable to this modern age. There is nothing wrong in the sacred texts of Qur'an and Hadith, but the wrongness lies in the quality of the minds that approach the sacred texts of Qur'an and Hadith. There is no doubt about the authenticity and supremacy of the sacredness of the Qur'an and Hadith. Yet, these texts have been interpreted, elaborated, evaluated and understood by people with different levels of intellectual, social, religious and ideological backgrounds for the last 1400 hundred years. The sacred texts of the Holy Qur'an and Hadith have been interpreted and understood out of their socio-historical contexts. Sometimes, the linguistic traditions and conventions of the Arabic language have been totally ignored in many Qur'anic exegesis. Moreover, the social realities of the modern world have been totally ignored in the application of Quranic teaching into modern social conditions.

The intricate and delicate relations between the sacredness of the texts and modern conditions of our time are scrupulously explored by Tariq Ramadan in his writing. How does Tariq Ramadan reconcile the sacredness of the texts and the problems of the Muslim community that have no historical precedents at all in the primary sources of Islam? His reformative method is he asserts "first, I quote the sources: here is a verse or a prophetic tradition (hadith), and this is the literal meaning. Second, I explain the different readings offered by scholars during history as well as the possibilities available for interpreting the said verse or hadith because of its formation or in light of Islam's message. Third, starting from the verse (or hadith) and its various possible interpretation, I suggest an understanding and implementation that take into account the context which we live in. That is what I call the reformist approach" (Tariq Ramadan. (2010) P. 3). Thus, he relates the relevancy of the texts to modern times bearing in mind the time and space factor in our application of texts to modern conditions. He does not doubt the authenticity and validity of the texts, but his contention is about the application of the texts to our modern conditions. For instance, he takes the example of hitting one's wife. He says that there are some texts both in the Qur'an and hadith that refer to this issue of striking one's wife. These texts have been interpreted differently by different people. The literalists justify striking women, while the reformists investigate these texts in light of the global message and read these texts in their contexts. Tariq Ramadan contends that the historical precedents of the prophet tell us he never struck a woman in his life and hence the notion of domestic violence contradicts Islamic teaching and hence it should be condemned. Yet, the literalists would argue that this type of explanation is nothing but mere deliberation to distort the meaning of the texts and they would not agree with this type of elucidation. Most important fact here is to know how to read the texts in their historical context and gauge the possibilities of applying them to modern social conditions. This needs holistic and inductive reading into the texts in line with the general philosophy of Islamic law. What is important here is to see if T. Ramadan dismisses the text in order to reconcile modern social conditions. He never tries to dismiss the authenticity and validity of the texts, but he questions the level of human intellect that reads the texts. He contends that to relate the divine texts to modern social conditions we need to read the text deeply and grasp its meaning profoundly with all its linguistic conventions. Moreover, to apply them to modern conditions, we should know modern social realities. That is why Ramadan calls to reform Muslim minds in understanding the divine texts. Islamic legal studies have been about studying the textual interpretation. Most classical

Islamic scholars confined the legal interpretation within the limits of the sacred texts of Qur'an and Hadith. They applied intellectual effort around the meanings of the legal texts. yet, they failed to provide the interpretation and religious explanation to social activities of human beings around them. For instance, we read little about the public laws or administrative laws in classical Islamic legal thought. Thus, Islamic legal interpretation grew in Islamic legal thought away from the realities of the social contexts of medieval time and this continued until modern times. Even today, many Islamic jurists limit their legal interpretation within Islamic texts alone. They rarely provide any religious explanation for human actions and activities beyond the limits of sacred texts. Yet, today modern human life so cluttered with modern inventions, scientific and technological advancements. Humanity has witnessed a huge industrial, technological and scientific development in the last three hundred years. What does Islamic teaching say about these developments? What does Islamic law say about these modern developments? To what extent are these modern developments compatible with Islamic legal philosophy and with Islamic law?

The rapid agricultural, industrial, scientific and technological revolutions took place in recent times in human history. It can be argued that the Holy Qur'an encourages such human intellectual activities and yet, Muslim scholars have failed to appreciate, encourage, and explain these human intellectual endeavours in their religious discourses. Islamic research activities have been confined to the textual reading, textual interpretation away from the realities of the modern dramatic changes that take place in field of science, technology, agriculture and industry. Consequently, Islamic legal studies are carried out for the sake of legal studies rather than relating Islamic legal rulings to the realities of the modern world. The literal interpretation of the Islamic law predominated in most parts of its legal history from the formative period of Islamic law until modern time. Because of this literal approach to Islamic sacred texts, Islamic legal scholars failed to relate Islamic law to the realities of social contexts they had been living in different epochs of Islamic history. For instance, consider what are the major problems or challenges that humanity faces today in general? It may be a nuclear war, global warming, environmental disaster, a threat of terrorism and poverty, collapse of the world economy, danger of the population, or any similar modern problem that humanity faces today. Does the Islamic legal philosophy address these modern issues that pose an existential threat to humanity? Otherwise, does the Islamic legal philosophy address any major issue that poses an existential threat to the Muslim community today. Issues such as the rule of law in Muslim countries, peace, community harmony, poverty, unemployment problems, justice, equality, economic development, education, democracy, health and safety issues of the Muslim community. The discourses on Islamic law and legal studies have been confined to a literal reading of the sacred texts rather than finding solutions to the problems that humanity and Muslim communities face today. That is why we contend that the discourses on Islamic law should address these modern social issues in the light of the general philosophy of Islamic law rather than a word to word literal approach to the texts of the Holy Qur'an and prophetic traditions. This book is written to highlight the importance of such an approach to the legal studies in our modern time. The Muslim community is polarized into many theological, ideological and mystical groups. We do not have a central religious authority as we see within Roman Catholicism or other religious groups. So, the different interpretation and disagreement within Islamic jurisprudence, theology and religious matters are unavoidable. Yet, Islamic scholars should consider the social realities, social contexts, time and space factors in the application of divine texts. However, knowing the mere texts alone is not enough they should also know how and when to apply religious texts to our modern complicated world. We live in a multi-ethnic, multi-cultural, and multi religious world today.

Moreover, Muslim clerics should know the consequences of their religious verdicts in this modern world: Unfortunately, the most radical Islamic groups do not have such a profound Islamic knowledge. The Islamic legal philosophy directs the Muslim clerics how to apply the Islamic texts considering all these above-mentioned social conditions and realities. That is why it can be convincingly said that a thorough knowledge of the legal philosophy of Islamic law is a prerequisite for all graduates of Islamic studies before they embark on Islamic teaching or give any religious verdicts. To speak for Islam and for Muslim communities today, Muslim scholars must be well equipped and well trained not only in traditional Islamic sciences but also in modern social sciences. Of course, you cannot expect that Muslim scholars will have time and energy to excel both of traditional Islamic sciences and modern social sciences. It is beyond human capabilities to excel in all subjects in this age of specialization and knowledge explosion. Therefore, it is not practically possible to expect Muslim scholars to have a thorough knowledge of Islamic sciences and modern sciences at one time. At the same time without a thorough knowledge in both branches of knowledge (secular and religious), it would not be appropriate to issue any religious verdicts on any contemporary socio-political and scientific problems of Muslim communities. For this reason, it has been proposed by many contemporary Islamic scholars to form a team of Muslim intellectuals comprising both Muslim legal experts and social scientists so that they could jointly study all contemporary Muslim socio-political, economic, religious and scientific problems. Today, it has been agreed by many modern Islamic scholars that Muslim consultants should consult Muslim experts on different disciplines of modern social sciences before they declare any religious verdicts on any given issues related to the contemporary Muslim community. Hassan Jabir (2007 p. 90) argues that Europe went through some intellectual, industrial, agricultural, technological, scientific and information revolutions over the last two centuries. Although some contemporary Muslim jurists are influenced by these new ideas in European developments to formulate some new kind of Islamic legal jurisprudence incorporating modern concepts of development most of the contemporary Muslim jurists have failed to learn from the European intellectual contributions to human civilization over the past two centuries. He further contends that because of this failure there is a huge intellectual vacuum among contemporary Muslim scholars about western civilization and its contribution to humanity. Therefore, he argues that many modern Islamic jurists cannot relate their legal verdicts to the realities and challenges of the modern world. Why did the Muslim juristic mind not grow up to meet the challenges of modern times? Hassan Jabir replies to this question. He argues that the Muslim jurists in the majority of their intellectual history, spent most of their time and energy analysing the past historical events of medieval times, trivial legal issues, theological matters, rules of rituals, and laws of slavery instead of addressing the primary issues that are relevant to human civilization such as human resource development, economic development, educational development or political development, or human values such as liberty, democracy or freedom of speech. He argues that instead of understanding the physical laws of nature, cosmological laws of the universe, geological rules of the earth and sea, biological wonders of the human body, marvels of the ecological environment of this earth, the Muslim scholars spent their time and energy over some 500 verses of the Holy Quran that speak about religious rites and rituals at the expense of thousands of Quranic verses that speak about the universe, cosmology, ecology, biology, geology, oceanology and many other features of this universe. He further argues that the Muslim mind is not competitive mind in knowledge seeking but the Western and Eastern scholars are competing one against another to discover the wonders of the universe, to innovate new concepts yet, the Muslim religious scholars live with the mindset of the Middle ages. He identifies many factors for the backwardness of Muslim communities in many areas of knowledge and development. Religious extremism, political corruption, dictatorship, over

reliance on the past glory, wrong understanding of religion and wrong reading of religious texts are some of the main reasons for the stagnation of critical thinking in the Muslim world.

There is no political will and hardworking ethic in many Muslim countries. The socio-economic, scientific and technological development of Western countries did not take place within one or two decades rather people in many parts of the western world went through a series of industrial, agricultural, economic and scientific revolutions to achieve the notion of liberty, freedom, democratic rights, and human rights. All this did not take place over night but people in Europe fought for their rights for many centuries. This physical world is ruled by physical and natural laws. If you want to achieve something you must work with that. People in most Muslim countries do not have a hard-working ethic. Consider, for instance, Japan. Two Japanese cities, namely Nagasaki and Hiroshima were bombed in WW2 in 1945 and yet, Japanese people did not keep mourning over these attacks for decades rather they worked hard with determination and they became one of strongest economies of the world within a few decades. So, there is no point in blaming others for the shortcomings of the Muslim world, The socio-economic and scientific progress and development of the west is the cultural product of western society and therefore, I would argue not all aspects of socio-economic models of development are appropriate to third world countries. Moreover, the European nations compete with one another in science and technology and yet, we do not see such a sense of competitiveness and eagerness among Muslim nations to learn and discover. Muslim history tells us that sometime in the middle ages, the Islamic civilization lost this competitiveness when the Europe was waking up from the dark ages. Moreover, people in Muslim countries do not have social environments, opportunities and facilities to enrich their human resource potentiality. This is due to the lack of political will and socio-economic conditions of these countries. Hassan Jabir argues that the notion of socio-economic development of Muslim countries should be analysed in the light of the general philosophy of Islamic law. He argues that more critical evaluation of the social realities of the Muslim countries is not enough rather that Muslim political leaders and policy makers should take some initiatives to make any changes. Ibrahim El-Bayomi Ghanem (2017 p 61) identifies an important factor in the stagnation of creative thinking and the lack of development in the Muslim world. He argues that most Arab and Muslim political leaders today are dictators and these dictators rely on some policy makers, intelligence and military experts who do not have any Islamic background or knowledge about the primary sources of Islam. These dictators hire their own relatives and friends who do not have any expert knowledge of Islamic sciences or in geopolitics. Moreover, these dictators do not give any kind of political freedom in the Muslim world to challenge their political power. As a result of this dictatorship the Muslim world is lagging all nations in the areas of education and development. All this greatly affects the creative thinking in legal studies. With the European renaissance, most Western nations went through some radical changes in all aspects of socio-political, economic, educational and scientific aspects of life. Areas of legal studies and juristic discourses too went through some radical changes in Europe. From the Norman invasion of England to the present day, the English law, or substantive law went through some radical changes and yet, we do not see such radical changes in the legal studies in Muslim countries. The legal system in most of the Muslim world is in stagnation as all other areas of progress and development.

For instance, substantive law in western countries went through some radical changes in its history. From its origin up to the present time, English law or western substantive is in the process of evolution. Islamic law is divinely a revealed set of laws unlike any man-made legal system. Therefore, Islamic law is not entirely subjected to the process of evolution like any other earthly legal system. However, there are two kinds of law in the Islamic legal system. Private and public law. Private law or religious law is not subject to evolution and yet, public law is subject to constant changes and evolution. Nevertheless, public law did not adopt in Islamic law

as we notice in the common law of England. It is argued by Worthington (2003, Equity. P. 8) that the Laws of England are the result of the Norman conquest in 1066 when the Normans introduced an entirely new legal system common to the whole of the Kingdom. Norman kings created the Courts of King's Bench, and from these medieval courts, the principles of common law began. Rights and obligations grew from the decisions of the Courts. However, if common law rulings were unfair or unjust there was a right to petition the King for redress. This was because the King was the fount of justice, personally responsible for ensuring that his subjects were treated fairly and justly. With the introduction of the Magna Carta, the notion of liberty, freedom, equal right and many other rights were protected in English law. It would be a daunting task to compare the Islamic legal system with common law and yet, some comparison will give us some insight into the two contrasting legal systems. The difference between English law and Islamic law is clearly illustrated by M. H. M Razik. He notes that "public law" in the sense of constitutional law, administrative law as understood today by the Western and English legal system, did not form a separate major part of the Islamic legal methodology during the formative period of Islamic law, even though in theory it had well defined principles covering all areas of public law and practice. However, it existed to some degree, particularly in criminal law. As society advanced just as in the West, these laws were developed further and were flexible enough to incorporate elements of public law when appropriate. (M. H. Razik, 2010, p.39). Vikor Knut (2005, p3) argues that there are no separate courts in Islamic law to deal with private, public, or criminal cases, Islamic law, according to him, does not make a clear distinction. Yet, M.H.M Razik has challenged this contention. M. H. M Razik argues that during the caliphate of Abu Bakr and Umar the state had rules to deal with criminal acts such as treason, murder, rape, and theft. He further contends that may be the Islamic court system was not as elaborate as it is today but then neither did any modern western state have well defined different court systems at the beginning. (Ibid. p262). He further notes that "By the eighteenth and nineteenth centuries when the English Parliament became strong, Acts of parliament were the main sources of new laws in England. Under the early Islamic law, although there were no similar Acts of Parliament as such, during the time of the Prophet as the Messenger of God and head of State under the Medinan constitution his Sunnah become absolutely binding. With the passing away of the Prophet, the Caliphal edicts of the first four Caliphs, although not as absolutely binding as that of the Qur'an and the Sunnah of the Prophet, nevertheless became a highly respected source of law" (Ibid. p 262)

Comparing both Islamic legal methodology and the English legal system, M. H. M Razik argues that "In Islamic legal methodology, just as the Qur'an and the Sunnah of the Prophet from the primary or the main sources of law, the *qādīs* and jurists played an important role in interpreting this main source. In the English legal system Acts of Parliament were at first the main source of new law while judicial decisions continued to be significant not only in interpreting Parliamentary Acts, Statute law, but also reviewing and differentiating judge-made law, legal precedents set by judges." (Ibid, 282). Thus, western legal systems went to through some radical changes at different historical periods as we have seen and yet, the Islamic legal system from its formative period to the present did not grow with the speed of social changes. Thus, we notice some differences between two the legal systems. The Islamic legal system is purely based on divine revelation and hence human legal reasoning and interpretations are limited by divine commandments. Whereas, the English legal system does not have any religious binding or connotations. It is purely secular in nature and religious authorities have no right to interfere with what the British Parliament legislates. Nevertheless, the Muslim community firmly believes that ultimate legislative power rests with God alone. He has already legislated what is good and what is bad for humanity. All that the Muslim jurists did is to interpret divine laws and not to add or omit any divine injunctions. They did not consider all the social changes that took place around them in human life. That is why the Islamic legal speculation did not grow. Since medieval times to now we have seen huge

changes in human life and yet, regulatory laws in Islam did not grow in accordance with these social changes. I think that the Muslim jurists have confused religious law and worldly laws or statute laws that are needed to meet growing social change in society. As any society progresses it needs statute laws to keep law and order in society and yet, the classical Muslim jurists were more concerned about the religious laws of divine nature than statute laws. It may be that the rudimentary social structure of medieval life styles did not need that many of changes in law and yet, the rapid development in human activity necessitates new rules and regulations.

The Ottoman empire did try to develop public law. Under *Tanzim at* reform the Ottaman empire introduced many changes to meet the demand of social realties. "The changes of the *Tanzimat* Era included modern postal system, a national bank, tax reform, a proto-parliament and an ottoman national anthem. The education system was overhauled along French line. According to the ideals of the West, secular scientific education was promoted over the religion-based education that had been the norm through-out Islamic history. Earlier in Islamic history, scientific and religious research was the same enterprise, and even the prophet had promoted the advancement of knowledge. But with the imposition of French secular attitudes, scientific and religious knowledge were separated, with science considered more valuable…… According to the reformers and their supporters, these were all organizational reforms that were necessary for the Ottoman Empire to function effectively in the 1980s. But more significantly, the *Tanzimat* was a fundamentally change in the way the Ottoman Empire functioned legally. The old legal law code established by Suleiman and his grand mufti in the 1500s was replaced with a new one based on the French system, which prized Enlightenment-inspired natural rights as the basis for the relationship between citizens and their government. No longer was the Islamic shariah was the basis for the law in the Ottoman empire" (Fras al-hateeb, 2017, pp224-225). Why did not this legal reform work in Ottoman Empire? I think that common law gradually grew in western countries along with agricultural, industrial and technological revolutions. Yet, Ottoman Empire and Muslim countries did not go through that all those revolutions. Islamic law is basically a divinely revealed law and the Muslim jurists have freedom to interpret divine law with some conditions. They should not exceed divine limits and divine intents. They should interpret the Islamic law in accordance with the general philosophy of Islamic law. The Muslim jurists concentrated on religious aspects of Islamic law and interpreted the religious laws in relation to the religious life of the Muslim community to guide the Muslim community in day to day religious life. Unfortunately, most Muslim jurists throughout Islamic legal history concentrated in providing legal interpretation to some selective rules of Islamic law at the expense of public laws. The Muslim jurists failed to develop civil laws, public laws, administrative laws, company laws and other aspects of laws as we see in our modern time. It is argued that Muslim religious leadership did not have harmonious relations with political leadership in most of the Islamic history. Muslim political leadership did not get on well with religious leadership. The confrontational attitudes of political leadership with religious leadership had impacted hugely on many areas of Muslim community for the last 1400 years of Muslim legal history. I think Islamic legal studies did not grow due to this confrontation between the Muslim political and religious leadership. M.H. M Razik argues that the tendency towards a purposive approach to law is increasing in western legal studies too. He notes that "This is somewhat like what the Muslims have advocated since the earliest times with respect to "the purposive" or *maqāsid* based interpretation of the primary sources". (Ibid, 2010, p.263) The legal Interpretation in the English court system, according to Martin. J "is left to the individual judges and it is possible that one judge will prefer the literal view, and another could form the opposite conclusion" (Ibid, 2010, p.263). This is a fact in Islamic legal studies too. Some Muslim jurists preferred the literal interpretation over the purposive interpretation to the law and yet, today the tendency is shifting towards the purposive or objective interpretation of textual sources. The problem with the Muslim community today, is the knowledge gap. The religious leaders are not trained in modern human sciences. They do not

grasp what is going around them in human sciences. on the other hand, secular educated elite groups do not have a deep knowledge of Islamic sciences. Because of this disparity and knowledge gap between religious and secular educated elites of the Muslim community, the Islamic sciences grew in isolation from the realities of modern-day life. Consequently, the graduates of Islamic studies have no intellectual skills to guide the Muslim community today. The failure to appreciate the changes of modernity and relate Islamic teaching to the modern day is due to a lack of creative thinking. Although, Islamic law is rich with its legal theories and legal principles, today, the Muslim world is lacking in high quality creative legal scholars to relate those legal theories to the changes of the modern world.

c) *Maqāsid* and deficiencies in conventional legal theories.

Basically, the legal methodology of Islamic law or the legal theories of *Usūl al-fiqh* were articulated as a set of guidelines to stimulate and regulate Islamic legal reasoning (*Ijtihād*). M. H. M. Razik contends that "an important aspect of a legal methodology is the creative process involving a particular form of legal reasoning by taking into account matters that are not explicitly stated in a legal text, either by legislation, judicial precedent, legal reports or texts books". (2010, pp 34-35) yet, the Islamic legal methodology is quite different from any other legal methodologies of common law or any form of legal system. The fundamental elements of law in Islam are set by divine rules and regulations. Hence, the divine nature of Islamic law is indisputable. Yet, it is human beings who interpret and offer legal interpretation to divine texts. For this reason, it can be argued that divine texts and human legal reasoning are fundamental elements of Islamic law: Qur'an proclaims that the Muslim community should "obey Allah and the Messenger (Qur'an 3:32). Based on this Qur'an text M Razik argues that "the fundamental basis of the Islamic legal methodology encompasses the primary sources of Islamic law. (Ibid. P35). It means that the legal reason by Muslim jurists is somewhat limited and controlled. Hence, Muslim jurists cannot provide legal interpretation as they like and as they want according to their own human desire and inclination. Yet, it is human interpretation that gives practical application to this divine law and human intellect is a tool to understand the divine laws. Unlike Western common law which is secular in nature, Islamic law has its roots in divine revelation. This is the difference between Islamic and western laws. Thus, the legal interpretation methodologies too differ between Islamic law and Western law. However, historically and pragmatically speaking, the legal theories of (*Usūl al-fiqh): the Islamic legal methodologies* have had some setbacks. With the steady decline of the Islamic legal reasoning of *Ijtihād*, the functional nature of *Usūl al-fiqh* was subject to some sort of complete stagnation. More specifically, with the so called "closure of the gate of *Ijtihād*" which has been described by Iqbal as a "voluntary surrender of intellectual independence (Iqbal. M. 1978, p, 178) the methodology of the legal theories of *Usūl al-fiqh* lost its functional nature in the development of juristic thought. The subject matter of *Usūl al-fiqh* became a theoretical subject. Consequently, further fresh legal interpretations to the texts of the Qur'an and the Sunnah have ceased. The rational approach to the texts should have been increased by the emergence of *Usūl* doctrines. Nevertheless, the science of *Usūl al-fiqh* became a pure theoretical subject that dealt with linguistic traditions, issues related to Aristotelian logic and theological polemics rather than formulating a pragmatic and a practical method to deal with social issues. Moreover, Hellenistic thought and logic crept into the doctrines of *Usūl al-fiqh*. In addition to this, theology, philology, dialectics, and mysticism had a great influence on the science of *Usūl al-fiqh*. The works of Ghāzalī, Bāji (d.474/1081) ibn 'Aqil (d.513/1119) Ibn al-Hājib (d.646/1248) all consist of many theories that were deeply influenced by dialectics (*jadal*), logic, and mystical thought. (W. Hallaq (1999). pp 134-153). Such influence in the science of *Usūl* was well acknowledged by al-Āmidi in that he notes that the science of *Usūl al-fiqh* was derived and formed from the mixture of theology, Arabic language and the *ahkām al-Shaīi'ah* (Imam al-Āmidi. (1982) Vol:1, p, 6). Thus, the dynamism of the methodology of Islamic

legal theory ceased during this Islamic period due to the so called "closure of the gate of *Ijtihād*". This trend continued into our modern time. This stagnation of thought not only affected religious studies but all other branches of knowledge.

Richard Koch and Chris Smith so beautifully describe the rise and fall of Islamic civilization. I think that it would be appropriate here to quote them so that we will know what exactly went wrong with Islamic creative thinking. "After the fall of the Roman Empire, Islamic civilization became militarily, culturally, and scientifically pre-eminent in Europe. It was under the umbrella of Islam, from the mid-tenth to the mid-thirteenth centuries, that, European civilization first began to emerge from so- called Dark Ages. When Christian Europe had lost all Greek learning, it was known and treasured throughout Islam. The beautiful Islamic cities of Spain, Seville, |Granada and Cordoba, were magnets for scholars of all faiths: …. Through the agency of Arab scholars, the West gained its modern numerals, rediscovered the writing of the ancient Greek scientists, advanced in astronomy, and gained new learning from Persia, India and China". But something strange happened by the thirteenth and fourteenth centuries in the Muslim world. Caesar E. Farah tells what went wrong with Islamic civilization at this time in history. "The early Muslim thinkers took up philosophy where the Greeks left off…… in Aristotle the Muslim thinkers found the great guide……. Muslim philosophy …. In subsequent centuries merely choose to continue in this vein and to enlarge Aristotle rather than to innovate". (1994 pp 85- 95). While the Muslim thinkers were engaged in Aristotelian philosophical and theological debate for the sake of intellectual pleasure, what happened in Europe was a different thing. Richard Koch and Chris Smith (Ibid. p71) note "for all their lack of Greek texts, the European "Barbarian" of the "Dark Ages" made remarkable progress, not in science but certainly in technology" This was what happened in the Muslim world over eight hundred years ago. This stagnation of creating thinking not only intruded into Muslim minds in the field of science and technology but also it intruded in religious sciences too and religious thinking too became a victim of this stagnation of Muslim thinking. Ahmed al-Khumlishi strongly contends that alien Greek philosophical influences on the science of *Usūl* had far-reaching consequences in the practical functions of *Usūl.* The theoretical and polemic nature of *Usūl* was not a viable means to resolve the pragmatic problems of realities of life. The gap between the realities of life and legal theories was widened. Thus, the studies in this science continued to be just for the sake of intellectual pleasure and scholastic arguments between jurists and theologians and away from the realities of life. (Al-Khumlishi, A. 1988 pp. 98-103). It can be said that socio-political and historical factors too played a greater role in this stagnation of Islamic legal thinking. Islamic jurists were persecuted for their political views in the middle ages. They did not have freedom in what to say and what to write. They did not have political support and back up to develop their religious thought throughout most of medieval Islamic history. There was no cooperation between Muslim rulers and scholars in the main part of Islamic history. This hostile relationship between Muslim rulers and scholars had a negative impact on the development of Islamic jurisprudence. Muslim jurists and scholars were not given freedom and leverage to develop Islamic jurisprudence and rules in the areas of public administration and collective duties of the Muslim community. Thus, creativeness in Islamic jurisprudence lost its dynamism by this time and it never recovered it even today.

Mahdi Shamsu Dīn, a contemporary *Shi'ite* jurist identifies the deficiencies and defects of the conventional *Usūl* from another standpoint. He contends that the divine commands are of two types. The first type of divine command is directly addressed to individuals by God in his revelation. The second type of divine command is directed to the Muslim community at large. So, there are two types of divine commands. One is individualistic in nature and other one is public in nature. According to Mahdi Shamsu Dīn, the focus of the classical Islamic scholarship in their legal interpretations was mostly on the first type of divine command. He argues that the classical Islamic jurists spent most of their

intellectual life in elaborating Islamic law concerning individuals. That is why we find volumes of Islamic legal books on rituals of purification, worship and religious duties and yet, we find little writing on public affairs or political affairs of Muslim communities. The classical Islamic scholars over spent much of their time and energy on the first type of divine command, elaborating, interpreting and explaining the legal rules of divine laws pertaining to individuals at the expense of public rules. However, he argues that the divine commands concerning the Muslim community are more in quantity and yet, those divine commands were not extensively studied by the classical jurists. Consequently, collective duties, social responsibilities, social needs, problems and obligations of the Muslim communities were largely neglected. He identifies that the reason for this neglect was the politically corrupt leadership, which marginalized the role of Islamic jurists in the socio-economic and political issues affecting the Muslims community at large. Consequently, Muslim jurists could not develop many areas of Islamic law and promote public welfare and interest with their legal thought in medieval ages in Islamic history. There was no cooperation and collaboration between ruling elites and Islamic jurists to develop different public development projects. Both political elites and jurists failed to devise public policy to promote public interest and public welfare of Muslim communities in that hostile social environment between them. This is one of the reasons why Islamic jurisprudence of politics and public administration did not develop in Islamic history. The resentment between Islamic jurists and the ruling elite continued throughout most of Islamic history and it left some far reaching negative impact in the formation of Islamic legal thought and still the Muslim community feels the impact of it. Thus, it is high time for Muslim intellectuals to re-examine their approach to the corpus of Islamic law from a collective perspective in line with the general philosophy of Islamic law. (*Shamsu Dīn, M. pp.19-20).* J. Esposito agrees with such contention and yet, he argues that the classical legal theory that predominated in the development of the law employed four different sources of law, namely, the *Qur'an, Sunnah, Qiyās* and *Ijmā''*. In addition to this, the classical legal theory employed the subsidiary principles of equity such as *Istihsān*, *istislāh* and *istishab*. However, the interaction of these sources and continued dynamism of legal development discontinued after the third A.H/ tenth century. This was due to several historical and legal factors such as the so-called closing of the door of *Ijtihād*, growing political disintegration, negative attitudes of political leaders to intellectuals, the unconstructive aspects of Sufism and ultimately, the Mongol invasions of the thirteenth century. All these factors negatively contributed to some greater extent in halting the creative legal activities. (Esposito, J. 1978. pp. 30-31). He too agrees that the hostile attitude of Muslim rulers in medieval times in addition to other factors contributed the decline of Islamic legal thought. Another negative aspect of this trend in the science of *Usūl al-fiqh* was the arguments around causation of *al-ahkām* (*Ta'līl al Ahkām*) between the theological schools of *Mu'tazilites* and *Ash'arites*. The essence of theological argument according to *Ash'arites* is that man is incapable of comprehending the rationale behind God's actions and commands. Hence, the legal cause behind the rules of God is no more than a sign (*al-imāra*). (al-Shātibī vol. 2, p, 6.) Imam Ibn Hazm had argued that Muslims should not question Almighty Allah at all for his action and for his ruling. We cannot ask why did Allah do this or why did Allah reveal this rule? His contention is it that it is not fitting for any human being to question Allah about his actions and rulings. What is needed is a complete submission to divine commands. (A. N. al Baza: 2014. pp.116-118). These theological and philosophical arguments left some negative impacts on the development of Islamic jurisprudence. Instead of providing pragmatic legal interpretation for the practical issues of the Muslim community, the Muslim jurists engaged in unrealistic issues due to above mentioned historical, political, theological and philosophical reasons. As result of this, the Muslim jurisprudence did not grow as it should have grown dealing with realistic issues.

The malfunction of the legal theories of *Usūl al-fiqh* can also be attributed to the total negligence of the general philosophy of Islamic law, i.e. *Maqāsid al-Sharī'ah.* The science of the legal philosophy of Islamic law never gained a prominent place in the writing of classical legal schools until al-Shātibī explored the integrated nature of the legal theories of *Usūl al-fiqh* to the doctrines of *maqāsid.* He made a close connection between the legal reasoning of *Ijtihād* and the general philosophy of Islamic law. Thus, according to al-Shātibī the knowledge of *maqāsid* is a prerequisite for the legal reasoning of *Ijtihād.* Otherwise, the involvement in the pursuit of legal reasoning without the knowledge of the higher objectives of law would lead to grave mistakes and errors in the legal interpretation. According to al-Shātibī those who read the apparent meanings of the texts without reflecting over their ultimate aims and rationale are the proponents of innovations (*ahl-al-bid'a*). *Mu'tazilah* and *Kharijites* did so at their own peril. Many of them provided literal interpretations to divine text and came to some erroneous conclusions. Thus, their fragmented approach to the texts of Qur'an without understanding their rationales and objectives paved the way for such mistakes. (Al-Shātibī. Vol. 4. pp, 159-169). Moreover, we should examine how far the conventional legal methodologies fit to modern times. Do we need to follow the same legal methodology of previous generations of the Muslim community? Abū Sulaiman questions the credibility of conventional *Usūl* for modern conditions. The basis of this problem lies in the defectiveness of traditional Muslim methodology. For him "the problem is not which rule Muslims should select, approve or reject, but rather what is wrong with Muslim thought and why *Sharī'ah* is no longer providing man with rules and regulations that can enable him to exert more effective control over his environment and destiny". (Abū Sulayman. 1981. P6). The crux of Abū Sulaiman's arguments is that there is nothing wrong with the sources of Islamic law, but it is Muslim approaches to sources of Islamic law, which need to be reviewed. He contends that contemporary Muslims fail to comprehend the general philosophy of Islamic law in the light of modern social changes. In the same line of thinking but with a quite different method Coulson elaborates on the defectiveness of Muslim jurisprudence in that he notes, "it appears that Muslim jurisprudence has not yet evolved any systematic approach…lacking any consistency of principle of methodology". (Coulson. J, A.1967. pp.152-154). From above the discussion that it seems that Muslim jurisprudence today suffers from methodological problems.

The International Institute of Islamic Thought in its annual conference in 1976 concluded that the Muslim World was badly afflicted by an intellectual crisis. The fundamental cause of the backwardness of the Muslim nations is attributed basically to this crisis. It suggested that any remedies for such a calamitous social predicament should begin with a comprehensive methodology that guarantees accurate and disciplined thinking. Moreover, the conference identified a certain inadequacy of vision (*ifqâr al- ru'yah al- shahihah*) in Muslim thinking, which was neither goal-oriented nor purposeful: intellectual discussions very often take place for their own sake rather than to find needed solutions to problems. (A. Raisūni (1998). *Islāmiyyat al-Ma'rifa*: Vol.3. p 35). Some Muslim scholars contend that the Islamic *Ummah* does not lack human and material resources, but the backwardness of Muslim nations can be mainly traced back to stagnation in thought and lack of vision, which impede creative and healthy approaches to utilising the immense resources. To rectify this condition, Muslims need to modify and renovate their way of thinking and to develop an academic and scientific methodology to face contemporary challenges. (Faruqi. I, 1981, p 7) Abū Sulaymân proposes to modify the classical concept of *Usûl* to resolve the crises of mind, He points out "the current concept of *Usûl* was formulated in an earlier period and, in that capacity, it responded to the needs of that age. Ironically, Muslim intellectuals of our time have failed to grasp the extent of change that has taken place in the realm of knowledge, culture and civilization in the modern

world. The deficiency is not in Islamic source materials themselves but rather in the intellectual capabilities of '*Ulama,* who are not capable of correlating these source materials to social developments". (Abū Sulayman, 1993.p, 87). What is needed urgently therefore is a comprehensive Islamic methodology. Abū Sulayman notes the defectiveness of conventional *Usūl* from three aspects. First, the classical legal speculation lacks the empiricism and systematisation. Classical scholars mostly relied on deduction from the Islamic texts as their main method in acquiring knowledge while not much attention was paid to developing a systematic rational knowledge pertaining to law and social structure. Nevertheless, in the field of the physical sciences such as medicine, mathematics, and geography, Muslim scholars applied both text and reason. They were empirical and experimental. Then, he notes that the reasons for this intellectual dichotomy were that there was a general satisfaction with the existing social system set up by the prophet i.e. there was not much difference between the social conditions of the prophet's time and that of the medieval age.

The second reason was the failure of the *M'utazilites* to reconcile the relationship between reason and revelation in a comprehensive way. Consequently, the Muslim scholars failed to institute a solid foundation for the evolution of a rational philosophy in Islam. Abū Sulayman vigorously warns contemporary Muslim jurists that simple and direct deduction from Islamic textual materials "without properly accounting for changes involving the time – space element of the early Muslim period is a retrogressive step." In this respect, he draws our attention to consequences of failure to understand the Qur'an and the *Sunna* in their historical contexts. (Abū Sulayman, 1993. p, 87). Abū Sulayman notes that many Islamic jurists have failed to analyse themes of the Qur'an and Sunnah in a social and historical context. He neither rejects the universality of the *Sharī'ah* nor doubts the application of the *Sharī'ah* in the modern world. However, he endeavours to clear some ambiguities surrounding the literal interpretation of the Qur'an and the Sunna. He further illustrates this point with several commentaries on the following verse of the Qur'an (8:65-66.). The main argument in this Qur'anic verse is that a small number of Muslim fighters would overcome a larger number of enemy fighters on the condition that they fight with commitment, perseverance and sacrifice. The main issue here is that the commentators explained this verse literally focusing their attention merely on the ratio of fighters and they argued that it is not permissible to flee from the battlefield if the enemy forces double their numbers. Such an understanding and conclusion may have been appropriate for the medieval time, which was comparable to the prophet's time. To contrive such an understanding in our contemporary world is not only misleading but also incomprehensible. Modern war methods are far more advanced and different from that of conventional warfare. Regarding the deficiency of conventional *Usūl* Abu Sulayman notes that irrelevance of some aspects of legal speculation of classical jurists to our time. An example is that in dealing with non-Muslim nations, Imām al -Shāfi'i instructed the Muslim rulers to engage in war with non-Muslims at least once a year, if not more often, and not to accept a truce for more than 10 years. This instruction was made by an analogy to the practice of the Prophet that he engaged in battle with non-believers at least once a year and did not accept a truce for more than ten years. This was a legal speculation of this great scholar of medieval times. This analogical conclusion might have been suitable for the time of Imām al-Shāfi'i. The generality of such a ruling is questionable in the context of our time. Abū Sulayman notes that no statesman could possibly accept this kind of analogy and understanding in our contemporary world. This kind of analogy is an individual juristic opinion, which has no support from the Qur'an. The tendency toward literalism, a word for word and issue for tissue analogical comparison led many jurists like al-Shāfi'i to such a general conclusion that does not sustain the test of time. (Abū Sulayman, 1993 pp. 80-83).

Many modern Islamic scholars support Abū Sulayman's method of reasoning. Most of the classical Muslim jurists of the second Islamic century had maintained the permanent hostile

relationship between Muslims and non-Muslims. As a corollary, the war between them was regarded as the rule rather than the exception. The techniques of abrogation (*naskh*) were used to justify their stand. The argument of the classical jurists that the war and resentment are the permanent rule for international relation is not binding. It is simply the juristic verdict of a temporary nature of medieval time. Moreover, there is no concrete authentic evidence from the sources for such an opinion. (Al- Zuhayli, 1989 pp.130-131). Thus, failure to understand the texts of the Qur'an and the Sunnah in the light of the general philosophy of Islamic law sometimes leads to misinterpretation and misunderstanding. Moreover, the concept of power has extensive meaning in our modern world. It encompasses the military, technological, economic, psychological, moral and spiritual elements of human life. To explain the context of this Qur'anic verse of warfare in a completely different atmosphere and circumstance, one must depart from the specifics of the text and highlight its general purpose instead. This must be done with due consideration for the change and development that has taken place in all aspects of human life. Many historical, political and religious events have halted the development of creative activities in Islamic law. We also find many deficiencies and shortcomings in the conventional *Usūl* as historical accounts depict. This does not mean however that Islamic law lacks a methodology to incorporate social and legal changes. While all subsidiary legal principles of classical legal theory incorporate social change in one way or another, what is needed is a comprehensive approach to the entire body of Islamic law in the light of the general philosophy of Islamic law. Such an approach is demanded by al-Shātibī in his legal writing considering rapidly developing social changes of his time. Unless such coherent and comprehensive approaches are applied, the textual interpretations will be confined to the literal meanings removed from the reality of life. The incoherent nature of conventional *Usūl* and rapidly developing social changes have prompted the Islamic reformists to reconsider the applicability of some aspects of conventional *Usūl* methodologies for modern times. The contemporary scholars such as F. Rahman, I. Faruqi, Z. Sardar, T. Ramadan, Abū Sulayman and T.' al-Alwāni call for an urgent task of revitalising conventional *Usūl* methodologies based on the foundation laid down by al-Imām al-Shātibī.

In his pioneering work in this direction (Towards a new methodology for Qur'anic exegesis), I. Faruqi advocates developing and enhancing this new methodology. He suggests that an efficient and valuable methodology for a reinterpretation and application of Islamic law *is* an axiological systemization of the Qur'an. He advises Muslim intellectuals to engage in a systematic study of the value system of the Qur'an so that the prioritisation and hierarchy of Qur'anic ethical - religious values are rightly maintained. For instance, the religious values such as justice, human dignity, freedom, health and safety are the fundamental teaching of the Qur'an and yet, the studies on Islamic jurisprudence do not pay not enough attention to these social values. Most importantly, focus would be shifted beyond the specific regulation to its intents, i.e. the underlying values of the Qur'an in general. The systematic analyses of this kind are directed to understand not only the value specific to the Qur'anic regulation within its context but also its general purposes. The Qur'anic instructions, its commands and injunctions need to be understood in relation to its space-time context with the realization of its overall values. It is the duty of Islamic jurists that they embody these Qur'anic values in their speculative process of *fiqh* regulations. He explicitly notes the lack of overall systemizations of conventional *Usūl*, "our ancestors completed remarkable studies constituting a tremendous wealth of insight, though none of them followed this method (axiological systemization). We cannot do without their work, nor can we afford to overlook the insight of their research or wisdom of their vision… (Though) none of them achieved the axiological systemization we need today." (Faruqi. I, P.47, March 1962).

Rahman makes a staunch criticism of the fragmented approaches of classical scholars to the Islamic texts. He blames the Islamic jurists and Qur'anic interpreters who

analysed the Qur'an verse by verse and the Sunnah report by report. The lack of comprehensive and integrated approaches to the textual sources is the main deficiency of classical methodology. He further argues that a systematic scrutiny of social, economic and tribal institutions is essential to understand the revelation for universalising it beyond the historical contexts. In this context, he argues, "A most fundamental and striking feature of our *fiqh* is that its various parts and legal points and enunciations do not actually tie up with one another to make it a really well-knit system…. *fiqh* constitutes materials for a legal system, but it is not a legal system itself." (Rahman. F,198, P.184) In the light of foregoing discussions, it can be noted that the urgent need for a broad and comprehensive approach in the field of Islamic law and the social sciences is a burning issue for Muslim intellectuals. Thus, Rahman advocates a holistic and contextual approach for legal theories and legal interpretation. Abū Sulayman notes that Islamic thought continues to be legalistic. In fact, the legal device of Talfiq (piecing together) had been used only to provide undesirable justification for the historical action in modern times. It is therefore crucially important to evaluate the problems of methodology (*Usūl*) in Muslim thought. He further notes that "the model of the social system laid down by the prophet and his Companions which constitutes the body of the *Sunnah* is an important aid for understanding and consequently abstracting the values and the basic outlook of Islam, but it cannot be applied or compared issue by issue with the social system that must be built in order to meet today's needs, realities, and challenges." (Abū Sulayman, 1993 pp, 62). As he strongly believes that "The imitation of a historical system is just as wrong as the imitation of a foreign one, because both reflect a lack of comprehensive understanding of the existing realities of contemporary Muslim people and the Muslim world." (Ibid, p, 94). Hence, such a new approach to sources of Islamic law does not require detaching from Islamic history nor does it require ignoring the richness of their legal speculations. Thus, the focus of the Muslim jurists should be one of social and religious value of the teaching of the primary sources of Islam rather than historical incidents, place, and issues.

On the other hand, Z. Sardar contends that it is inaccurate to believe that the four legal schools of thought have solved all social problems. He suggests that Muslim intellectuals need to go beyond the classical schools of legal thought and construct contemporary structures based on the foundations laid down by the classical jurists. Basically, Muslims today cannot consider the classical rulings as eternally validated. They also cannot seek solutions in their judgements and thoughts for modern problems without looking into the sources of the *Sharī'ah* with our experience and knowledge. Every century has its own problems which cannot be foreseen by predecessors and which are not resolvable by traditional solutions. (Sardar. Z, pp. 109-110). An urgent requirement is an extension of the *Sharī'ah* into the modern domains such as in science, technology, town planning, rural development and environmental issues. Moreover, he proposes to revitalise some *Sharī'ah* institutions such as *hisbah* (office of public inspection) and *hima* (public reserve) in parallel with modern administrative institutions in order to extend the scope of the *Sharī'ah* beyond the law and turn it into a dynamic problem-solving methodology. He further argues that classical jurists used the supplementary sources such as *Ijmā', Qiyās, Istihsān, and istislāh* as a problem-solving methodology. He says it is tragic that these methods were abandoned. Today, the Muslim jurists do not seem to be using these problem-solving legal methodologies. Why is it? It could be that because, most Islamic jurists do not know how to use them in their legal interpretation. Or it could be that the public administrations in many Muslim countries are not administered by with religious guidance of the Muslim jurists. Today, most of the Muslim jurists are socially, and politically marginalised.The aim of the jurists to create the science of *Usūl-al-fiqh* was to initiate some legal methodologies that facilitate the decision-making processes. The urgent need of Muslims today is the

development of the *Sharī'ah* as a problem-solving methodology focusing on the general principles of the *Sharī'ah*. However, Sardar notes, "Methodologically, the question of how to apply and extend the *Sharī'ah* to contemporary situations has been hampered by an over-reliance on narrow specifics, legal formalism, literalism, and outdated legal texts. To break away from this straitjacket, the Muslim scholars have to concentrate on the conceptual basis of *Sharī'ah."* (Sardar. Z, pp. 119-124). Moreover, in this context, Sardar argues that al- Shātibī's scheme of *maqāsid* and the legal devices of *maslaha* should be utilised as the legal mechanism to find solutions for the contemporary issues of the Muslim community. So that, the concepts of *Sharī'ah* can be the basis for legislation on various modern technological, scientific, environmental and cultural matters. Similarly, they can also be the source of useful regulations in such areas as abuse and destruction of natural resources and technology. Moreover, he argues that these Islamic sources can be used for international matters like the law of the sea and disarmament. Thus, he encourages Muslim scholars to expand the legal framework of Islamic legal doctrines as a problem-solving mechanism. One way to reconcile the conflict between the Islamic legal speculation of classical times and the rapidly changing social system of modern times is to introduce and incorporate the legal concept of *maqāsid* to the corpus of conventional *Usūl*. With the emergence of the rapidly changing modern industrial society, the classical framework of the analysis is no longer workable or acceptable. Therefore, it is imperative to ease the disparity between the reality of life and the nature of stagnation in legal theories. It is generally contended by modern Islamic reformists that a new methodological dimension of *Usūl al-fiqh* would ease this dichotomy. The doctrine of *maqāsid* will facilitate this new methodology of *Usūl*.

In this perspective, Kamāli notes that "at a time when some of the most important doctrines of *Usūl al-Fiqh*, such as *Ijmā'* (general consensus) and *Qiyās* (Analogical Reasoning) and even *Ijtihād* as a whole seem to be burdened with many difficult conditions rooted in the socio-political climate generally prevailing in the Muslim world, *Al- maqāsid* may as such provide a ready and convenient alternative route to the *Shaīi'ah*." (Kamali. H, p.135) Furthermore, he argues that the *maqāsid* doctrines basically deal with the higher objectives and the end goals of Islamic law rather than concerning the conformity with technical and literal details, which seems to be the overriding concern of the various doctrines of *Usūl al-Fiqh* and thus, overriding concern with technical requirements some time can easily impede one's clarity of vision and purpose. It does not mean that we should forget about the conventional legal methodology of *Usūl al-Fiqh* and yet, too much attachment into the literal reading of Islamic text and its technical language makes the application of Islamic law more complicated and difficult in modern social conditions. From another perspective, al-Qaradāwi stresses the importance of knowledge of the general philosophy of Islamic law. The method he suggests is that we should re-examine the intellectual legacy and heritage of our classical Islamic scholarship with its different schools of legal thought to choose what will ensure the enforcement of the *maqāsid* and the resurrection of *maslaha* considering the changes taking place in modern times. Moreover, we need to examine modern issues according to the Qur'an and Sunnah and more importantly, we need to look at the contemporary issues in view of these sources and the general philosophy of Islamic law because those issues were not part of our ancestors' lives and that is why we cannot find legal precedents for those issues in the legal thought.(Al-Qaradāwi, pp.108-9). Therefore, approaching the Islamic law in line with its general philosophy does not mean abandoning the contribution and the legacy of classical Islamic scholarship. The uniqueness of the legal doctrine of the *maqāsid* is that it is constructed to understand the various parts of the *Sharī'ah* in its totality. Without a comprehensive understanding of the ultimate purpose of Law and its overall implications, the application of substantive law (*furū'*) would not be meaningful and constructive. Thus, recently the legal methodology in Islamic law has been a subject of intellectual contention. Yet, a tangible methodology has not evolved. According to modern

Islamic scholarship, the holistic and contextual approach of *maqāsid* studies should be a rudimentary step for the development of such legal methodology. However, the fragmented nature of Muslim society intellectually, ideologically and politically makes such a task more difficult. Above all, there is no centralised intellectual legal authority and leadership for Muslims to co-ordinate any constructive tasks.

In the perspective of this thesis, it is imperative to note the relationship between the operative nature of *Ijtihād* and the *Maqāsid al-Sharī'ah*. The traditional works on *Usūl* failed to establish neither the affinity between *ijtihād* and the *maqāsid,* nor the antipathy between *taqlid* and *the maqāsid.* Indeed, the very question of reopening the door of *ijtihād* denotes a re-examination of the works of classical fiqh literatures in conformity with modern demands and challenges with due consideration for the spirit and end goals of the *Sharī'ah*. To this end, the most important step was taken by al- Shātibī's to highlight the relationship between *ijtihad* and the *maqāsid* when he notes that *ijtihād* has two pillars in the *al-Muwāfaqāt.* The first was a complete knowledge of Arabic Grammar and its syntax and the second was the knowledge of *(maqāsid*): the higher purposes behind the legislation of the lawgiver. (al-Shātibī's vol. 3, p. 1-4). However, the pioneers in the field of *Usūl* did not create such a coherent relationship between *ijtihād* and *maqāsid*. Unfortunately, al-Shātibī's thesis on this subject was not further developed although *maqāsid* is an essential instrument to understand the legislations of God.On one hand, al-Shātibī makes a staunch criticism of the mystical interpretation of Sufi's to the texts of the Qur'an in his theological treatise of *al-I'tisām*. On the other hand, he demands a moderate legal interpretation to the texts of the Qurān in his legal treatise of *al-Muwāfaqāt* in response to the social changes of his time. In his theological treatise, he seems to be following the footsteps of *Salafis* in his crusade against religious innovations and mystical interpretations of the texts of the Qurān. However, in his legal treatise he seems to be a pre-modernist advocating for legal changes in accordance with social changes. In the first, he seems to be addressing the mystical leaders and the followers of the mystical path. In the second, he seems to be criticising the jurists and jurist consultants for their very rigid and restricted legal interpretations. As in the time of al-Shātibī, today, we see the primary sources of the Islamic law are subject to many different types of interpretation: traditional, literal, mystical, political otherwise, ideological interpretations from different schools of thought. There are different schools of thought in Islam today: the moderate, literal, and traditional schools of thought. It can be argued that a profound understanding of general philosophy of law in a comprehensive way could strength the uniformity among all these different legal schools. Moreover, such a holistic approach into approaches to the texts of the Qur'an and Sunnah could harmonise our understanding of Islamic teaching. Moreover, reading the texts in the light of the general philosophy of Islamic law would protect us from the influence of the Muslim extremism in the legal interpretations of the texts. Thus, a contextual understanding of the texts in line with the general philosophy of Islamic law is what is demanded by this thesis. It does not mean that we should disregard the intellectual legacies of the legal schools of Islam. For the last 1400 years, the Muslim world has produced a wealth of legal materials in Islamic law. We should use those classical legal material selectively.

It is vital to note that while al-Shātibī recognises the social changes in the sphere of human transactions, he vehemently rejects the philosophical, and scientific interpretations of the texts. Al-Shātibī categorically argues that the Qur'an should be understood and interpreted in a way Arabs understood it during the time of the prophet. It is also very important to maintain their linguistic conventions and traditions in the interpretation of the texts. Al-Shātibī condemns one who exceeds this method of understating the texts. Hence, interpreting the Qur'an purely based on natural sciences, the science of engineering, logic and other physical sciences is wrong according to al-Shātibī. (al-Shātibī, vol, 2, P.60). Al-

Shātibī's arguments in this issue are more appropriate today for obvious reasons that the scientific theories are subject to constant changes from time to time. The scientific theories are mere theories and sometimes they are not factual. therefore, one cannot interpret the Qur'an based on changing theories. Moreover, the Qur'an is a book of guidance and not a book of science. Therefore, one should understand the nature of this book when arguing for the expansion of *Sharī'ah* to the field of science, technology and other fields. Yet, we should regulate the ethical and moral issues in the areas of science and technology from the perspective of Islamic law. God has implanted the natural instincts in human beings to discover treasures of this physical world and control nature. According to the Qur'an, Adam was taught the names of universal objects. The Qur'an reads, "He taught Adam all the names" (2:31). Therefore, gaining worldly knowledge is left to the natural instincts of human beings. Hence, it can be said that it was not part of prophetic missions to teach people the physical, empirical and natural sciences, but rather the prophets were sent to teach some sets of beliefs and tenets, which were not always comprehensible by human intellect alone. Therefore, when arguing for the expansion of *Sharī'ah* into the area of science, technology and other areas of modern development, one should always keep in mind the high objectives of prophetic missions. Thus, modern Islamic scholars strive to expand the scope of *maqāsid* to include all aspects of the modern way of life for the welfare of Muslim societies. However, such a call has been heavily criticised by ultra-literal Muslim clerics saying that some Muslim jurists are trying to distort the divine nature of Islamic law. However, what are the limitations of *maqāsid?* The generally accepted notion is that no one can limit the scope of *maqāsid* as long as such expansion is within the limit of the *Sharī'ah* boundaries. Still, this expansion of *maqāsid* demands a systemisation and prioritisation. This is an unaccomplished task that demands intellectual attention. Thus, the attitude of the human mind in Islamic legal speculation will change from individual to individual and group to group. However, such a course of evolution in legal speculation must comply with general philosophy of Islamic law always. The following conclusion can be made from this discussion. Some aspects of classical Islamic legal thought have some defects and deficiency. Not all aspects of classical legal thought are viable today to the modern socio-economic and political conditions of the Muslim world today. The verbatim and literal approaches to the divine texts are not always viable in all social contexts. Moreover, Islamic jurisprudence grew under some harsh socio-political conditions of the medieval Islamic history sometime in isolation away from the realities of social life. Islamic jurisprudence did not address the public problems and issues of the Muslim community throughout Islamic history rather concentration had been on personal matters and rituals of Islamic law. What more is the political dictatorship in the Muslim world suppressed the healthy academic development of the Muslim jurisprudence. In addition to this, the `piecemeal treatment of the sacred Islamic script is no longer viable in this modern complicated world. Furthermore, this study reveals that most Muslim clerics do not understand most of the burning problems of humanity and the Muslim world. Islamic jurisprudence no longer addresses the urgent human problems of the modern contemporary world issues such as globalization, global warming, ecological disaster, nuclear disarmament, and the world economy. Therefore, Islamic jurisprudence badly needs some sort of systemization and methodological structure

d) *Maqāsid* and laws of priorities (*Fiqh al-Awlawiyāt).*

The laws of priority are an integral part of the general philosophy of Islamic law. The laws of priority are some legal principles in Islamic law that have no parallels in any Western or Eastern legal systems. These are some unique legal principles in Islamic law. There is no doubt that the Muslim world today suffers from some serious socio-economic, political and educational problems. If only the Muslim world would revitalise and apply these legal principles in Islamic law, it could have done far better in many areas of development. The

classical Islamic jurists devised these legal doctrines to direct and guide the Muslim world during the classical Islamic period. They devised these legal doctrines so that the Muslim world could prioritise its socio-political, educational and religious ideas. More importantly, to prioritise what social issues are more important and what issues are less important in order of priority. What should be the most important burning issue of the Muslim world? Is it dealing with Muslim extremism? Is it economic development in the Muslim world? Is it educational progress in the Muslim world? Is it the political reformation of the Muslim world? Is it the spiritual development of the Muslim world? What should be the most important issue and what should be the least important issue among all these issues. The classical legal experts produced some brilliant legal principles for the Muslim community to guide them in times of difficulties and yet, today Muslim legal experts and policy makers are unable to comprehend all these legal principles and apply them to the contemporary problems of the Muslim world. Although there are so many Muslim legal experts in the Muslim world, the political system and hierarchical political orders of the Muslim countries do not allow Muslim legal experts to freely incorporate and integrate their reformative ideas in the national policies of these Muslim countries. There is no political will in many parts of the Muslim world to incorporate these legal principles in the nation building process. Muslim political leaders use excessive political power to control Muslim legal experts. They are not given freedom and liberty to introduce their new ideas and concepts in policy making. The logical argument of this kind of Islamic jurisprudence is that the legal principle demands from the Muslim community that it grades its actions: All type of human actions in the Muslim community should be graded at different levels: All human actions, rituals, responsibilities, and duties are not same in grades and reward: some duties and responsibilities should be given priority over some other duties and responsibilities. The classical Islamic legal experts called this classification of human actions as grading the human actions in accordance with greatness of their merits. (*Maratibul al A'mal).*

The epistemological foundation of these legal principles is taken from the primary sources of Islam: Qur'an and the Sunnah are very much explicit on this issue and demand from the Muslim community a choice between the most important issues in order of priority. The Holy Quran makes such a distinction between theological principles of faith, human values and human actions. There are different grades and ranking in the articles of faith and likewise, all religious rites are not same in grading and ranking. Much textual evidence could be cited in support of this ranking and differentiation. This differentiation in ranking of human actions are clearly illustrated in many divine texts and prophetic traditions. The Holy Qur'an says "Do you consider giving water to pilgrims and tending the Sacred Mosque to be equal to the deeds of those who believe in God and the Last Day and who strive in God's path? They are not equal in God's eyes. God does not guide such benighted people. Those who believe, who migrated and strove hard in God's way with their possessions and their persons, are in God's eyes much higher in rank. (Qur'an: 9: 19/20). What do we understand from this divine text? It means that articles of faith are the most important in grading human action. The faith in Oneness of God is the most important fundamental principle of Islamic theology. According to Islamic theology, without this basic principle of faith no matter what good actions man does, it does not earn him any divine reward. It is generally believed in Islam that a strong faith motivates a Muslim man to do good deeds. Thus, the faith and good actions are inherently interconnected in Islamic theology. There are hundreds of prophetic traditions that support this argument in Islamic theology. Moreover, good human actions are not equal in ranking and divine reward. Islamic law makes some differentiation in the grading of good human actions. Some human activities earn more divine rewards than other activities. Human deeds are classified in a such hierarchical order in Islamic law. Some religious deeds become obligatory actions. For instance, praying five times, fasting in the month of Ramadan,

or giving, annual charity to the poor, all these are some mandatory religious duties prescribed in Islamic law: yet, there are some lesser mandatory religious duties too in Islam. al-Qaradāwi argues that today, the Muslim community has got the priority wrong in many religious, cultural, social, educational, political and economic issues. He blames the youth of Muslim communities for their luxurious life styles, and pleasure-seeking ways of life at the expense of education and hard work. He accuses them of time wasting in many Muslim countries. He says the youth do not use their teenage and adulthood life in productive ways. Moreover, he accuses the governments in the Muslim countries of not spending enough money on education, health, industries, and social care but rather they spend a greater part of their annual budgets on sport, defence and cultural affairs at the expense of more important issues. He states that many Muslim countries have got their priorities wrong in policy making.

Moreover, he argues that many Muslim communities got their priorities wrong in religious performance too. He says that some trivial issues are given preference over the most important issues in religious performance. For instance, he argues that many rich people in Muslim countries go to hajj pilgrimages sometime annually. It is his contention that the hajj pilgrimage is a religious obligation for a rich Muslim once a life time and there is no need to repeat it again and again annually. Yet, some rich Muslims do it annually to seek spiritual pleasure. He argues that this is religiously not right a thing to do in accordance with the general philosophy of Islamic law. He contends that billions of dollars are spent on this optional religious pilgrimage by rich people that are not obligatory. For this reason, he argues that this money should be spent on some other social projects that are more beneficial to the public. He says this money should be spent on charities, building educational institutes, orphanages and care homes. He claims that people have got some Islamic priorities wrong due to a misunderstanding of Islamic teaching. Some Islamic jurists have argued that some obligatory duties can be postponed in time of emergencies. For instance, helping and saving the innocent lives of people in countries like Yemen, Syria, Palestine, Iraq and other Muslim countries should be given priority over the performance of Hajj pilgrimage. This conclusion is based on some legal maxim in Islamic law. One Islamic legal maxim reads that "immediate obligation should be given preference over any obligation that could be postponed". (al-Qaradāwi,2000, p. 18). Moreover, he claims that some Muslim students understand the priority of Islamic law wrongly in their life. He says that he met some science graduates in some Muslim countries who are religiously devotional and who left the field of their specialization to devote time in the field of Islamic studies. He argues that they would have done many beneficial contributions for Muslim communities had they concentrated on their field of specialization because, today, the Muslim world is falling behind in science and technology, so, he argues that these Muslim graduates out of their religious enthusiasm wrongly understood the laws of priority in the general philosophy of Islamic law. Moreover, he argues that many Muslim communities today are engaged in trivial religious debates and arguments at the expense of the most important issues in Islamic law. For instance, he says that many expatriate Muslim communities who migrated into Europe recently do not understand their priorities correctly in this new social environment. He says the Muslim communities in Europe, sometime engage in petty religious issues that bring no benefit for them at all. He argues that these newly arrived Muslim migrant communities engaged in some theological, religious and dogmatic debates that have no relevance in this new environment. What kind of clothes should we wear? How should we eat? what theological school we should follow? What legal school of thought should we follow? He argues that these kinds of questions are not necessarily needed in this new social environment. He argues that the Muslim communities in Europe should know their priorities in this new social environment and it would not be fitting to try to live in Europe as they were used to living back home in their native countries. He claims that some social norms, customs, traditions, cultural and legal

traditions are different in Europe from their native counties. So, he argues that the Muslim communities in Europe should give priority to some issues that matter to them the most. Such as education, community cohesion, social integration, employment problems, promoting peace and harmony among community, setting good examples, and cooperating in good initiative. (al-Qaradāwi, Ibid pp18-24). It is generally believed by many contemporary Islamic legal scholars that the Muslim world has got the priority wrong on many issues. This has done a greater harm to the Muslim community in many areas of socio-economic, political and educational development. The religion of Islam has been used and misused by different Islamic groups to justify their legal, theological and political perceptions. Like many other religious teachings, Islamic teachings have been subject to vigorous interpretation by many different groups. There is no uniformity in understanding the religion of Islam. The religion that was revealed by Almighty Allah as a guidance and enlightenment has been used by many Muslim groups to justify their political, theological, philosophical and ideological perceptions and doctrines. Moreover, priorities differ from person to person, country to country, community to community, place to place, age to age and social condition to social conditions. For instance, the priorities of the Pakistan community in their educational, economic, security and political policies cannot be the same as the priorities of Saudi Arabia in those areas of social policy making. The needs, necessities, and recruitments change from country to country. It is the duty of the policy makers in those countries to prioritise social needs. al-Qaradāwi argues that unfortunately, the policy makers and religious scholars in Islamic countries do not have such a deep understanding of Islamic legal philosophy and consequently, the Muslim community have got their priority wrong and sometime the less important needs are given preference over the more important needs of the Muslim community. For instance, countries such as Afghanistan and Iraq may need to spend more money on deradicalization programs to free the youth from the dangers of Muslim radicalization and yet, countries like Malaysia may have a different priority. For instance, it may need to spend more money on education and economic development.

There is nothing wrong with the religion of Islam, but people have misunderstood it with their own cultural, social, philosophical and ideological interpretation. In short, Islamic teachings and principles are distorted to suite the ideologies and philosophies of these Muslim groups. Today, a Sufi understanding of Islam is different from a Salafi understanding of Islam, a Wahabi understanding of Islam is different form *Ikhwan* understanding of Islam. Likewise, Islamic teachings are read and understood by different Muslim groups differently in accordance with their levels of IQ, educational, cultural, social, and ideological background. Arab Muslims read the Islamic teachings differently from Non-Arab Muslim communities. People in Pakistan and Indonesia read and understand the Islamic teachings differently from those of Saudi Muslims. Due to this polarised nature of Islamic reading and understanding, the Islamic teachings no longer work as a source of motivation and a unifying force, rather the Muslim communities are disunited and wasting their time and energy in unwanted dogmatic and theological argument that brings no benefit to their spiritual nor for their material life. The laws of priorities constitute a significant place in the legal theories of classical Islamic legal thought. Classical Islamic scholars endeavoured to understand the rules of Islamic law in the order of priorities, giving precedence to the most important issues over less important ones. The works of al-Ghazālī (d.505/1111), Ibn Abd Salām (d.660/1263), Ibn Taymiyah (d728/1327), Ibn Qayyim (d.751/1350) and many others draw our attention to the application of the laws of priorities in their legal interpretation. They went beyond the literal implications of the divine texts to understand the laws of priorities considering the rationale and contexts of social and legal issues in the light of the general philosophy of Islamic law. In cases of revolting against the aggression and atrocities of rulers, Ibn Qayyim argues that if such acts draw more harm to the community than the extent of their tyranny, then it is not

advisable to engage in preventing such evils since it only brings more harm into society. (Imam Ibn Qayyim, n.d P.4). The bedrock of this argument is that if such revolts and protests bring more harm and more destruction, he suggests that the Muslim community should avoid such protests. It would be a like a collective suicide to protest before a big army that wants to crush any protest. Because, most armies in Muslim countries operate under direct political command of rulers so, the public encountering them would be a like collective suicide. Yet, one could question the logics of this apologetic religious verdict. How long could the Muslim community keep maintaining the patience and tolerance in front of such a political atrocity in the Muslim world.

It could be said that some Muslim clerics in the Middle East use the same logical reasoning to argue that the Muslim community should not revolt against any regime. They argue that any revolt against regimes in the Middle East would bring more harm than any good They point out that what is happening in Iraq, Afghanistan, Yemen and Syria to support their claim and yet, one could argue that corrupt politics in the Middle East has brought more destruction and more harm than good. Therefore, a political change is a must in the Middle East for a long-term peace and stability. I think in this political scenario in the Middle East, Muslim clerics should rationalise their response to the political crisis in the Middle East. They must gauge the politics of the Middle East in the light of the general philosophy of Islamic law. Does keeping the same old political systems bring more benefits or more harm to Muslim communities in Middle East? Or would changing the political system bring more benefits or more harm? They should apply the laws of equivalence to gauge and evaluate the good and harm of political change in Middle East. It is one of the fundamental principles of Islamic law to put the public interest over the interest of individuals or any groups. So, the greater interest of public should be to give priority over the interest of some elite groups in the Middle East. Unlike in medieval times, in this modern world, politics plays a greater role in protecting and promoting public interest. Politics today is more important than at any time in human history. politics controls all aspects of human life in this modern world. It controls the wealth, and income of the public, it controls the quality of healthcare, it controls the education and skill development, it controls the health and safety, it controls freedom and liberty. it controls the transport and movement of public, and it control the freedom of expression and religious freedom. For instance, in some gulf countries people do not have freedom to speak or write as they like. In this modern world, politics controls every aspect of human life, it affects every human being today. we are compelled to engage in politics. Our modern socio-economic conditions necessitate that we engage in politics. Moreover, fulfilling these basic needs of human life is the primary duty and responsibility of government. When people do not meet these basic needs, people will demonstrate against their government. This is a basic human right of people in any country and yet, some Muslim scholars argue that such demonstration against governments is unlawful in Islamic law. These scholars read the religious texts literally. That is why they come into a such mistaken conclusion. A. Raisūni argues that the welfare of the public interest is more important than the welfare of political leaders in the Muslim communities. He says that Qur'an directly addresses to the Muslim community rather than the political authorities. The government in Muslim community is secondary important. He argues that the Qur'an does not address the Muslim political leaders, caliphs, government or any person or authorities rather it addresses directly to the collective Muslim community. All divine commands and prohibitions are directly addressed to the Muslim community. The notion of consultation in Islam is not merely confined in the circle of political leaders rather public should be consulted in Islam on many political or public affairs. Of course, government gets power and authority from public in Islam to rule yet, the central power is in the hands of public. The public has power to elect any one into power or remove any one from power. (A. Raisūni. 2013.

Pp9-29). Yet, today, many Muslim rulers do not like to give the power back in the hands of public as we notice in many western democratic countries.

The understanding the laws of priorities in the light of the general philosophy of Islamic law is vital today to examine our social and legal problems in this modern world. Yet, this area of Islamic law has been a neglected chapter of Islamic legal thought for a long time. One can see far-reaching consequences of neglecting the law of priorities in Muslim societies today. Firstly, Muslims are confused in their understanding of priorities in their duties and obligations. Sometimes, the less important religious obligations are given priority over the vital religious duties. This often happens due to lack of understanding of the laws of priorities. Therefore, it is vital from the perspective of the general philosophy of Islamic law to understand these aspects of Islamic jurisprudence (wakeeli, pp.22-26). The higher objectives and purposes of the Islamic law are always the same and constant, at all places and in all circumstances. Thus, understanding the general philosophy of Islamic law is vital to our correct reading of Islamic law itself. Moreover, as was mentioned earlier, the comprehensive understanding of the general philosophy of Islamic law helps to override the deficiencies and shortcomings of the conventional legal theories and more importantly, the knowledge of the general philosophy of Islamic law helps to understand the priorities of the Islamic law in order of preference specially in our time when the priorities of Islamic law are badly confused in the Muslims world.These legal principles are some of the sophisticated legal concepts of classical Muslim scholars. These legal principles are more rational and more logical. Classical Muslim legal experts created these unique Islamic legal devices to enrich Islamic legal thought and facilitate the Muslim community with some legal mechanisms to meet any social challenges and yet, the Muslim community has failed to appreciate and apply these brilliant legal concepts today in many Muslim countries. Today, the Muslim community does not suffer from a deficiency of any sophisticated legal theories, but many contemporary Muslim jurists do not know how to relate them to our modern social conditions and how to expand those legal principles to our modern social circumstances. However, it can be also argued that Muslim countries do not suffer from a lack of good Muslim scholars but in fact, Muslim countries suffer from a lack of good political leaders to alleviate the suffering of the public. The Muslim community suffers from a leadership crisis in many parts of the Muslim world. Muslim legal scholars have been marginalised and excluded from the decision-making process in many Muslim countries. Therefore, the Muslim community does not get its priority and policies right on many issues.

e) *Maqāsid* and consequences of human actions: *Ma'ålâth al-Af'ål:*

Some Muslim jurists have argued that an understanding of the consequences of the human actions of individuals and communities is an integral part of the general philosophy of Islamic law. They argue that Islamic legal philosophy has been created to regulate the actions, duties and responsibilities of the individuals and Muslim communities. so, knowing the consequences of human action is part and parcel of Islamic law. They argue not only how the actions of the Muslim community should be in accordance with laws of Islam but also about the far researching consequences of actions of the Muslim community and how should they be in accordance with the general philosophy of Islamic law. Sometimes, the Muslim community may adhere to the letter of Islamic legal texts without considering the far researching consequences. A classic example for this, is the action of Muslim radical groups today. The radical groups claim that they follow divine instructions letter by letter and word by words and yet, they do not consider the far-reaching consequences of their actions. The general philosophy of Islamic law is constituted to harness the inherent connection between human actions and their consequences in Islamic law. According to the Islamic legal philosophy man ought to think twice before he acts, and the consequences of his actions are part and parcel of his moral and religious responsibilities. Although western legal studies have expanded this area of human responsibility in substantive law today, the consideration

of the consequences of human actions was profoundly expounded by some classical legal experts in the formative periods of Islamic legal thought. Imam al-Shātibī the architect of the general philosophy of Islamic law notes that Muslim jurists should not issue any religious verdict blindly. He argues that human actions have negative or positive consequences. There can be good and bad consequences. Al-Shātibī states that all good and bad consequences of human actions should be considered when any Muslim jurist issues religious verdicts on any legal issue. So that Muslim jurists can avoid any inimical and harmful consequences of their religious verdicts. Quran and Hadith traditions have clearly alluded to these legal principles in many places. Early Islamic scholarship too had already elaborated on this legal principle in their legal manuals. This is one of the established legal principles in Islamic law. What is called the legal device of *Ma'álâth al-Af'ál:* It has been defined as "considering the consequence of human action before issuing any legal verdict"

A Raisūni argues that this legal principle to consider the consequences of human action prior to issuing any religious verdict was initially created by al-Shātibī. He argues that no one elaborated its meaning comprehensively as al-Shātibī did. Raisūni contended that basically the foundation of the corpus of Islamic law was constituted taking this basic principle into account. He contends that when Islamic law prescribes any law it always considers the consequences of human actions: the consequences of human actions in the present and future. Raisūni has broadened this concept by saying that the entire corpus of divine guidance is revealed based on this principle. He argues that all theological, legal, economic, and religious concepts of Islam are instituted on the foundation of this principle. For instance, he tells us to examine the socio-religious, psychological, and spiritual benefits of five-time Muslim prayers. He says that individually and collectively we benefit from five-time prayer. When someone prays five times, it connects him with Almighty Allah five times a day. He experiences the spiritual benefits of prayer immediately with his devotion in prayer. This is he claims an instantaneous benefit of prayer. Yet, he argues that prayer brings so many social benefits to the Muslim community. It creates social bonds and friendship among Muslim community. He argues when a community meets five times a day collectively in a mosque it gives them a good opportunity to know each other, to care and share their socio, political, religious and economic problems. He argues no other community is blessed with such a divine religious institution as the Muslim community is blessed. He argues that God prescribed this religious obligation considering all these collective and individual benefits. So, short and long-term consequences are considered when Allah prescribed laws in Islam. (Raisūni. 2014. P 80). He gives another example to illustrate this point in more detail. He argues that capital punishment in Islam has been severely criticised today more importantly cutting off the hands of thieves for stealing any item that is worth more than 80.000 Saudi Riyals. This hand chopping has been badly depicted today by some media people. They argue that cutting off the hand for stealing a small amount of money is not acceptable. Human rights groups argue that this is a disgrace for humanity in this modern world. They compare the value of body parts (hands) and the amount of stolen money and conclude that such a punishment does not make any sense in this civilized world. Yet, A. Raisūni. contend that this Islamic punishment is not applied easily as has been portrayed by media. This punishment is done not just to punish the thief but as a deterrent mechanism so that no one will dare to steal. He claims that cutting off a hand of a thief sends a warning message to thousands of thieves not to steal. Moreover, theft and burglary cause unwanted social unrest. He argues that a large percentage of murders and shootings are connected to burglaries. To deter all this, Islamic law prescribes some harsh punishment. This is nothing but a deterrent mechanism. Yet, the secularists among Muslim communities argue that capital or corporal punishment is not unacceptable in any Muslim countries. They argue that rich and affluent people get away with it and yet, this punishment is applied to the poor in the community. For instance, they argue that many of princes and political elites are looting public

money in some Muslim countries without any accountability and yet, they do not get any punishment but the system in Muslim countries makes poor people suffer this kind of punishment.

Therefore, all corporal and capital punishment should be suspended in Muslim countries. The general philosophy of Islamic law dictates some pre-conditions to apply to corporal and capital punishment. Unless those conditions are met the application of Islamic capital punishment would be inappropriate. Muslim society must be spiritually trained, guided and educated on Islamic punishment. Moreover, these punishments can be applied only on just and equal Muslim communities. Yet, today, the principle of justice and equality do not prevail in many parts of the Muslim world so, applying harsh Islamic capital punishment goes against the spirits and ethos of the general philosophy of Islamic law. After all, the primary objective of the general philosophy of Islamic law is to establish justice among the Muslim community. Does such a harsh punishment work as a deterrent mechanism? I would say it does to some extent. It is true that the crime rate is comparatively less in Muslim countries than many non-Muslim countries. Yet, the application of Islamic capital punishment selectively on the poor and weak section of the Muslim community is not acceptable at all. It goes against the basic teaching of Islam. The legal principle of *Ma'âlâth al-Af'âl* has been also defined as one of the Islamic legal devices that determines human actions as valid or invalid considering the consequences of actions. Any human action may be a permissible one, but the consequence of that action would not go alone with the general philosophy of Islamic law. Moreover, Islamic law does not encourage any action that goes against the general philosophy of Islamic law. All human actions are gauged and measured in view of the general philosophy of Islamic law. All human actions, behaviours and duties should go alone with the general philosophy of Islamic law. (Kamal. Imam (2012). P 19). The Qur'an speaks about the consequences of human actions in many places. For instance, take this verse from Holy Qur'an. Allah says that "(Believers) do not relive those they call on beside God in case they, in their hostility and ignorance, revile God." 6:108. Islam clearly prohibits all form of idol worship. To bow down to anyone other than Allah is one of the biggest sins in Islam, yet, Islam demands from its followers not to insult any of these people who worship other than Almighty Allah. Islam demands from its followers not to insult any sensitive rituals of any other religious people. Making mockery of any other faith is not permitted in Islam. Kamal Imam argues that Allah made this prohibition of mocking other faiths, considering the consequences of such actions. if any Muslim groups engage in insulting other religious faiths, in return, people of other faiths, would insult Almighty Allah. Islamic legal theorists have argued the Muslim community should consider the consequences of its actions. Classical Islamic legal theorists confined the application of this legal principle into some jurisprudential rulings and yet, this legal principle should be applied in all areas of policy making in the Muslim world. Today, the policy makers and political leaders when they take crucial decisions in many socio-political, economic and religious affairs of the Muslim community should think about the consequences of their policies. Yet, they do not do so,

> For instance, take the example of recently declared economic sanctions imposed on the state of Qatar by Saudi and some Gulf countries. Although this is a politically motivated decision that has no any academic or logical credibility, it tells us how Muslim political leaders behave naively without any regards to the consequences of their actions. Likewise, we could say the actions and behaviour of radical groups such as ISIS, al- Qaeda, Taliban and many other radical Muslim groups come directly under view of this legal device in Islamic law. All these groups have utterly failed to pay attention to the legal doctrines of *Ma'âlâth al-Af'âl.* Islamic law does not command to follow its rules blindly but rather each sane Muslim person should act with some social and legal responsibility when he or she makes some decision in life. Yet, the political decision that effect millions of people.

Therefore, the Muslim leaders should take the most appropriate and more viable solutions keeping in mind the consequences of their decisions. The Prophet and his companions took many decisions taking into consideration the consequences of their actions. It would be beyond the scope of this book to include as many examples and yet, I will include one example to illustrate how the Prophet Muhammed acted carefully and considered his action. It is reported by Aisha that she recommended the prophet rebuild the House of Allah once again upon the foundation of the Prophet Abraham. Then the Prophet replied to her saying. "I would have done it had not your people been new to the religion of Islam" The prophet predicted such action would have some far-reaching consequences among the people of Makkah. Islamic law prohibits all kinds of deception and legal stratagems. Why is it Islamic law prohibit all legal stratagems? It is because of the fact allowing any legal stratagems on Islamic ruling would bring some far researching consequences. Muslim jurists investigated the consequences of their verdicts before they issued any legal edicts. We could see this in many classical Islamic legal precedents. They made an inherent connection between their legal verdict and its consequences. Abdul Majeed Najjar argues that there is an intricate connection between the legal philosophy of Islamic law and the consideration of the consequence of any human action. He claims that the rules could be amended and changed considering the consequences. He gives two examples to justify this. He argues that in time of war, you could impose border controls between countries to protect the countries from imminent attack. His contention is that the original purpose of the borders between countries is to serve the public and to facilitate the transposition of goods and services between countries and yet, under some extraordinary circumstances this original rule will be suspended considering the notion of public interest. Likewise, it is reported that Imam Malik banned all kinds of business transaction with enemy countries in time of war. This concept of *Ma'álâth al-Af'ál* could be applied to gauge and evaluate human activities in line with the ethical and moral teachings of the general philosophy of Islamic law. Issues such as deforestation, production of weapons of mass destruction, atomic and hydronic bombs, or any other form of nuclear weapons, the production of GM food, giving free gun licences to the public, the social phenomenon of lesbianism, homosexuality, the addiction to drugs and the internet, and many other human activities in the field of science, technology, politics and economic development can be examined and evaluated in the light of this legal principle in Islamic law. This principle could be applied to evaluate the actions of individuals and communities. It could be applied to gauge and evaluate the policy making of Muslim political leaders in Muslim countries. It could be applied to assess the policies in areas of the socio-political economic, and religious matters of Muslim countries. Yet, unhealthy and hostile relations between religious leaders and political leaders in many parts of Muslim countries does not allow the application of this legal principle

The failure to appreciate and apply this legal principle has brought destruction to many Muslim communities by many radical groups such as Wahabi groups, Salafi groups, and other extremist groups such as ISIS, Al-Qaeda, Taliban and other groups. These groups follow the apparent literal meaning of the divine texts often ignoring the rational and context of the divine texts. They do not know how and where to apply the divine texts appropriately in their contexts. As result of this literal reading they have done more harm to the Muslim community. They might have the sincerity to follow Islamic teaching and yet, they do not have the thorough knowledge of the general philosophy of Islamic law to know how to apply the divine texts appropriately. I will just give one more example to illustrate how this legal principle is ignored by many Islamic groups today. In 2013, a military group called the Abakan Rohingya Salvation Army formed in Rakhine province of Myanmar. It was formed with the support of some Muslim radicals in some South Asian Muslim countries. Without considering any far-reaching consequences it attacked the Burmese police post on 25/08/2017

killing at least 12 Burmese police officers. This group did not consider its limitation, and the consequence of its actions. The reaction of these Burmese inflicted some far researching consequences on the minority Muslim community in Rakhine state of Myanmar. The UN described the atrocities committed by the Burmese army as ethnic cleansing and Emmanuel Macron described it as an act of genocide. Likewise, we could say that many actions of Muslim radical groups are not compatible with this legal principle in Islamic law. Each human action has its reaction and consequence. Islamic law demands the Muslim individuals and Muslim communities collectively consider the consequences of their actions before they engage in any. This is one of basic legal principles in Islamic law and yet, due to the distorted nature of Islamic teaching many groups do not take this into consideration. Imam al-Shātibī argues that the human intention should always go along with the divine intention and divine commands. Human wishes, desires, intentions, statements, behaviours, plans and human activities all should go along with the divine Will. Hence, all human inventions, scientific discoveries, technological advancements and all human progress in any area of life should be in line with Islamic teachings to be included in the frameworks of Islamic legal philosophy. So, it could be argued that some modern human inventions do not go along with the Islamic legal philosophy. According to Imam al-Shātibī's legal argument, all types of weapons of mass destruction have no place in Islamic legal philosophy. For instance, all kinds of Atomic bombs, nuclear-powered bombs, hydrogen bombs and all other forms of weapons of mass destruction have no place in Islamic law according to Imam al-Shātibī's doctrines of the general philosophy of Islamic law. The invention of all these weapons of mass destruction does not go along with the general philosophy of Islamic law. One of the fundamental higher objectives of the Islamic law is to protect humanity from any imminent destruction. Ibrahim Ahmed Khalifa argues that the notion of the nuclear race between countries does not go along with Islamic legal philosophy (Ibrahim Ahamed Khalifa, pp254-273). Ironically, the modern world order is controlled by many political powers today, therefore some of these Islamic legal philosophies and concepts do not have any practical implications or practical application in this modern world and yet, for this research, I have tried to relate these classical Islamic ideas with modern day social realties. In short, all human actions and human intention should go along with divine Will and divine laws. According to Islamic law any human action or human invention that goes against this basic Islamic principle is not acceptable in Islamic law. So, all aspects of Islamic law should be read in conjunction with this basic principle. In conclusion it can be said all these legal principles, and legal maxims are always created in the general philosophy of Islamic law to illustrate the flexibility and adaptable nature of Islamic law in all places and. The changing social circumstances, needs, necessity, times, extraordinary situations, different situation and different customs all are considered when laws are applied according the general philosophy of Islamic law. The general philosophy of Islamic law determines the function of law and laws are created in Islam not just for the sake of law rather the laws should be beneficial for people. The application of the law should bring some benefits to the community. The general philosophy of Islamic law makes such a close connection between the functional nature of Islamic law and its benefits to the Muslim community. Classical Islamic legal scholars have created some of the best legal theories in Islamic law and yet, today we do not have good enough Islamic legal theorists to understand all those classical legal theories and relate them to our modern conditions.

Chapter 2: Definitions of the general philosophy of the Islamic law: (*Maqāsid al-Sharī'ah)*:

What is *(Maqāsid al-Sharī'ah)*: the legal philosophy of Islamic law? What are the definitions of the Islamic legal philosophy? What is the epistemological foundation of the Islamic legal philosophy? and what is the historical origin of the general philosophy of Islamic law? Where did this idea of Islamic legal philosophy come from? Where did it begin? How do we understand it? How do we trace and identify it? What is its scope and parameter? This part of our book traces and identifies the genesis, origin and the development of *maqāsid* from its linguistic, theoretical and historical perspectives. Basically, this part of our book defines the broader idea of the general philosophy of Islamic law and traces its historical roots in the primary sources of Islamic law. Most Islamic legal scholars unanimously agree that Islamic law got some higher objectives and yet, some of them differ on how to define them and how to identify them. Moreover, how to make an inherent connection between the higher objectives of Islamic law and modern social conditions. Traditionally, Islamic terms and terminologies have been defined literally and technically. Although we do not need to go into detail about the literal meanings of these terms, we will examine the theoretical and technical meanings here. Many Islamic scholars have argued that the construction of *Maqāsid al-Sharī'ah:* **(**Legal philosophy of Islam law) has two components: The first one is *Maqāsid* and second one is -*Sharī'ah:* both are Arabic terms which have some deep theoretical and technical meanings in Islam: They argue that this construction has far reaching and profound meanings attached to them: It means that there is no Islamic law without some rationale, wisdom and philosophies attached to it. I would argue that this rationale, and wisdom as the spirit of Islamic law. This rationale is the foundation of Islamic law and without them the Islamic law would not have any meaning. We could compare the spirit of the law with that of a human body. The human body functions if life is in the body. Without life in the human body there is no benefit for it. Likewise, I would say the general philosophy of Islamic law is the spirit of Islamic law and its dynamic mechanism that gauges the functional nature of law. There is an inherent connection between Islamic law and its higher objectives. No legal philosophies can be derived or subtracted from any other sources except from Islamic *Shariah*: Islamic law is revealed in accordance with divine wisdom and divine wisdom is the foundation of Islamic law. Nothing else. (Zubeida, 1996, p.39 & Wasfi Ashoor,2015, p.5). Yet, human intellect and reason have a greater role in understanding and applying Islamic law but, human intellect should work within the boundaries and limitations of the divine texts and prophetic traditions. The logical conclusion of this argument is that the Muslim jurist cannot go beyond the divine instructions in constituting new laws in Islam. Whatever new laws and regulations are introduced they should be in line with the general philosophy of Islamic law. This means that any alien philosophy or doctrine that goes against any teaching of Islam cannot be incorporated or integrated into the corpus of the Islamic legal philosophy of law: This excludes all man-made philosophies beyond the scope of Islamic legal philosophy. Islamic legal theorists argue that the legal philosophy has been determined and limited by two factors. It should always go along with the evidence of the primary sources of Islamic law. Secondly, it should go along with pure human intellect that is concurrent with Islamic sources. The human intellect that has been contaminated with alien anti-Islamic doctrines and concepts cannot define what the objectives of Islamic law are? I think that contemporary Muslim legal experts have taken some precautionary measures in limiting the role of the human intellect on the development of Islamic legal philosophy. All what they argue is that the Islamic legal philosophy is derived and constructed from divine guidance and only the Muslim jurists with certain academic qualifications in Islamic sciences could interpret the Islamic law and expound its meaning. Today, yet, I would argue that they need some extra qualifications in modern sciences to relate Islamic law onto modern conditions.

The literal meaning of this term:

Etymologically, the term *maqāsid* is derived from the term *Qasada*: It means to aim at or to go straight. Literarily, the term *maqāsid* means straightness of path. Quran says that it is Allah who guides to the right direction. "God points out the right path" (16:9). Literally it means to intend to go in a right direction and right path without any deviation. This means that one who follows the middle path and not veering into either side of the path. (A.N. Baza,2014. P. 28). We do not try to make any literal analysis of this word.

The technical meaning of the *maqāsid:*

Technically it means that the aims, purposes, goals, objectives and intentions of Islamic law: It has been defined as the general philosophy of Islamic law by modern Islamic scholars. The majority of the definitions given to *maqāsid* are identical. The term *maqāsid al-Sharī'ah* has been defined as a legal methodology in Islamic law or science of knowing the wisdom and rationale of the rules of law that Allah instituted for His believers through his last prophet Muhmmed. It is a point of reference for all Islamic law. (Zubeida P.39). In short, *Maqāsid al-Shari'ah, ie:* the *Islamic* legal philosophy of Islamic law. It has been defined as "an Islamic science that deals with the objectives and divine wisdom of Islamic rulings. Moreover, this science aims at promoting and enhancing public interest and the welfare of people both worldly and eschatological interest in accordance with Islamic law" (Zubeida P.45). Many modern Islamic scholars have attempted to define the general philosophy of Islamic law and indeed, many of them have arrived at identical definitions. The phenomenon of *maqāsid* was approached by many classical schools of jurisprudence with an aim to grasp the very fundamentals of this religious philosophy and to establish general principles, which reflected the spirit of the law (*Maqāsid al-Sharī'ah)*. Although classical scholars discussed the theme of *maqāsid* in their legal works, none of these classical scholars endeavoured to define the theme of *maqāsid* in a precise and comprehensive manner in a technical sense until some modern scholars made an intellectual endeavour to define the theme of *maqāsid*. Nevertheless, A. Raisūni argues that the initial appearance of the term *maqāsid* in a technical sense was in the works of Imām Abū Abd Allah Mohamed Ibn 'Ali al-Tirmithy (245.H). He was the first to employ the term *al-maqāsid* and *'illah* in a strictly technical sense. In fact, some of his treatises on the wisdom and logic of the acts of worship *('ibādāt*) were based on the theme of *maqāsid.* Thus, it can be said that the process of analysing the purpose and benefits of the rules of the *Sharī'ah* systematically stems from this scholar's works, although the precedent for this concept was incorporated in the texts and opinions of his pioneers. Nevertheless, al-Tirmithy did not provide a definition for the general philosophy of law in a technical sense. (Raisūni., 1997 p. 40-41)

The general philosophy of Islamic law is a branch of Islamic science that has been devised to understand the general divine wisdom and rationale of Islamic law. Moreover, it is an Islamic strategic legal methodology that aims at promoting and protecting the public interest and welfare of people. Even al-Shātibī, the architect of the doctrine of *maqāsid* did not define the theme of *maqāsid* in any precise technical sense. This was perhaps because the subject matter of *maqāsid* was clear and obvious that it did not demand any definition as such. Therefore, the reader of his work must be someone who has already acquired some basic knowledge in Islamic law. Otherwise, it would be difficult to understand his legal thought. Furthermore, he demands from his reader open-mindedness and not to be confined to any legal school of thought. These are two conditions that al-Shātibī imposes on those who wish to embark on studying his legal philosophy. (al-Shātibī vol.1, p.61). This means to fully comprehend the broader concepts of the general philosophy of Islamic law, the students should have some prerequisites. Unless these conditions are met, his ideas of *maqāsid* are not fully comprehensible. For the first time, in the legal history of Islamic law, Ibn 'Āshur, Allal Fāsi and A. Raisūni tried to define the doctrine of *maqāsid* in a technical and legal sense. Yet, I do not think that these are

comprehensive definitions. I think that legal studies in the general philosophy of Islamic law are still growing and are still rapidly developing. However, the works of these scholars give us some fundamental ideas about the origins of the general philosophy of Islamic law.

Ibn ‘Ashur defines *al-maqāsid al-Sharī‘ah* as a “science that aims at knowing the aims and purposes of Islamic law”. The Islamic law derives its rationale from the divine legislation enshrined in the Holy Qur’an and Sunnah. *(Ibn ‘Āshur.* p.17*).* *Allal Fāsi* defines it in two ways, he defines it in a general term to say the general philosophy of Islamic law is to know the general objectives and divine wisdom behind each divine law. This is somewhat a religious definition to the doctrines of the general philosophy of Islamic law. Yet, he offers a comprehensive and cohesive definition to it defining the mission of man in this world as a divine agent. “The general philosophy of Islamic legislation is an art of knowing how to develop this earth, to build up a cohesive community interaction among humanity, to know how to establish justice on earth, to know how to guide the political leaders into the right direction to serve humanity, in short, mastering the arts of good governance and public administration free of corruption and to know how to enrich the faculty of human reasoning skills, human resources and public service.” (*Allal Fāsi*. 1981, p3). What does he mean by the preservation of social order? He means that the Muslim community needs to reform its social structure and update its living standards and meet people’s basic needs and necessities. The Muslim community should maintain law and order in society to prosper and progress. Moreover, it needs to take all measures to enrich and enhance human civilization on earth. Allal Fāsi proposes some radical changes in our reading of the general philosophy of Islamic law. For him Islam is not merely religion rather it is a dynamic way of life that encourages the Muslim community to contribute to building a healthy and progressive society to create a strong human civilization. On the other hand, Ibn ‘Āshur divides the general philosophy of Islamic law into general and specific objectives in Islamic law. i.e. *al-maqāsid al-‘āmmah* (general) and *al-maqāsid al-khāssa* (specific) (Ibn ‘Āshur. 1988, p.17)

I. ***Al-maqāsid al-‘āmmah*: *The broader objectives of Islamic law*.**

These general objectives of the divine laws are enshrined in a broader spectrum of divine legislation and these are not limited to any specific aspects of the divine law. The overall objectives of Islamic legislation are general philosophies of Islamic law according to Ibn ‘Āshur. These include the promotion and protection of the public interest of individuals and societies in human races. Further, maintaining law and order in society, establishing justice, maintaining freedom and equality, enhancing the social developments in all aspects of life are included in the general philosophy of Islamic law. (Ibn ‘Āshur. 1998. p.17). The Holy Qur’an and the prophetic traditions outline some general social values such as Oneness of God, sincerity, justice, freedom, equality, love, compassion, universal brotherhood of humanity, and some other social values. These are according to Ibn ‘Āshur universal principles that Islamic law has incorporated in it. These are, according to him, the general objectives of Islamic law.

II-b. ***Al- maqāsidal-khāssa*: *The specific purpose of Islamic law***

The specific type of *maqāsid* that Ibn ’Āshur refers to include those purposes of law that we understand in relation to particular areas of *Sharī‘ah*. Those laws are related to family affairs such as the laws of marriage, the laws of divorce, the laws of inheritance, the laws of Will writing, the laws of business transactions, and punishments. Identifying the specific laws in relation to all these branches of the substantive law according to Ibn ’Āshur is called as knowing the specific purpose of the Islamic law.

III-*c*. *Al-maqāsid al-juziyyah*: *The objective of law in relation to particular rule of law.*

Identifying the wisdom and rationale behind each command and prohibition of divine ruling is defined as *al-maqāsid al-juziyyah.* Each divine command and prohibition are enshrined with some divine wisdom. Knowing those aspects of divine wisdom is called partial *maqāsid.* These aspects of *maqāsid* are mostly recognized by the intellectual scrutiny of Islamic jurists

into positive law. (Raisūni, 1995. P20). To know this kind of divine rationale one needs to have a sound knowledge in Islamic science and Arabic linguistic conventions. Because the primary sources of Islam are in the Arabic language to subtract rulings from divine texts one should know the linguistic conventions of that language.

These are the three types of definitions proffered to the doctrine of *maqāsid* from various perspectives. The scope of the general philosophy of law seems to be open ended. No one has yet limited the scope of the general philosophy of Islamic law. Of course, the scope of the general philosophy of Islamic law is closely linked to the divine texts, prophetic traditions, legal maxims, legal theories and legal precedents and yet, the religious value and validity of any human actions, behaviour or intention can be gauged and measured in the light of the general philosophy of Islamic law. However, establishing a coherent and comprehensive correlation between specific and general purposes of law is an important issue in our understanding of the concept of *maqāsid*. There should always be a harmony between these two domains of *maqāsid.* There should not be an antipathy between these two areas. The specific purposes of law should be always in conformity with the general purposes of law. For instance, maintaining unconditional justice is one of the primary objectives of the general philosophy of law and yet, the chopping the hand of a thief who steals a specific amount of money is one of the substantive aspects of Islamic law or specific rule of Islamic law. The application of this specific rule of law should conform with the general purpose of Islamic law. Therefore, it can be argued that any endeavour to understand the specific purposes of law in isolation from the general purposes of law is not a comprehensive approach to understanding the *Sharī'ah* . Such a partial approach has been one of the main causes for the existing legal chaos and tension within the boundaries of Islamic legal schools. Take for instance the marriage of young girls (majors) in Islamic law. Some Islamic jurists say that guardianship for the marriage of Muslim girls is a prerequisite for a valid marriage conduct in Islamic law and this is based on some specific evidence and yet, this marriage conduct should be seen in the light of the broader objectives of Islamic law. For instance, if a mature girl did not find a guardian, or guardians opposed her marriage to any person within Islamic faith what should she do? freedom is one of the primary objectives of Islamic law or the general objective of Islamic law. Therefore, in this case, the higher objective of Islamic law should be the overriding principle. Maintaining justice is one of the broader objectives of Islamic law. So, in this case, the specific rules of Islamic law could be overridden by the broader objective of Islamic law. Therefore, the general philosophy of law should always override the specific purposes of law whenever conflicts arise. Thus, understanding the general philosophy of Islamic law constitutes an important element in our study of Islamic law.

J. Auda (2016) defines the concept of the *Maqāsid al-Shari'ah* differently in that he says the general philosophy of Islamic law or higher objectives of Islamic law are related to some fundamental logical questions. There are dealing with "Questions" of why? It is a natural inquisition to ask why we have traffic rules or why do we have a code of conduct in our working environment? Or why we have a certain protocol in our schools, colleges and universities? All rules and regulations are set for good reasons. These rules and regulations are there for a purpose and that is to protect people from any danger. Behind every rule of Allah there is a rationale and logic. Some of this rationale is comprehensible to human minds some others are not. Yet, J. Auda argues that the overall general philosophy of Islamic commands and prohibitions are comprehensible to human minds. knowing why Allah prescribed rules and regulations for human life is the subject of the higher objectives of Islamic law (*Maqāsid al-Shari'ah*). Auda contends that (*Maqāsid al-Shari'ah*) is the branch of Islamic knowledge that answers all the challenging questions of " why" on various levels. According to some historians, philosophers such as Aristotle and Plato introduced logical debates and discussions with the questions of "why and how". Auda argues that we should apply these questions to

Islamic divine rules to know the wisdom behind His laws. For instance, why did Allah make praying five times a day compulsory? What is the logic behind it? why did Allah make paying 2.5% of profit a compulsory duty upon every rich Muslim person? What is the logic behind it? why did Allah make a hajj pilgrimage a compulsory duty for rich Muslims once in their life time? what is the logic behind it? why is drinking alcohol prohibited in Islam? Why is eating pork prohibited in Islam? Similarly, knowing the rationale of divine commands and prohibitions are part and parcel of Islamic legal philosophy. All these deals with the questions of why. It is all about knowing the true meaning of Islamic faith and rituals. For instance, the Muslim community pray five times a day. Why do they pray? To know the rationale of the prayer is different from praying for the sake of praying. Beyond the literalistic and ritualistic meaning of the prayer there are some inner meaning for the prayer. Prayers are not some mere physical exercises or traditional religious rituals rather there are some rationales to pray five times. so, knowing those rationales is part and parcel of the general philosophy of Islamic law. It is not outward ritualistic practice that matters most but the meaning of the pray. Why we pray and what do we get from prayer? The prayers increase the spirituality and God consciousness in the minds and the hearts of the Muslims.The primary objective of the prayer is to go closer to Allah, but the physical exercise of ritual is a mean to attain this goal. If we do not attain this objective there would not be any meaning for outward physical rituals in Islam. Yet, some literalistic Muslim jurists are more concerned about the minute details of outward rituals of the prayer at the expense of inner dimensions of the prayer. They are more concerned about how to pray, how to face the direction of the prayer, how to keep the hands in the prayer and yet, often they forget to ask why we pray and what do we get out of our prayers? They give this kind of literalistic interpretation to the rituals and practices of Islamic traditions. These literalistic Muslim jurists are concerned about the dogmatic and ritualistic aspects of the Muslim traditions and yet, they forget why Allah prescribed these religious duties? According to Islamic theology Allah is wise and all His divine rules are prescribed with wisdom. Therefore, we should do all our rituals and duties keeping in mind the rational and wisdom of divine command. But the Muslim community is obsessed with formalities of Islamic rituals.

Auda further contends that the concept of *maqāsid* could be used as a dynamic mechanism to solve some burning problems of Muslims today. He argues these higher objectives of Islamic law tell us how to choose the best way to interpret Islamic texts bearing in mind modern-day realities. He strongly advocates that the inherent relation between the divine texts and social realities can be made through the medium of the general philosophy of Islamic law. He further notes that terms such as development, liberty, freedom. human rights, morality and civility should be elucidated considering higher objectives of law (Auda. 2016, P5.) So, according to this explanation of the general philosophy of Islamic law there are two kinds of general philosophies of Islamic law. One kind of the general philosophy of Islamic law is to examine the wisdom and rationale of the divine texts: The second layer of the general philosophy of Islamic law examines the interconnection between the divine texts and social realties. That is to examine how far the social change or social realities are compatible with Islamic teachings. God sent his final divine message with some primary and secondary objectives. According to al-Shātibī, the intention of the legislator in revealing the divine law is to make man understand the law and bring him under divine Will. But by applying those divine laws man gets some material and spiritual benefits. So, God has some objectives for revealing his divine message and at the same time, man has some objectives in applying divine laws in his life. It is like a teacher who designs a lesson that has some primary and secondary lesson objectives. Students too have some objectives and aims in attending the lesson. Knowing those divine objectives for revealing His law for mankind is the arts of the general philosophy of Islamic law. According to Islamic theology, God, the Creator of this universe, created man with some

objectives and missions. Moreover, God gave man a road map to follow in this life. This divine road map was revealed to mankind through some Prophets according to Islamic theology.

Understanding those divine objectives for human life on this earth and knowing what kind of material and spiritual benefits man gets by following the divine message is part and parcel of Islamic legal philosophy. Moreover, the general philosophy of Islamic law deals with some practical mechanisms to apply the divine message in the life of the Muslim community. The general philosophy of Islamic law identifies the priorities of divine message. It regulates life and mission of Muslim individuals and communities, it sets the life mission of the Muslim community, it gives the Muslim community some general and specific guidelines and direction on how to apply Islamic teaching in different social environments, it guides the Muslim community on how to deal with any issues that are not stipulated in divine revelation or regulated by the Prophetic traditions. it guides the Muslim community on how to make new rules and regulations and on how to meet the demands of huge social changes. Above all, Ibn Taymiyah defines the general philosophy of Islamic law from another theological perspective. According to him, it defines the mission and the purpose of the human life. It defines the meaning and mission of Muslim individuals and communities collectively in this world. He defines it from purely spiritual and religious perspective. In short, his argument is that it is God who created man and this universe. It is God who facilitated man with all facilities on this earth to live on it, so man should submit his will to God alone and no one else. Not for his own desire, not for money or wealth nor for anyone else. Ibn Taymiyah argues that the full submission to the divine will is the primary purpose for which man is created, so, he should live as God asked him to live There is nothing wrong with this definition. It deals with some fundamental questions of the human life. Philosophers have been debating for centuries about the fundamental questions of life. The questions such as who am I? Where do I come from? What is my origin? What is my life mission? Where do I go after death? In deed, the general philosophy of Islamic law deals with these questions too. Thaha Jabir Alwani defines it from this perspective. He defines the mission and vision of Muslim individuals and communities with certain duties and responsibilities on this earth. That mission is to purify our souls, submit our will to God alone and enrich this earth for the benefits of humanity. We can explain this point more in detail comparing the life objective of practicing and non-practising Muslims. For instance, if we ask any non-practicing Muslim what is your mission in life or what is your life ambition? one might say “my life ambition is to get a good job with a big salary? Or to buy a big house or to enjoy life as much as possible. Or something to do with this worldly life” Yet, if we ask the same question to a practicing Muslim he would say, “my life mission is to please God, to be successful both worldly and eschatological life, to be a beneficial person for all and to do good deeds as much as possible with the expectation that God will reward me in my next life”.

According to the general philosophy of Islamic law human life is not merely to eat, drink and die rather it has a profound and deeper spiritual, eternal, everlasting meaning and objective. The wider scope and parameters of the general philosophy of Islamic law is not merely concerned about the material development and progress of the Muslim community in this world, rather its projects and programs are aimed at guiding the Muslim community and humanity for the salvation of the human soul in t both this and the eschatological life. Islamic teaching encourages man to be successful in his material life and earn as much wealth he can, but it is not at the expense of his salvation in his next life. Islam is a moderate religion in that it meets the physical, spiritual and material needs of human beings. The general philosophy of Islamic law is designed to meet all these needs equally and fairly. The general philosophy of Islamic law directs Muslim individuals and Muslim communities to follow the path of moderation in their material, and spiritual life. Spiritual life should not be given priority over material life, or the material life should not be given priority over the spiritual life. The general

philosophy of Islamic law makes a balanced path between the spiritual and material life. That is why a total renunciation of worldly life is prohibited in the Islamic teaching. At the same time, an excessive love of this materialism is seriously condemned in Islam. Islam never encourages people to renounce this world to succeed in their spiritual path or to gain salvation in their eschatological life. Islam is not merely a religion like many other religions in the world. Islam is neither a spiritual path like many cults nor a religious cult, but Islam is a complete way life. Islam is a dynamic civilization that is designed to meet the spiritual, material and physical, emotional, and intellectual needs of individuals and communities. Islam is not a religion of violence and extremism as the media has been portraying in recent time. Rather Islam is a religion of peace and harmony. The general philosophy of Islamic law is designed to promote peace and harmony in the world not to destroy this world. The general philosophy of Islamic law prohibits any action or activities that bring destruction to this world, it could be environmental pollution, global warming, deforestation, production of weapons of mass destruction or any human activities or invention that causes any damage to our physical or human environment. Therefore, it can be said that the general philosophy of Islamic law is a complete and comprehensive strategic mechanism that was designed by Muslim scholars to apply Islamic teaching in viable and appropriate ways. Recently, some modern Islamic scholars have departed from the traditional methods of understanding Islamic legal philosophy *(Maqāsid al-Shari'ah*) and highlighted the importance of understanding it in a holistic approach in the general philosophy of Islamic law. (Auda: 2007:1). Auda in his latest book on the Islamic legal philosophy has departed from traditional methods of studying Islamic legal philosophy. He has taken the scope, structure and parameters of the Islamic legal philosophy into a new dimension. For him, Islamic legal philosophy is an Islamic value added strategic legal mechanism that directs the Muslim community in all fields of human life: socio- economic, political, ecological, religious, human rights, development issues, health and safety and all issues of human life. For him all this, comes under the framework of Islamic legal philosophical studies. It means that the legal philosophy of Islamic law is not merely reading the primary sources of Islam literally to know the divine wisdom behind each divine command, but, the general philosophy of Islamic law is a strategic policy making Islamic legal mechanism that goes along with divine guidance. In this high tech modern virtual world of globalisation, who could understand, or deal with socio-economic, political and scientific problems, and challenge of humanity? Who could read the modern problems of humanity and the Muslim community in light of the general philosophy of Islamic law bearing in mind all modern scientific, technological and other changes? Auda has highlighted the importance of expanding the scope of the general philosophy of Islamic law and yet, he did not discover any mechanism to expand the scope of it. To understand this modern world, Muslim scholars need the advice of experts in all fields of science and the humanities.

Therefore, Muslim scholars should seek the collaboration of experts in many fields to comprehensively understand the social changes that take place in this modern world and propose Islamic solutions in the light of the general philosophy of Islamic law. No Muslim country has yet come up with any such collaborative and constructivist teams of different scholars and experts to examine the modern socio-economic and political issues in light of the general philosophy of Islamic law. Today, to relate Islamic teaching in this modern world, the Muslim world needs the collaboration of experts in many fields. Yet, the Islamic studies grew in isolation from the realities of the modern world. Muslim scholars and jurists find it hard to relate Islamic teachings to the modern world. There are two domains in the study of the general philosophy of Islamic law: one is related to the study of general philosophy of Islamic law in relation to the stipulated general philosophy of Islamic law:

In this domain, Muslim scholars and jurists deal with the general objectives of law that are clearly stipulated in the texts of the Qur'an and Hadith. Some scholars and jurist could

understand those objectives and yet, they find it hard to relate them to the modern world. There is another domain in which the general philosophy of Islamic law is not clearly stipulated in the primary sources of Islamic law and yet, identifying those unregulated higher objectives of Islamic law is difficult and that needs intellectual effort of scholars and jurists in Islamic law. The traditionalists, modernists and reformists among Muslim scholars largely disagree in defining this domain of the general philosophy of Islamic law. That is why, we see a lot of disagreement, misperception and suspicion about the values and validity of the general philosophy of Islamic law. There is still a large percentage of the Muslim public who accuse the reformists among the Muslim community of distorting the pure teaching of Islam in the name of modernity. Auda says "that the Islamic law" aims to "to be a drive for a just, productive, developed, humane, spiritual, clean, cohesive, friendly, and highly, democratic society …. I see little evidence for these values, on the ground, in the Muslim societies ever here, so, the big question I have is Where is the Islamic law? How could it play a role in this crisis? (Auda,2007: XXIII.). In a way, he argues that Islamic law has the capacity to make a real change in the average Muslim life. He contends that his book on Islamic legal philosophy is written to answer this question. He attributes the status of "the Islamic law" to the decay of Muslim societies today. Thus, he makes a link between the decline of the Islamic civilisation and the failure of the Muslim community to comprehend the general philosophy of Islamic law in a comprehensive and pragmatic way. I think that Islamic history is not in a shortage of legal legacies and legal theories.The Medieval Muslim legal theorists produced some advanced legal theories long before the European renaissance and later scientific revolutions. Still Muslim communities have one of the best legal methodologies and yet, the problem is in the scarcity of qualified people to relate those legal theories to current social changes that take place in this modern world. Moreover, the problem is with Muslim political leaders who do not give freedom and liberty to Muslim scholars to make appropriate new policies to take this Muslim world out of this mess and chaotic conditions. Therefore, it can be argued that the Muslim world is not suffering from from lack of brilliant ideas or concepts, but rather the Muslim world is suffering from political atrocities and aggression. Muslim legal history is rich with many legal concepts and principles and yet, the Muslim policy makers and scholars do not have the leverage and scope to work freely in the interest of the public. It can be said that Islamic legal scholars have not yet developed a universally accepted definition of the general philosophy of Islamic law. Some Islamic legal scholars have argued that the doctrines of Islamic legal philosophy are still in the process of evolution and development. I would argue that the Islamic legal philosophy is somewhat identical to the modern qualitative research method. Ian Dey describes that qualitative research methods deal with meanings or with quality or with question of why? And the quantitative research methods deal with quantities and with the question of how? (Ian Dey. Pp10-11, 1993). It is very much clear that most classical Islamic scholars used deductive and inductive logical reasoning methods in their legal theories, *Imam al-Shātibī* very often uses this inductive method of legal reasoning to establish the true nature of some Islamic practice and rites. Initially, the studies on Islamic legal philosophy were devised from the punishment laws in Islam. Some classical scholars expanded their studies in the legal philosophy of Islam to incorporate some human values on it. In the present day, people like Allal Fasi, and Ibn Ashour expanded their studies on the legal philosophy of Islam (*Maqāsid al-Shari'ah)* to incorporate not only some human values but also many developmental indexes.

In recent studies, many Islamic scholars have argued that *Maqāsid al-Shari'ah studies* should not be confined to areas of Islamic law alone rather, *Maqāsid al-Shari'ah* should cover all aspects of Muslim life. It is to know rationale or the philosophies of all aspects of Islamic way of life. Now studies have come out examining the legal philosophies of Islam from different perspectives from financial, economic, social, political, ethical, and religious perspectives. Moreover, many modern areas such health and safety, medical ethics, environmental issues,

global warming, nuclear disarmament, terrorism, population growth, pollution, international relation, diplomacy, and other areas of social sciences are studied in the light of the general philosophy of Islamic law. I have mentioned some of these areas to highlight the growing nature of the general philosophy of Islamic law. Al-Furqan foundation in London and IIIT in USA, have produced hundreds of research document covering the different aspects of Islamic legal studies in many areas. The genre of Islamic legal literature on the general philosophy of the Islamic law is rapidly growing in phase with modern development. That is why I contend that the definition of the concept of the general philosophy of Islamic law is not yet defined in a fixed technical structure. The genre of Islamic literature on the topic of the general philosophy of Islamic law is still increasing day by day. Much has been written on this topic from different perspectives. All these intellectual efforts need a systemization. The genre of Islamic literature on this topic could be collected as a legal compendium incorporating some of these topics. Yet, IIIT and Al-Furqan foundation have written covering following topics but a systemization is needed in a logical order.

1) *Maqāsid* of the Islamic family
2) *Maqāsid* of Islamic politics and good governance
3) *Maqāsid* of Islamic economy and Islamic finance
4) *Maqāsid* of jihad.
5) *Maqāsid of* rituals such as prayer, fasting and *Hajj*.
6) *Maqāsid* of inheritance and wills.
7) *Maqāsid of* International and diplomatic relation
8) *Maqāsid* of Islamic preaching
9) *Maqāsid* of Islamic Education.
10) *Maqāsid of health* and safety
11) *Maqāsid and* nuclear disarmament
12) *Maqāsid and* human_resource_development
13) *Maqāsid* and human rights
14) *Maqāsid* and the right of non-Muslims
15) *Maqāsid* and justice on earth
16 *Maqāsid* and human dignity freedom.
17) *Maqāsid* and extremism
18) *Maqāsid* and child development
19) *Maqāsid* and Muslim minorities.
20) *Maqāsid* and women rights
21) *Maqāsid* and charities
22) *Maqāsid* and environmental issues.
23) *Maqāsid and* population growth
24) *Maqāsid and punishment in Islam*
25) *Maqāsid* and civil society.
26) *Maqāsid and freedom*
27) *Maqāsid and justice*
28) *Maqāsid and human right*
29) *Maqāsid and compassion*
30) *Maqāsid and equality*
31) *Maqāsid and Islamic dawa work.*

This extensive writing from different perspectives on the general philosophy of Islamic law tells us that contemporary Islamic scholars are trying to relate Islamic teaching with all human development on various subject matters. Every aspect of human development has been scrutinised considering the general philosophy of Islamic law to gauge how far human development is compatible with Islamic teaching. Every human discovery, invention, activities

and progress can be gauged and measured in light of the general philosophy of Islamic law to see how far those activities are compatible with Islamic teaching. Most Muslim clerics and jurists in this modern age of scientific and technological advancement, are still engaging in some philosophical and polemic theological argument about the nature of God and His attributes and yet, they do not still realise the dramatic changes that are taking place in the field of human sciences and human intellectual development. The unnecessary theological debates not only paved the way for the decline of Islamic civilization but also stultified creative thinking in Muslim minds. Even today, the Muslim scholars all over the world could not come out of this intellectual stagnation. Dogmatic theological and legal thinking has indeed, curtailed the creative thinking of some literalist Muslim scholars. The general philosophy of Islamic law should be redesigned to meet the challenges of modern time. Islam is a religion that promotes all civilizational development. Quran is sent down by Allah not merely to demand man to perform some rituals and traditions on earth, but God sent man to earth as His vice regent to establish a human civilization. 1400 years of Islamic history tells us that Islam established a dynamic civilization on earth. The classical Islamic scholars of medieval times did not make any separation between the physical and religious sciences. The Muslim community needs to enhance the general philosophy of Islamic law, bearing in mind this broader concept of Islamic civilization. The classical concept of the general philosophy of Islamic law was constructed merely based on punishment laws. Today, some intellectual endeavours have been made to define and redefine the general philosophy of Islamic law. *Maqāsid al-Shari'ah* is not merely a legal tool to deal with some Islamic legal principles and doctrines, rather it should be developed as a fully-fledged developmental mechanism and strategy to draw some solid policies to enhance Muslim communities. It could incorporate all fields of education, economy, politics, trade, agriculture public administration and all other fields of development. This does not mean that we neglect the spiritual and religious aspects of the general philosophy of Islamic law. Faith, and spiritual development are the bedrock of Islamic legal philosophy and yet, we should not neglect the civilizational dimension of Islamic legal philosophy. That is to enhance human skills, enhance human life, enhance human freedom, justice and moreover, to nurture this earth and protect the universe for the benefit of humanity. The Holy Qur'an speaks about this universe in more than 1000 thousand verses. No other religious text speaks about the universe as the Qur'an does. Likewise, the Holy Quran speaks about the earth, sky, son, moon, sea, animal kingdom, plantation and many other physical, zoological and biological world in hundreds of scripts and despite this, Muslim countries do not have scientific and technical experts to relate modern science into the teaching of the Qur'an.

Muslim scholars should redesign the legal doctrines of *Maqāsid al-Shari'ah* and its structures *as* an all-inclusive philosophy of Islamic teachings for human development in all fields. The overall designs of *Maqāsid al-Shari'ah* can be re-constructed in some modern formats considering all aspects of human life. Hence, in this modern time, the general philosophy of Islamic law *Maqāsid al-Shari'ah* can be identical to the philosophy of Islamic civilization: what are the primary objectives of Islamic civilization? I think that the primary objectives of the legal philosophy of Islamic law and Islamic civilization are almost identical. This does not mean that we undermine any spiritual or religious dimension of the general philosophy of Islamic law. All those aspects should be given priority in accordance with the priority of Islamic law. My contention is limiting the general philosophy of Islamic law merely in legal studies is not enough to build a strong Islamic civilization once again. Islam is a complete way of life. Initially, the original definition of Islamic shari'ah included all aspect of Din. Theological, moral, legal and civilizational aspects of Islam and yet, the meaning of Shari'ah was confined within the scope of law in later centuries of Islamic history. The late president of the Bosnia Ibrahimović rightly said that one of the primary reasons for the decline of Islamic civilization was that the Muslim community began to give a religious interpretation for the religion of

Islam. The religion of Islam is an all-inclusive system of civilization and culture rather than a set of religious laws. Yet, since the fourteenth century, the Muslim community begun to give a religious interpretation to the social, economic, political, moral, ethical, and educational teachings of Islam. As a result, this wrong perception about Islam in the minds of the Muslim community the broader ideas and concepts of Islam did not grow in the last 500 hundred years. The sociological, political, economic, and scientific ideas of Islam did not grow in the Muslim community for these five hundred years. The wrong and negative religious perception and interpretation discouraged the Muslim community from engaging in worldly matters, invention and discoveries. Sometimes, a clear distinction was made between the religious or spiritual affairs and material development. This attitude to the religion of Islam is a new one for the Muslim community. During the formative period of Muslim history, the Muslim community did not perceive Islam in this way, rather the religion of Islam was seen a powerful civilization that incorporated all aspects of life under its guidance. However, with the downfall of the Islamic civilization, the Muslim community lost the broader teaching of Islam. Most of Islamic teachings were reduced into some ritualistic rites of Islam. Moreover, the Muslim world grossly ignored the empirical and experimental sciences due to this wrong perception of Islam. All this contributed to the rapid decline of Islamic civilization over the last five hundred years. Yet, recently, Muslim intellectuals have begun to correct this wrong perception.

Most Muslim scholars would like to invigorate the Muslim perception of religion and to reconstruct religious thought in Islam. They know well what went wrong in the Muslim perception of religion. They call for the reconstruction of Islamic civilization once again on the scientific and empirical foundation of Islamic thought. It means they want to introduce creative thinking in Islamic teaching. They argue that Islamic legal philosophies are the Islamic goal oriented developmental policies and strategies that have holistic approaches to the notion of development within the scope of Islamic teachings. Spiritual and religious dimension of Islamic teaching should be given priority in order of the hierarchical order of the general philosophy of Islamic law. Islamic theology is the central point of the general philosophy of Islamic law. Each action of a Muslim person is characteristically connected with the Islamic theology. Islamic law and Islamic theology are intricately connected. This is the uniqueness of the general philosophy of Islamic law. Rapid development of all these areas are imperative for Muslim communities to compete other nations in human civilization. Ibrahim al-Bayyoumi Ghanem argues that the concepts of the general philosophy of Islamic law should be developed as policy making strategies by experts in public administration and management. The scope and leverage of Islamic legal philosophies should be all-inclusive taking into consideration the entire Muslim community life in all aspects of human development. The broader outlines of our scheme of the general philosophy of Islamic civilization are given below.

1) The philosophy of education development in Islam: its policies and strategies.
2) The Philosophy of economic development in Islam: its policies and its strategies.
3) The Philosophy of politics in Islam: its policies and its strategies.
4) The Philosophy of Islam in religious and spiritual development: Its policies and its strategies
5) The Philosophy of environmental and ecological development in Islam: its policies and its strategies: health and safety issues.
6) The Philosophy of Human resource development in Islam; Its policies and strategies.
7) The Philosophy of the social justice system in Islam: its strategies and policies.
8) The Philosophy of human rights in Islam: justice, freedom, equality, women and minority rights in Islam: its policies and strategies
9) The Philosophy of public administration in Islam: administrative, managerial skills development: its policies and strategies.

For many centuries, the legal philosophy of *Maqāsid al-Shari'ah* had been confined to theoretical studies in Islamic law. It had been confined to legal debates on primary and supplementary sources of Islamic law. It had been confined in identifying some rationale and wisdom behind the law in areas of Islamic criminal laws and yet, recently some Muslim scholars have attempted to develop its scope and parameters as a legal tool or mechanism. It has not yet been developed as a developmental strategy or policy strategy for the inclusive development of the international Muslim community in all fields as a community of a strong civilization. M. al-Ghāzalī, in his writings had been calling the Muslim community to see Islam as a source of civilization and to pay more attention to skill development, human resource development and intellectual development in all modern sciences as part of religious duty. For him researching or working on any aspect of physical or modern science is a religious duty as much as a Muslim prays five times in the mosque. He contends that the final divine revelation is revealed not merely as a set of law rather comprehensive guidelines to build a strong human civilization. Although reformative promrams of Jamal Din Afghani, Muhammad Abduh and Rasheed Rida aimed at rebuilding the Islamic civilization once again, the focus of Islamic revivalist groups has been on spiritual and religious awakening for the last seven decades at the expense of educational, experiential and empirical research activities. Moreover, the focus of Muslim political leaders has been to secure their personal interest and political power at the expense of public interest and educational development of the Muslim communities.

We propose to redesign the general philosophy of Islamic law *Maqāsid al-Shari'ah* as an overriding developmental tool to direct the Muslim community. *Maqāsid al-Shari'ah* are general guidelines that are designed to enrich the quality of Muslim life in this and the next life inclusively: After all, Allah sent his final divine guidance for the success of man in both the worldly and eschatological life. Some may argue that I have attempted to delude the definition, meaning and scope of *Maqāsid al-Shari'ah* but I think that *Maqāsid al-Shari'ah* is not merely a legal tool rather it is a developmental source for the Muslim community and yet, it has not so far, been rightly enhanced into a fully-fledged tool or source for the Muslim community for development. Tariq Ramadan, Hossein Askari and many others have proposed some constructive projects to elevate the socio-economic, political and moral development of the Muslim communities. Yet, their projects many have restraints and limitations. It is generally claimed that Islam is a world religion and its teachings are applicable to all times and all ages anywhere in this globe. The flexible nature of Islamic teaching has been debated by classical and modern Islamic scholars. It is claimed that Islamic legal theories, more importantly the legal philosophy of Islamic law (*Maqasid al-Shariah*) provides some general guidelines to apply Islamic laws to the changing new social conditions and environments. The corpus of the primary sources of Islam is confined by the limited number of Quranic texts and Prophetic traditions. How could these limited scriptural texts always provide solutions for the ever-increasing social problems of humanity in all ages? Scholars of Islamic legal philosophy argue that Islamic law contains some universal principles. It would be impossible to find the solutions for all problems in the primary sources of Islam. Yet, the primary source of Islam provides some general principles and using these principles Muslim academics could come up with an appropriate solution for any problem that arises in human civilization.

This mechanism, they argue, is enshrined in the legal doctrines of *Maqasid al-Shar'iah* or higher objectives of Islamic law: the flexible nature of Islamic law, its universal principles, its legal maxims and the legal device of *maslaha al-mursala* all provide some legal mechanisms to find solutions to ever increasing problems of the Muslim community in the world. That is why it is imperative that Muslim intellectuals and jurists engage in the systemization or syncretisation of the general philosophy of Islamic law. J. Auda has highlighted the difficulties of defining the general philosophy of Islamic law. He tells us how difficult it is to limit or confine the scope and framework of the general philosophy of Islamic law. He contends that

Muslim scholars have been trying to come up with different ideas to define the doctrines of the general philosophy of Islamic law and yet, the ideas of the general philosophy of Islamic law are not yet categorically well-defined or fixed in any definite way. He argues that the process of evolution of the general philosophy of Islamic law is constantly continuing. The similarity of that is like the process of discovering the mystery of this huge universe. Scientists have been discovering the wonders and miracles of this universe throughout human history. The more they discover the more they are puzzled about the structure and uniqueness of this universe. Whenever they discover the new mysteries of this universe, the old perceptions about it change or become partially true. Likewise, the more Muslim scholar discover and understand the mysteries of the general philosophy of Islamic law the more they are puzzled. Whatever human intellect come up with new concepts in the general philosophy of Islamic law those are nothing but mere outcomes of human logical reasoning. (Auda. 2007. p40). So, the intellectual efforts of classical and modern Islamic scholars to come up with different definitions of the general philosophy of Islamic law is nothing but mere human legal reasoning.

b) Identification of *Maqāsid al-Sharī'ah:*

How do we identify the general philosophy of Islamic law? What should be included in the general philosophy of Islamic law and who has the right and qualification to identity the general philosophy of Islamic law? These questions have been a subject of heated debate among Islamic scholars. Some Mohamed Kamal Imam argues that the general philosophy of Islamic law is based on three legal doctrines in Islamic law. The frame work of Islamic legal philosophy is created basically from these three legal doctrines. The rationalization of Islamic law.(*Ta'līl al Ahkām) Istishlah and Ma'ålâth al-Af'ál)* are the basic structure of the general philosophy of Islamic law. yet, not all Islamic scholars would agree with this frame work for the general philosophy of Islamic law. Because, many Islamic scholars disagree with the notion of rationalization of Islamic law and the legal device of *Istishlah.* Many Muslim jurists did not agree with all these elements of Islamic legal philosophy. The ideas of rationalization of Islamic law or ideas of finding reasons for each rule of Islamic law has been a controversial subject in Islamic legal history. It has been claimed that this idea has been taken from Greek philosophical, logical, polemic and dialectical arguments. Moreover, the ideas of identification of public interest in Islamic law have always been a subject of heated debates in Islamic law. Besides, the art of knowing the consequences of human action is not well established among the literal school of Islamic law. Hence, it could be argued that these ideas of the general philosophy of Islamic law are not unanimously agreed upon by all sections of Islamic scholars.

It can be said that the themes of *maqāsid* are enshrined in the scriptural sources of the Qur'an and the prophetic reports. Nevertheless, neither the Qur'an nor the Sunna define or employ the term *maqāsid* in a strictly technical sense. However, to the discerning jurist, it is obvious that these texts provide general ground rules. they are *maqāsid* orientated. The scholars detect the divine wisdom that is inherent in the verses of the scripture. It is generally agreed by most jurists that almost all the rules of *Sharī'ah* manifest God's objectives and wisdom except a few rules in relation to pure acts of worship in which rationale is not comprehensible intellectually (*al-Qaradhāwi*,1991.p.58). It is widely believed that the entire corpus of the *Sharī'ah* was revealed to protect and promote the interests of man individually and collectively. According to the Qur'an, the essence of the prophetic message is to manifest a distinctive character of mercy to humanity at large. Moreover, a cursory examination of the Qur'anic texts reveals that their primary concern is mostly related to human interests and humanitarian objectives such as social justice, social welfare, clemency, compassion, piety and honesty, preservation of good and prevention of evil, helping the weak, and needy, promoting good qualities, striving, struggling against social injustice, encouraging the cooperation in good work and so forth. Thus, it can be convincingly argued that the Qur'an is a goal-oriented book that

aims at developing a structure of human qualities and values by the medium of certain general and broad, moral, ethical and theological principles. (Kamali. H, 2001. P.13). yet, these social values and the general divine principle have not been systematically placed in any hierarchical order in the general philosophy of Islamic law.

That is why al-Shātibī emphatically insists on the importance of understanding the general philosophy of law through the general and broader principles of the Qur'an. He convincingly argues that the Qur'an itself profoundly maintains the primary purpose of the *Sharī'ah*, namely safeguarding the interests of the people. All the general principles of Islamic law are primarily stipulated in the Qur'an and explained by the Sunnah. According to al-Shātibī, the Qur'an is the main source to identify the general philosophy of Islamic law. According to him whoever wants to understand the general philosophy of law and its universal principles, should take the Qur'an as his mentor in its theory and application. For him, a comprehensive understanding of the Qur'an is a prerequisite to the correct understanding of the general philosophy of Islamic law. Therefore, one who wishes to grasp the knowledge of the general philosophy of Islamic law should approach the Qur'an initially before dealing with specific details and technical formulae that occupy the bulk of *Usūl* works. The texts of the Qur'an are clear-cut manifestations of its general purposes. It is through them that one can at first understand the general philosophy of Islamic law. Moreover, al-Shātibī is more eloquent in establishing the relationship between the general purposes of the law and the Sunnah. He precisely notes that the foundation of the five universals of *maqāsid* is laid down in the Qur'an and an explanation for them is given in the Sunnah. Thus, the general philosophy of law is primarily defined and identified by the scriptural texts of the Qur'an and the Sunnah. It is interesting to note how al-Shātibī defines and identifies *maqāsid*. In his conclusive remarks to the study of *maqāsid* al-Shātibī he discusses a variety of different approaches to its identification. Al-Shātibī quite convincingly contends that the Qur'an itself profoundly maintains the primary purpose of the *Sharī'ah* ; namely safeguarding the interests of the people. All the general principles of *maqāsid* are stipulated in the Qur'an. The Qur'an is the first and the foremost foundation to identify the general philosophy of law. The texts of *maqāsid* are clear-cut manifestations of its general purposes. It is through them that one can initially understand the general philosophy of law. Before him, al-Ghāzalī noted that the general purposes of the *Shaī'ah are* identified by the Qur'an, the Sunnah and *Ijmā'* and not according to human reason alone. (al-Ghāzalī, *1981* p.179).Ibn Taymiah also maintained that it is through the verses of the Qur'an that one understands the general philosophy of law. In order to appreciate the true meaning of the Qur'an, one must study the original text without resorting to any other means such as explanation or commentary by scholars. Moreover, Ibn Taymiah notes that the prophet explained the general meaning and intents of the *Sharī'ah*. Hence, we must bear in mind that to understand the meaning and intents of law, we must refer to prophetic explanation. (al-Badawi 1981 pp.312-330) al-Shātibī eloquently establishes the relationship between the general purposes of law and the Sunnah. Moreover, according to him the scholars adopted three important trends in the identification of *maqāsid*:

1)Some argue that the identification of *maqāsid* is an impossible task except through the explicit textual indication from the legislator. According to this perception, the higher objective or rationale of Islamic law is inherent in the text itself. The *Zahirites* upheld this view which the Holy Quran and the Sunnah explicitly indicate are the higher objective of Islamic law. This group strongly believes there is no higher objective of Islamic law outside the realm of these two-primary sources. They limit the scope of the higher objectives of the Islamic law: All higher objectives are already mentioned in the primary sources of the Quran and Sunnah: secondly, the higher objectives should be explicit to the texts of the Quran and Sunnah. Therefore, they do not agree with what some modern Muslim jurists consider new ideas,

concepts and opinions on the general philosophy of Islamic law. They consider that all these additional concepts are religious innovations in Islam. So, the Muslim community should not identify any higher objectives of Islamic law outside the texts of these primary sources of Islamic law. This group does not explicitly say how to bring about a reconciliation between the ever-increasing social changes and legal changes. This group does not mind following the common laws or any other system of laws but, they do not welcome making any amendment to Islamic law.

2) The *Bātiniya* sect advocates a view that is directly opposite to *Zāhirites*. It does not focus on the explicit meaning of text at all; rather it investigates its inner dimensions. Al-Shātibī strongly condemns this group for its destructive view of the very foundation of *Sharī'ah* . The danger of this group is that it is willing make any change in Islamic law in accordance to their reading and understanding of texts. They strongly believe that the divine texts have got an inner and outer meaning. This group prefer to give mystical interpretation to the texts of the Holy Quran. This method of legal interpretation might harm and damage the integrity and authenticity of divine message. Al-Shātibī and many legal experts think this group distorts the true meaning of the Islamic message.

3) The third sect gives due consideration to the explicit meaning of the texts with a full comprehension of its underlying rationale and wisdom. Most scholars follow this method to understand the objectives of law. Al- Shātibī suggests two ways for the identification of *al-maqāsid.* These methods are discussed below.

a) The mere explicit commands and prohibitions of the scriptural texts are the clear-cut manifestations of *maqāsid*. Al-Shātibī notes that in certain verses of the Qur'an, the divine intent is apparent to discerning people. It is simply comprehensible in verse 09: 62 for example, which reads, "haste unto remembrance of Allah." The divine intent is apparent in this text and it is just a divine command. Anyone with Arabic knowledge would know what is meant by this divine command. It does not demand any intellectual exertion to understand the meaning of this text. It is apparent and clear cut. There are hundreds of the Holy Quranic verses like this. The meanings of those verses are vividly clear for any discerning student of the Quran. However, al-Shātibī notes that a comprehensive examination of the texts of the Qur'an and Sunnah in relation to their '*ilal* should reveal the rationales and wisdom behind each divine command. Why are such rituals demanded by the Muslim community? Why is such an obligation commanded by Allah? why is a certain thing prohibited in Islamic law? It may be that some things are comprehensible to human reason, while others are not. If the rationale is incomprehensible to human reason, al-Shātibī says that what is demanded by a Muslim is a mere submission to God's rhetoric. (al-Shātibī, vol. 2, p. 298). It is because, human reason cannot understand the divine wisdom in that divine command yet. The other method of identification of *al-maqāsid* is through understanding the secondary purpose of law besides its ultimate end goals.

Al-Shātibī advocates that there are two types of *maqāsid*. The first one is the primary purpose of law. The other one is the secondary purpose. For instance, he argues that the law regulates the institution of marriage primarily to maintain steady population growth. Al-Shātibī contends that beside this primary purpose of law, there are some secondary purposes such as helping each other, preserving chastity, raising children and showing affection to one another. So, the primary objective of marrying is to have children and maintain population growth. There are some other secondary objectives attached to the institution of marriage (Al-Shatibi, Ibid, Vol.2. p. 301). Another fine illustration to this would be al-Shātibī's understanding of the philosophy of Islamic Education. Al-Shātibī argues that the primary purpose of seeking any branch of knowledge in Islam is to increase God's consciousness in our mind and thus, seeking knowledge is a form of religious worship. Why do the Muslim community seek religious education? It is not merely for intellectual

pleasure rather the Muslim community seek Islamic knowledge so that they can enhance their spirituality and religiosity. al-Shātibī maintains that this is a primary purpose of seeking knowledge. However, he states that in addition to this, there are some supplementary benefits of seeking knowledge. Examples are that learned people receive respect and they are the heirs of prophets in Islam. Gaining such positions and respect are not the primary purposes of seeking knowledge in Islam and yet, such things constitute its secondary purposes.

b) The clear-cut Hadith scripts point out the wisdom and rationale of the general philosophy of Islamic law. For instance, "No harm is expected from anyone and no harm should be inflicted upon any one". There are thousands of hadith tradition that carry the wisdom and rationales of Islamic law. So, tracing all these prophetic traditions and knowing the wisdom and rationale of those tradition are another method of identifying the *al-maqāsid.*
c) Moreover, the wisdom, the rationale of Islamic law could be identified through hundreds of legal maxims and legal principles which are created by classical Muslim jurists. These legal maxims convey the rationale and wisdom of Islamic law. So, knowing those legal maxims is another method of knowing the rationale of divine laws.
d) Another method of identifying the *al-maqāsid* by knowing the rationale through analogical reasoning. It is reported that Imam Shafi used the analogy as a mean of knowing the rationale. Sometimes, the Arabic alphabet letter "fa' is used to indicate the reason of the divine order or the divine prohibition. Likewise, the prophetic traditions too indicate the reason for prophetic actions, approvals, or rejection of any acts. All these methods are used to know the rationale of the divine laws.

Abdul Wahab Ibrahim Abu Sulaiman notes that having a thorough knowledge of the general philosophy of Islamic law is like having a torch light or a road map in the hands. For Muslim jurists if they want to guide the Muslim community in the right direction in all its affairs, they should have a thorough knowledge of this science so, they would be able to know exactly what Allah really expects from the application of His laws. Moreover, mastering the arts of this science will help them to subtract the rules from the primary source of Islam. He quotes the famous statement of Imam Al-Juwaini in support of this. "whoever fails to grasp the wisdom of divine command and divine prohibition would not have an insight into the institution of Islamic law." The basic argument is without deep knowledge of the general philosophy of Islamic law one should not enter into the sphere of Islamic legal interpretation at all. al-Shātibī put some preconditions for those who engaged in the legal interpretation of Islamic law.

1) They should have a thorough knowledge of the general philosophy of Islamic law
2) They should have skills and abilities to subtract laws based on their comprehensive understanding of the general philosophy of Islamic law.

Thus, the identification of the general philosophy of Islamic law demands some intellectual efforts and qualifications. Not everyone has the skills and knowledge to engage in this art of general philosophy of Islamic law. Ibn Ashour notes that "knowing the general philosophy of Islamic law is the best way to select the most appropriate, suitable legal opinions from the classical Islamic legal heritage, to organise the worldly matters of the Muslim community, to find suitable solution for the problems of the Muslim community, to resolve the conflict issues of the Muslim community, to save the Muslim community from man-made calamity and conflict, to avoid all harmful decision making, those who do not follow the path designed by the general philosophy of Islamic law bound to dismiss the religion of Islam as a suitable religion for all time and all ages" (Abdul Wahab Ibrahim Abu Sulaiman. 2014 p41). Today, we know well that the priorities of the Muslim world are gone wrong, and the Muslim world encounters numerous problems, challenges and disasters in many socio-political, educational and economic arenas. To solves all these problems neither the primary sources of Islam nor the

historical intellectual heritage provides readymade answers. So, the Muslim jurists should exercise their intellectual abilities to choose and identify the most appropriate and viable solutions in the light of the general philosophy of the Islamic law. Ibn Ashour points out the reason for the crisis of humanity is not the scarcity of natural resources but due to clashes of socio-political and economical ideologies that dominate the world today. How do we live and how do we interact with the humanity today and how to enrich this world with good socio-economic and political ideals? He says that the religion of Islam has got some sublime ideals, ethics and social values. As consequence of the failure to take these ethical and moral teaching is the main cause of all problems today in the world. For him, this modern world is suffering not because of the scarcity of natural resources but due to the greediness of a few in the humanity. The general philosophy of Islamic law would guide into the right direction in our search for solution. It is like a road map or a compass that help the pilot to follow the right path. When the Muslim jurists encounter a new social phenomenon that has no legal precedent at all in any of the primary source of Islam, we should take into consideration the public welfare of the Muslim community in line with the general philosophy of Islamic law. Yet, when the Muslim jurists consider the public interest they should always do so in accordance with the primary sources of Islam. Otherwise, it would not be considered as a sound public interest in Islamic law. If any apparent public interest clashes with any Islamic teaching, it would not be considered as a sound public interest. For instance, some Muslim economists may conclude that the business dealing with interest today is unavoidable due to the international financial marketing system. Yet, Abdul Wahab Ibrahim Abu Sulaiman argues that this is not acceptable at all in Islamic law. Because, such economic advice is not in accordance with the general philosophy of Islamic law. The interest has been clearly prohibited in Islam with multiple textual evidence so, proposing something in a clear-cut contradiction with the divine text is not acceptable in Islamic law. It may be his theoretical argument and yet, Today, 99% of the world trade and business transactions are done with high interest rates. Today, dealing with banks without any interest is almost difficult to avoid. Moreover, all international business transactions and financial dealings are intermingled with interest. How could the Muslim world avoid it all? Moreover, whether we like it or not we are compelled to cooperate with the international monitory fund, world bank and other world financial institutions. Does it come under laws of necessity and compulsion? Or otherwise, does the issue of interest become irrelevant in this matter as it is beyond the control of the Muslim world to do anything about this issue of interest and financial dealing.? Al-Shātibī strongly advocates that the *Maqāsid al-Sharī'ah* cannot be comprehensively understood unless one masters the Arabic language with its linguistic conventions and grammatical traditions. For him, the Arabic language is the gateway for seeking knowledge in any branch of Islamic sciences. According to his analysis of *Maqāsid al-Sharī'ah* these are instrumental ways for understanding purposes of Islamic law. The Contemporary scholars such as al-Qaradāwi, and kamali propose similar methods of identifying *maqāsid.* In his attempt to identify and recognise the divine intents from certain Qur'anic verses and prophetic traditions, al-Qaradāwi notes that one must distinguish between the eternal divine intents and the changing means that the Qur'anic and the prophetic texts employ. The Qur'an and the Sunnah often use the metaphoric language along with the classical Arabic traditions and conventions. Unless one understands and recognises these differences, one may have difficulties in understanding the divine intents in some cases, if not in all cases. The Qur'an and the Sunnah employ various methods and social means to explain the divine intents. Those social tools are taken from the circumstances of around the time of revelation in historical contexts. It does not mean that those means always remain constant. An example is that the Qur'an urges the believers to prepare for a war in the verse 8: 60. The war preparation was done using weaponries of the seven century horses and arrows. Does this mean that the believer must adhere to the strict literal meaning of this verse in all circumstance? However,

the means of weaponry change in accordance with the development in technology. Unless one reads the text of the Qur'an in conjunction with its rationale, objective and purpose, one may misinterpret the text wrongly sometime out of historical context.

Al-Qaradāwi gives many examples wherein he demands a realistic and rational approach to the texts to know the divine intention clearly. It is necessary to highlight some of these examples to understand the changing nature of the social means. The first example is that, nearly every Hadith related to *sadaqāt al-fitr* (a charity offered at the end of Ramadān demands that such charity must be offered in kind as dates, wheat, barley and raisin. Most Islamic jurists upheld the literal meaning of the Hadith and henceforth demanded the payment in kind except a few Hanafi scholars who maintained that the equivalent sum of money or valuable payment could be made instead. This is for an obvious reason that such charity is given to meet the needs of poor on this happy day. The literal meaning of those *Ahādith* may have been suitable during the time of the prophet. However, adherence to such a literal interpretation would not be consistent with the modern time. Moreover, the prophet asked the companions to collect and distribute such charity between the early hours of '*Id* day and '*Id* prayer. Confining the time in such a way may not be suitable for today. It may be offered two or three days before the festival day or even any day during the month of fasting so that beneficiaries of this charity can maximise its benefit running up to the day of festival. The second example is that the prophet instructed his companions to begin the fasting in the month of Ramadān after seeing the new moon. This was the method used by the prophet and his companions, as it was the only dependable method in the Arabian Peninsula where the sky was always clear. However, insisting on sighting the new moon by the naked eye under different circumstances of today may not be feasible. Enforcing such method would not be appropriate today. Insisting on the adherence to literal meaning of the text while ignoring all facilitating methods provided by modern science is irrational. The objective here is to confirm the arrival of Ramadān so that people do not miss any day of fasting in that month or fast before or after the start of Ramadān. When the better means are available, we must use them to arrive at such objective, as there is a change only in the means, but not in the objective. (Al-Qaradāwi, 1991 *pp.* 155-170). Kamāli in his study on the price controlling in Islamic law, highlights the changing rules with a change in circumstances. He refers to the different methods applied by the prophet and his companions in price controlling. When the price in the market in Madinah went up, some companions suggested that the prophet should fix the price of basic commodities. However, the prophet rejected such suggestion claiming it would be unfair towards some people and particularly for the fear of a decrease in supply to the market. However, after the death of the Holy prophet, the price control was introduced because it was feared that people might suffer unless authorities regulated the price. Although such ruling may be in a sharp contrast to the ruling upheld by the prophetic tradition, the aim of both rulings was in fact the same, which was to do justice and prevent abuse. (Kamāli, H, AJISS, Vo.2.1994. pp.25-38). It is clear from these examples that one needs to look at the texts in conjunction with its rationale and wisdom when deducing rules. Our literal adherence to its apparent meaning must not be so rigid. If follow such a rigid adherence to the litters of divine texts or prophetic statements we may ignore the rationales of the texts. Thus, a change in time, place and circumstance sometimes demands a different approach to the texts by different means. However, the end goals of Islamic law are constant and remain same at all time and in all circumstances. Therefore, in identifying the *maqāsid* one should go beyond the apparent meaning of the texts to grasp the context, circumstances and adapt different approaches. Not only al Shātibī most reformists including modern scholars adopt this method of interpretation as the most appropriate approach to the texts, which is consistent with changing times. Otherwise, many aspects of Islamic teaching would not be viable to apply in this modern world. Many social means and tools may change time to time and yet, the end goals of Islamic law remain the same

all time and all age. That is why we should always try to go along with the higher objectives of Islamic law. Yet, most of the Muslim communities in the world do not understand this subtle difference in Islamic legal studies.

J. Auda (2015, p12) argues that the literalism has deeply rooted in the minds of traditional Islamic scholars and they find it difficult to distinguish between the notion of means and intents in Islamic law. The social means change time to time, but the intent of Islamic law is always same and constant. I think that the confusion arises due to the fact most of the Muslims perceive the Prophet Muhammed absolutely a "holy person" in Islam. Some people fail to appreciate him as a human being and attribute to him some divine qualities or supper human qualities. Because of this wrong perception, many Muslims find it difficult to make any distinction between the actions and activities of the Prophet in his capacity as a messenger and ordinary man? What did the Prophet Muhammad eat? What did the Prophet Muhammed wear? How did he wear? How did he travel? How did he sleep? How did he sit in his meeting with public? what did he do for his living? How did he lead his army? How did he do business his community? What travel means he used during his life time? what kind of house he lived in? what kind of food he ate? What kind of fruits and vegetable did he like? How did he walk? How did he talk? All these are habitual and personal human activities that change person to person, place to place, time to time and community to community. We cannot expect that any modern man wears as his ancestors wore in the middle age? Or to eat as his forefathers ate many centuries ago. Yet, for some Muslims following each footstep of the Prophet is according to their conviction an integral part of Islamic practice. Yet, some classical Islamic scholars had made a clear distinction between the religious duties, legal responsibilities and personal attribute of the Prophet. Imam al-Qarāfi made it clear that there is a clear distinction between these three aspects in the life of the Prophet. The prophet in his capacity as a religious leader behaved differently from his capacity as a military leader or political leader and as ordinary human being. This distinction is very much important in our study of the general philosophy of Islamic. People who find it hard to make such a distinction are creating some confusion in Islamic legal studies. They find it hard to know the difference between the intent of the Islamic law and various social means that the Prophet used in his daily life. Can the Muslim community today, follow all same socio, economic and political practice of the Medieval time in this modern world of globalization and information technology in the same way they did? Of course, the ethical, moral and religious values of the Islamic socio-economic, political practice will remain same all time and all ages, yet, the application of these practices will differ time to time, nation to nation and people to people in the field of economy, politics and social science. So, the Islamic values, ethics and moral principles will remain but, the general philosophy of Islamic law will incorporate all modern means and methods of change.

c) ***Maqāsid al-Shari'ah*** **and** ***Usûl al-fiqh***

What is the difference between the *Usûl al-fiqh and Maqāsid al-Shari'ah*. The students of Islamic law very often ask this question. It is important the know the difference between these two branches of Islamic legal methodological sciences. The structure, scope and functional nature of both sciences differ. What is the connection between Islamic legal philosophy and the legal methodology of Islamic law: (*Usûl al-fiqh*)**.**? Is *Maqāsid* an integral part of *Usûl al-fiqh* Or Is it an independent branch of Islamic science? There are two schools of thought on this issue. Some modern Islamic scholars consider *maqāsid* as an independent science on its own right. Some others consider it a part of (*Usûl al-fiqh).*? Both groups of scholars give their justification to substantiate their arguments. Mohamed Kamal Imam argues that the general philosophy of Islamic law is based on three legal doctrines (*Ta'līl al Ahkām) Istishlah and Ma'ålâth al-Af'ål)* in Islamic law. The frame work of Islamic legal philosophy is created basically from these three legal doctrines. It has been argued by al-Shātibī and Ibn 'Āshur that the general philosophy of Islamic law is an independent branch of Islamic science. Ibn 'Āshur in his book of *Maqāsid al-*

Shari'ah declares that science of *Maqāsid* as an independent branch of Islamic science. Yet, Abdallah ibn Bayan a leading contemporary Islamic scholar says that the science of *Maqāsid* is an integral part of traditional Islamic legal theories: (*Usûl al-fiqh).* M. K. Imam argues that the legal philosophy of Islamic law (*Maqāsid al-Shari'ah)* is indispensable part of Islamic legal principles *(Usûl al-fiqh).* His contention is separating the legal philosophy of Islamic law from the domain of Islamic legal principles *(Usûl al-fiqh)* gives the Muslim secularists the leverage and space to come with some alien ideas and concepts away from Islamic roots. Therefore M. K. Imam fear such separation is not needed. A. Raisūni argues that the *Maqāsid al-Shari'ah* is an identical branch of Islamic science. He gives some logical reasons for his claim. He argues that since the time of Imam al-Shātibī to present time, more than 130 legal principles and maxims related to the general philosophy of Islamic law have been created by Muslim jurists. Thousands of books have been written on the general philosophy of Islamic law. Moreover, the general philosophy of Islamic law is being taught today in most of Islamic universities as one of their core subjects on Islamic studies. Moreover, the Muslim professionals such as reformists, educationalists, policy makers, lawyers, politicians, Islamic preachers and all other Muslim professionals are benefiting more from this science than traditional Islamic jurisprudence or the science of the legal theories: *(Usûl al-fiqh).* He argues Imam al-Sharfi's contribution to the field Islamic legal methodology is minimal compared to Imam al-Shātibī's contribution to the general philosophy of Islamic law. Imam Shafi established the science of (*Usûl al-fiqh).* by writing his small legal treatise on the fundamental of Islamic legal methodology yet, Imam al-Shātibī's contribution is many times greater than Imam Shafi's contribution to the Islamic legal studies. Therefore, we should not have any hesitation in calling the general philosophy of Islamic law as an independent science. (Raisūni,2014, pp 910& 911). He argues that this does not mean we should disregard the role of Islamic jurisprudence or any other related fields of Islamic studies. He contends all Islamic sciences have inherently interrelated one another. For instance, he argues that the science of Islamic jurisprudence has been an integral part of Hadith literature and by the passage of time, the science of Islamic jurisprudence was separated from Hadith literature and grew as an independent science in Islamic history. Likewise, the legal methodology of Islamic law has been an integral part of Islamic jurisprudence and by the passage of time, the legal methodology of Islamic law (*Usûl al-fiqh)* grew as an independent science soon after Imam Shafi's time. likewise, it can be argued that today the general of Islamic law has grown as an independent part of jurisprudence.

He says that Muhammad Arkoun and his followers give priority to the human intellect over the divine guidance in the name of the general philosophy of Islamic law. They want to replace *Maqāsid al-Shari'ah with Usûl al-fiqh*. That will give the freedom and leverage to interpret Islamic law without any restriction. Because the Usûl *al-fiqh* methodology regulate the legal interpretation. Muhammad Kamal al-Din- Imam fears that in the name of *Maqāsid al-Shari'ah* Muhammad Arkoun and his followers want to give presidency for their reformation agenda away from divine guidance of the Holy Qur'an and prophetic traditions. They want to replace Islamic *al-Shari'ah* with the human intellect. This is done to belittle the guidance of the Quran and Sunnah. More fanatic and peculiar interpretation was given by some Muslim politicians to some Islamic tenant due to lack of clear understanding of the general philosophy of Islamic law. It was reported that former Tunisian president declared that breaking the fast during the holy month of Ramadan should be permitted. His contention was that God has given special permission for traveller to break the fast. He argued that working during the day time is harder than travelling and for some people there is no livelihood without work so, he called upon public to avoid fasting during the month of Ramadan. (Wael ibn Sultan Al-Harizee, 2014, p 850). Why or how did the former Tunisian president dare to come to such a hasty conclusion about fasting during the holy month? When people without any Islamic background or training read the scriptural texts, they bound to come into such wrong interpretation. This is not the kind of

public interest that the general philosophy of Islamic law aims at achieving. This type of innovative reformation agenda to change the fundamental principles of Islamic legal philosophy was not familiar within the classical and modern legal Islamic tradition and scholarship. All doctrines of *Maqāsid al-Shari'ah* should go hand in hands within the limits and parameters of primary sources of Islamic law. (M. K. Imam. 2011, p 11). The human intellect should function and work within the framework of divine guidance and principles. The reason and revelation are complimentary one another in Islam not contradictory: each one is indispensable one another in Islamic law and human intellect plays a greater role in Islamic law not only to understand the texts but also to propose new rules and regulations in the light of divine guidance. But it cannot go against very basic foundations and fundamentals of divine guidance and doctrines. Muhammad Kamal al-Din- Imam fears that separating *Maqāsid al-Shari'ah* from (*Usûl al-fiqh)* may give the scope and leverage for so called modernists to come up with innovative alien ideas in the name of legal philosophy of Islamic law as M. Arkoun did in his writing. He does not have profound knowledge and insight into the legal principles of Islamic law ((*Usûl al-fiqh)).* What he projected was to replace this science of *(Usûl al-fiqh))* with his version of the science of *Maqāsid* so that he can replace the primacy of divine guidance with the human reason. He believes that the science of *(Usûl al-fiqh))* regulates the legal interpretation in Islamic law. For him that this science of (*Usûl al-fiqh)* stands between him and his reformative agenda. The science of (*Usûl al-fiqh)* determines regulates and guides the Muslim community in its behaviours, customs, traditions, and human interaction with some legal norms. It determines what is permissible and what is not. What M. Arkoun proposes is to disparage the significance of the science of (*Usûl al-fiqh))* with his version of science of *Maqāsid)* to give priority to his scheme of Islamic reformation. (M. K. Imam. 2011, p 10). Not only M. Arkoun many so called Muslim secularists want to make reformation in Islamic theology, Islamic law and Islamic teachings. Yet, they do not realise that any reformation in Islam should go hand in hand with the Islamic legal philosophy of Islamic law *Maqāsid al-Shari'ah*. The classical and modern Islamic scholars set some limits and boundaries within which *Maqāsid al-Shari'ah* and *Usûl al-fiqh* work. There cannot be any talk of reformation that goes against the basic teaching of divine guidance.

Arshad Manji, Wafer Sultan, Ayaan Hirsi Ali and many more secularists argue that they want to reform Islamic teachings. Yet, classical and modern legal expert in Islamic law set some limits and boundaries to do any reformation in Islam. Islam sets some qualifications for any Islamic reformer who wants to embark on Islamic reformation agenda. Imam al-Shātibī (1399. d) of Muslim Spain set some strict conditions for any Islamic scholar who wants to interpret the Islamic law or wants to make any reformation attempt on Islamic teachings. Al-Iman-Shāfi (d.204/825d) set some regulations and methodologies to interpret Islamic law. Some of Manji's naïve questions about the interpretation of Islamic texts. "What prevents young Muslim, even in the west, from going public with their need for religious interpretation? What scars non-Muslims about openly supporting liberal voices within Islam? How did we get into the mess of tolerating customs, such as honour killings, and how do we find our way out? How can people abandon dogma while keeping faith?" (Irshad Manji, 2011. P. 4). Moreover, she claims that he has got right to do her own *Ijtihad*. Yet, the classical and modern Islamic scholars set some academic prerequisites and qualifications to exercise *Ijtihad.* It is a myth to say that each Muslim could engage in the legal interpretation and do *Ijtihad* as he or she likes. This intellectual exercise has got some conditions and qualifications attached to it. I would agree with her that Qur'an repeatedly persuades people to use their minds: It is true that Qur'an encourages people to think and ponder over the divine creations around them as signs of God.

Likewise, it has been argued by some Ahmadiya community intellectuals that the Prophet Muhammed is not the last prophet, but he is the seal of all prophets and many more prophets could come with his seal. They came into such a wrong conclusion with their wrong interpretation into the text of the Quran without knowing the linguistic conventions. To know

the true meaning and connotation of divine texts one must have some good solid knowledge not mere literal meanings of text but inner meanings and linguistic traditions of Arabic language. More importantly, one should have thorough knowledge in the general philosophy of Islamic law. For instance, if you want to learn the classics in English languages you learn Shakespeare or native materials in English language so that you would know the English language linguistic conventions. To know the English language conventions, you do not refer to unauthentic materials. You need to know the linguistic conventions from the authentic materials not from the second-hand sources. Yet, *Ahamadiya* sect interprets the divine texts without this authentic reference into classical Arabic reference. That is why they come into the wrong conclusion in many Islamic doctrines. Anyone who wants to interpret Islamic law needs to have some prerequisites and academic qualifications on Islamic law. He or she must have some prerequisite knowledge in some traditional Islamic sciences. He or she should meet some preconditions and should have some licences to teach Islamic traditions. She does not know this basic principle. The Islamic dogma, rituals and traditions are intertwined with one another. The religion of Islam is a complete way of life. The faith, dogma and Islamic law all are revealed foundations in Islam and no one has got right to change, reform basic theology of Islam. All theological, dogmatic aspects of Islam are fixed and will never subject to any sort of human reformation as it has been demanded by these so-called secularist Muslims. Their call to reform Islamic teachings as they dream will never materialise. For generations, the divine texts and prophetic traditions have been preserved and protected. No single alteration is made in divine revelation since it was revealed. It would be naïve to say that one could use his intellect or reasoning facilities to know divine texts without some background learning and qualifications. To speak for Islam and Muslim community Manji should be equipped with this Islamic background knowledge otherwise, anyone who has got some debating skills could come up with any argument for the sake of intellectual pleasure and debating. What happens with so called Muslim modernists camp is that they do not have any scholastic intellectual background and training to speak about Islamic legal doctrines rather they have picked up all these arguments from different sources. Some of these arguments are not presented by the experts in Islamic law.

Al-Shātibī in his monumental legal treatise on Islamic law argues that any Muslim scholar who wants to engage in any type of legal reasoning exercise in Islamic law should have two prerequisites:1) A thorough knowledge in Arabic language linguistic traditions and conventions: Qur'an is revealed in Arabic language to grasp its profound meanings and to appreciate it one should have a deep knowledge in Arabic language otherwise, he or she bound to make mistake in understanding its meaning completely. 2 Secondly, he needs to have a thorough knowledge of general philosophy of Islamic law. (*Maqāsid al-Shari'ah).* He should know *why* each divine command is revealed? and what are the rationales behind prohibitions and commands? Do they all these modernists have these qualifications to embark upon Islamic reformation agenda? Khaled Abu El-Fadl an expert on modern Islamic radical groups resolves the paradoxical question of who speak for Muslims and Islam. He notes that "Sharia is, on the one hand, the sum of total of technical legal methodologies, precedents and decisions; it is also, on the other hand, a powerful symbol of the Islamic identity. For the trained jurist, Sharia is a legal system full of complex processes and technical jargon but for the average Muslim Shariah is a symbol for Islamic authenticity and legitimacy (Abu Fadl.2007. P.39). Do Manji and her cohort have got such Islamic intellectual background, qualifications and legal training to speak for Islam and Muslim community today? Therefore, I would argue there is no any academic credits in these modernists' argument about Islamic reformation. The problem with this argument is that in Islam there is no restriction to speak about Islam. Anyone could speak for Islam and about Islam. But the quality of that speech or talk about Islam depends on the qualification and experience of those speakers who speak for Islam and Muslims. It is like you seek a medical

advice from an undergraduate medical student, a trained nurse, quailed medical doctor and from a specialist medical consultant. These medical professionals can give medical advice according to their knowledge, skills and experience. Likewise, the subject matter of Islamic studies is wider and broader. There are so many areas of specialization such as Islamic theology, Islamic legal methodology, Muslim tradition, Muslim history and many other areas. Above all, a thorough knowledge of Arabic language is very important to understand Islam profoundly. People can speak for Islam and about Islam according to their level of knowledge about Islam and Islamic sciences. Theoretically, to speak for Islam and Muslims, the religion of Islam does not sanction any type of specific priesthood. Historically speaking, the classical Islamic scholars spoke for Islam with a deep knowledge. They spoke for Islam with qualification and training. They gained a popular recognition of the Muslim public. Imam al-Shafi, Imam Malik and others did not go to universities or colleges to learn Islam and yet, they learned Islam from their teachers and got the public reorganization for their deep knowledge in religion. What matters is the deep knowledge in Islamic sciences to speak for Muslims and in the name of Islam. Today, to speak for Islam we need to have some level of IQ and some thorough knowledge not only in Islamic sciences but also in all aspects of modern sciences. Because, human life today is more complicated and greatly influenced by all modern social changes.

Today, Muslims do not have a centralised institution or centralised organization to speak for Islam and Muslims. The secularist Muslims who live in the western countries make use of this vacuum and dared to speak for Islam. They are educated in western countries with western ideologies and world view. They have been greatly influenced with western mentality, mindsets, thinking and way of life. They have not been educated, and trained in Islamic institutions and consequently, this type of western influence is unavoidable. People who want to speak for Islam and Muslim in this modern world need to have some sound knowledge not only in Islamic sciences but also in modern sciences to relate Islamic teachings to the modern world. Moreover, someone who wants to speak for Islam should have profound knowledge in Islamic legal theories and general philosophy of Islamic law. Otherwise, these secular Muslim modernists bound to make some big blunders in their understanding divine texts. In the name of liberty, freedom and democracy, these secularists want to change the Islamic law as they understand it. The Islamic legal tradition has got more than 1400 hundred intellectual legacy and heritage. It is enshrined with some sophisticated legal theories, principles and legal maxims. These Islamic legal maxims and doctrines have no equivalents and parallels in any legal system of the modern world. Yet, today we do not have well trained Muslim jurists with the scientific and Islamic legal knowledge to relate all these legal doctrines with modern problems and issues. Most of western and eastern philosophical thoughts and concepts are purely man-made intellectual output. These philosophies and doctrines are deprived of divine guidance. Most of these philosophers are atheists and Non-believers. There are some truth and wisdom in those philosophies and doctrines and yet, most of their ideas and concepts are based on their own human desires, experience, and inclination away from divine guidelines. The Islamic legal philosophy always goes with divine will and guidance. It will never go against what has been clearly mentioned in the primary sources of Islam. What Irshad Manji wants to do is to change what has been categorically mentioned in the primary sources of Islam. In the name of Islamic reform, she dreams to introduce the practices of feminism, lesbianism, homosexuality, atheism and all anti- Islamism into the Muslim community and yet, this type of reformation that goes against very foundation of Islamic teaching is not an Islamic reformation. It will never get public acceptance in the Muslim world. The genius nature of Islamic legal theories is highly appreciated by many western legal experts of modern world and yet, these secularist reformists ignore all these intellectual heritages to come up with some naïve agenda of Islamic reformation. It appears that there is no any academic credit in these

naïve arguments. They go against all universal fundamentals of the general philosophy of the Islamic law. Moreover, they go against clear cut divine texts of Qur'an and prophetic traditions. In that sense, their call for Islamic reformation goes against the very foundation of Islam because any legal reasoning that goes against any clear-cut texts of the Qur'an and prophetic tradition is null and void in Islamic law. The supremacy of divine revelation should prevail over the human legal reasoning. Otherwise, an excessive human desire could take the humanity into self-destruction.

Imam al-Shātibī argues that one of the primary reasons that Almighty Allah sent the final set of divine revelation is to save the humanity from becoming the victims of its own desires and predisposition for animalistic needs. He argues that if man is left without any divine guidance, man will become a victim of his own human greed and evil desires. Some of these desires are harmful for him such as excessive greed. Therefore, Imam al-Shātibī argues that the divine guidance is indispensable to the humanity to save it from a total self-destruction. The functional nature of these two legal methodologies are different. The methodology of the *Maqāsid al-Shari'ah* and *Usūl al-fiqh.* The *Maqāsid al-Shari'ah* is an overriding foundation of all theories of Islamic law. Some Muslim scholars argue that all theories and principles of Islamic law should be functioning with the guidelines of general philosophy of Islamic law and not outside of it. Some consider that the *Maqāsid al-Shari'ah* are some Islamic values that are attached to all rules in Islam. Those eternal Islamic values should be sustained in enacting new regulations in the Islamic law or interpreting any aspects of Islamic law. Ibn 'Āshur contends that the science of *Usūl al-fiqh* has been primarily concerned with some technical and linguistic aspects of Islamic legal theories rather than dealing with primary objectives of Islamic laws. For this reason, he suggests replacing it with *Maqāsid al-Shari'ah. "Most* propositions and inquiries of *Usūl al-fiqh* hardly serve the purpose of expounding the underlying wisdom, or *hikmah,* and establishing goals of *al-Shari'ah.* The scholars *of Usūl al-fiqh* have thus confined their inquiries to the external and literal aspects of *al-Shari'ah.* We are concerned with the status the of the actual propositions of *Usūl al-fiqh.* The traditionally accepted proposition of the science of *Usūl al-fiqh* no longer serve its purpose today. So, we should reformulate the whole and replace it with the "science of the higher objectives of the Shari'ah. (Ibn 'Āshur. 2006. P7). What Imam Ibn 'Āshur says is that initially the science of *Usūl al-fiqh* was created by the classical Islamic legal theorists to deduct Islamic rulings from the primary sources of Islamic law and yet, the classical scholars *of Usūl al-fiqh* did not ignore the general philosophy of Islamic law in their legal studies in the science of *Usūl al-fiqh.* by the passage of time, the science of *Usūl al-fiqh* was greatly influenced and inflicted with alien ideas and its primary purpose was ignored by legal scholars in the later part of Islamic legal history. For that reason, Imam Ibn 'Āshur proposes the reformation of the science of *Usūl al-fiqh.* A. Raisūni a leading Islamic scholar in the legal philosophy of Islamic law contends that *Maqāsid* studies on Islamic legal philosophy should be declared as an Independent branch of Islamic sciences. His contention is that today the subject of Islamic legal philosophy is commonly taught at all levels in colleges, schools and universities. Today, we have hundreds of research centres for the study of Islamic legal philosophy. Thousands of books have been produced on the legal philosophy of Islamic law. We have thousands of experts on the legal philosophy of Islamic law with their publication and research activities on this subject. For all these reasons, there should not be any problem in declaring *Maqāsid al-Shari'ah*. as an independent science on its own right. Raisūni argues that all Islamic sciences are interconnected and inter-linked one another. He argues that Imam al-Shafi was considered as the founder of Islamic legal theories with some treatises he wrote on Islamic law. Yet, today, thousands of treaties have been written on different of aspects of Islamic legal philosophy. For that reason, there should not be any qualm in declaring the *Maqāsid al-Shari'ah.* as a special subject on its own right (Raisūni. 2014. pp 9-14). I think this sort of academic argument is not

necessary on this subject rather we should consider why the study on the legal philosophy of Islamic law is imperative today? Or why do we need to study this subject matter today. Whether we make it as part of traditional Islamic legal sciences or an independent art on its own right it does not matter but what matters is its academic credit in our modern social condition. What matters is how to enhance this science of the general philosophy of the Islamic law and develop it as one of the problem-solving legal mechanisms in modern time.

What is the meaning of *Usūl al-fiqh* in any technical sense? It is constructed by two technical terms in Islamic studies. The *Usūl* are some legal principles or premises upon which Islamic jurisprudence is formulated. The term al-*fiqh* literally mean the understanding and comprehension. The technical meaning of the *al-fiqh* is to understand the rules and regulation of the corpus of Islamic law as expounded by the legal schools at different time. The structure and the functional nature of *Usūl al-fiqh* are formed by four legal pillars according to *Imam al-Ghāzalī.* What is the epistemological foundation of Islamic law? what is its origin and how it is formed? How do the Muslim jurists arrive at legal verdicts? What are the primary and secondary sources of Islamic law? What are the reference points in Islamic law? what are the legal precedents in Islamic law? What is the role of reason in Islamic law? How did Islamic law develop? How does it respond to new case or new social problems? Who has the right to interpret the rules of law in Islam? What are their qualifications? What mechanisms do they apply to deduce the rules in Islamic law? This diagram below illustrates how the corpus of Islamic law is formed and how it works.

Rational evidence: الأدلة العقلية	*Textual evidence:* الأدلة النقلية
Qiyas: القياس	*Quran:* القران
Maslaha Mursala : المصلحةالمرسلة	*Sunna:* السنة.
Istihsan: الاستحسان	*Ijmah :* لإجماع.
Istihsab: لاستصحاب	*TheLegal Schools of the companions:* قول الصحابة
Saddu Zarah. سد الذريعة	*The Previously revealed divine laws*: شرع من قبلنا.
The legal maxims and principles: القواعد الفقهية والقواعد الأصولية.	
The laws of priority: فقه الأولويات:	
The law of equivalence: فقه الموازنات:	
The Knowledge of consequence of human actions: فقه المؤالات:	

Diagram.2

Unlike the common law or any other form of secular law, the Islamic law is a constituted from two main components. It is based on some religious texts. It is divinely inspired set of the law. Basically, it is a revealed law. According to Islamic theology, God is the Creator of this universe. He created Man as His agent on this earth. He revealed his divine message through several messengers. The final divine message came to the mankind through the Prophet Muhammad. The final divine message included a set of law. This set of law tells the Muslim community how to live, how to interact with people, how to look after parents, how to look after children, how to look after spouses, how to do business, how to look after poor and how to look after orphans, how to look after elderly people, how to distribute wealth, how to distribute the inheritance, how to write will and so many other moral, ethical, religious, social, economic , political human interaction and conducts are regulated by the divine texts of the Holy Qur'an and the prophetic traditions.It is argued that the religion of Islam is a complete way of life. So, the Islamic law covers all aspects of life. It is argued that Islam has got the answers for all human problems. The logics of this argument is that this universe is created by

God and He guides the humanity with His divine guidance. It would not make sense for any religious person to say that God created this universe and humanity. Yet, He left the humanity for its own destiny without any divine guidance. The faithful in all religions believes it is God who sets the natural laws for this universe, has indeed, given the humanity a set of rules and regulations how to live on this earth. That final set of law came to the humanity through the last Prophet according to Islamic faith.

Unlike other legal systems, the Islamic law is not merely a secular set of law rather the spiritual, religious, ethical, moral, economic, political and social values and implication are enshrined in Islamic law. So, the Islamic law is not merely a set of law rather it is a complete and comprehensive guideline for the Muslim community in all aspects of life: there is no demarcation between secular, and religious life in Islamic law: The Islamic law guides the Muslim community in all aspects of its life. It guides the Muslim rulers what to do and what not to do? It regulates their ethical, moral, religious responsibilities towards the public and humanity. It guides the Muslim economists how to come up with economic policies in line with the divine guidance. It guides the Muslim educationalists and the policy makers how to design their educational, social, and administrative policies in line with the divine guidance. It guides the Muslim politicians how to design the foreign policies of the Muslim countries with the outside world. In short, the law in Islam is not merely set of religious law rather it is a broader guideline for the entire humanity according to the teaching of the Qur'an: It is "a guidance for the humanity" (Qur'an:2;185).

The religious nature of Islamic law clashes with many aspects of man-made laws: with common and secular laws. The divine wills and human desires clash. The religious people of all religions strongly believe that divine will, intent and the supremacy of divine law should be maintained. They argue that human weakness, human desires, and human inclination are reflected in all manmade laws and regulations. Yet, God is free from all these human weakness and desires. Therefore, His laws are supreme and free from all weakness. Moreover, following the divine law is rewarding in both life: in this and the next life. yet, in this modern complicated world of globalization and information technology how do we apply the divine laws in the daily life. The problem is no place for the religious laws in this modern world. Neither biblical nor Islamic law dominates this secular world. It is the secular legal systems and secular legislature dominate this world as of today. The religious law and legal systems are marginalised. The laws of old testament and new testament are marginalized in private life, religious rituals, in churches and synagogues. Likewise, the major parts of Islamic law too are marginalized today in this modern world. Most of the Muslim counties today apply some aspects of Islamic law in personal matters such as laws of marriages, laws of divorce and laws of inheritance. Besides this, the pious Muslim follow the religious laws in their daily life in their individual and collective religious activities. Yet, the Islamic law is marginalised in major public affairs of political, economic, administrative, and educational establishments of the Muslim communities today. There could be many reasons for this marginalization. One of the reasons that ineptitude of the modern Islamic legal scholars to relate the Islamic legal thought to the modern challenges. There are two kinds of Islamic legal sources: The primary and secondary: the primary sources are textual and legal precedents of previous generations. The supplementary sources are rational, creative, and analogical. How different Islamic legal experts and scholars approach these primary and secondary of Islamic law is questionable and disputable. Moreover, how do they relate these supplementary sources of Islamic law into modern issues is most important. The connection between these primary and secondary sources of Islamic law is inherently linked. The secondary sources of Islamic law are created by the classical Islamic scholars to provide legal rulings when the primary sources are silent in any given issue. These secondary rational sources connect very increasing new cases with the antiquity and the heritage of the primary source of Islam. This is a protective mechanism to

protect the Muslim community from deviating from divine guidance. The application of these supplementary sources of Islamic law today is not truly materialised within the modern context. All what we do is to allude to some classical examples to illustrate the functions of these secondary sources in Islamic history and yet, today, the modern world has dramatically changed how do we apply these secondary sources to the modern human challenges and problems. These legal devices and principles are constructed to regulate the community affairs and issues of the Muslim communities and yet, how successful the Muslim communities are in utilizing these legal devices and legal principles today? What are the main concerns of the humanity today? What are the main challenges of the Muslim community today? For instance, economic problems of the Muslim community or unemployment problems of the Muslim community or the leadership problems of the Muslim community? These supplementary sources of public interest, the principles of the equity, and analogy should be used to explore these major concerns of the Muslim community and humanity. But the studies on these supplementary sources of Islamic law still are not employed by experts competently to explore the modern problems of the Muslim community and humanity at large.

One of the reasons why the Islamic law did grow or did not develop as the common law and European law grew is that the Muslim jurists divided the Islamic law into two sets of law. The first one is private law and the second one is pubic law. The public law did not grow in the Islamic history as we see the growth of public law in Europe or any other nations. The Muslim scholars mostly concentrated in providing legal interpretation, legal reasoning to the private or religious laws of Islam mainly dealing with personal laws and religious laws. Of course, some Imams such as Mawardi and Ibn Taymaiah did expand on public law in some aspect and yet, it did not grow in Islamic history due to some political reasons. Moreover, the public law did not grow in the Muslim countries due to the centuries of colonization. During the colonial period many aspects of Islamic law were replaced by western law in the Muslim countries. because of this continuous colonization, the Muslim jurists and scholars did not have opportunities to develop public law. Moreover, the Ottoman Empire did make some progress in the areas of public law and yet, due to the educational backwardness of the ottomans they could not come public with many legal developments in public law. Contrary to this backwardness, the public law rapidly grew in the European countries. Civil law grew in Europe dramatically and codified with comprehensive legal codes, legal procedures, and the punishment for each offence and crimes. With this, different kinds of laws and court systems grew in Europe. In contrast, the legal system and particularly, civil law and other areas of substantive laws did not grow in the many Muslim countries. That is why the supplementary sources of law did not grow in Islamic law. The main functional nature of these supplementary legal sources is developed by the Muslim jurists to meet the social changes with legal changes. Yet, the legal procedures, the court system, legal norms, legal practices and legal industry did not grow in the Muslim countries as we notice in the western countries. A cursory examination of a short European legal history tells how the law and concept of human rights gradually developed in the Europe. From Magna Carta, till development of the universal declaration of human rights by UN, the norm of law and human right gradually grew in Europe nations. From anarchy of monarchs in the Medieval England, people fought for their freedom from feudalism and slavery in the medieval England. In 1600s John Lock came up with the idea of natural rights: those natural rights are right to live, right to have liberty and right to own property in medieval England. These ideas are identical with the ideals of the general philosophy of Islamic law.

This period of natural rights awareness was followed with the intellectual movement of Enlightenment. During this period of Intellectual movement of Enlightenment some intellectuals were influenced with natural right concepts and came with up the English bill of rights. This period was followed many revolutions in Europe: American revolution, French revolution, agricultural and industrial revolutions took place in Europe. With this change,

different concept of individuals rights and freedom came up in Europe between 1700-1900. This period of awareness on human rights was followed with period of awareness in social and collective rights of people. With the world war II, United nation was created to protect the humanity from wars and destruction. With all this historical struggle for rights and liberty, Europeans won over some of inalienable human rights that are fundamental for a dignified human life. all political, civic, social, cultural and economic rights of people are won by Europeans with constant struggles over centuries. The notion of freedom, liberty, democratic rights, equality, fraternity, human dignity, civil right, citizenship rights, freedom of expression, voting rights, education rights, employment rights, collective right to protect environment, and democratic values are won by Europeans after long struggles and self-determination. For the public in the Muslim counties it will take a long time to gain all these civic and democratic rights. I think that the public in Muslim countries must experience and go through these kinds of socio-economic and political struggles to gain full freedom and civic rights. A cursory examination of the legal, political, social and religious history of the Muslim countries tells us these inalienable human rights, values, civic rights and citizenship values did not grow in the Muslim history. Of course, the inalienable and fundamental human values are inherently enshrined in the general philosophy of Islamic law and yet, 1400 hundred Muslim history tells us these fundamental human values are rarely upheld in the major parts of Islamic history. The Muslim communities across its 1400 hundred histories did not enjoy the political and civic rights: The primary source of Islamic law and legal manuals of Islamic treatises extensively elaborate on these basic inalienable human rights. The Islamic legal tradition is rich in documenting the minute details of all these civic rights, political rights, economic right, collective and social rights and yet, the Muslim rulers, legal experts, policy makers and the public grossly failed to give practical application to these values embedded in the primary sources of the Islamic law. if these rights are inherently enshrined in the primary source of Islamic law, why could not the Muslim communities for the last 1400 hundred years of its history secure these rights? The Muslim communities has had a long history of political rebellion, revolt and revolution.

The three of four caliphs of Islamic regime were indeed, killed in some sort of political rebellions. The Islamic history is full of rebellions and revolts for political freedom and civic rights and yet, all these are crushed badly by the regimes time to time in 1400 hundred years. Unlike the European political struggles and civic right movements, the Muslim political struggles did not materialise at all. It is true that Islamic expansion took place at a rapid speed and yet, the Muslim empires and dynasties did not come up with some good public administrative system or any good political system for the public to exercise their voting rights. The Muslim empires did not give the liberty, freedom and civic rights to fully engage in public life. As result of this political despotism of the Muslim empire democratic values, practice and institution did not grow. Even today in this modern world, some Arab countries do not have proper voting system or electoral mechanism. This tells that the legal, political and administrative system and mechanism did not grow in the Arab world for many centuries. It is reported that the second Caliph Omar established a just society and during his regime the justice and rule of law prevailed. All historical accounts written by Muslim and Non- Muslim historians indicate the during the regime of Caliph Omar he maintained justice, equality and rule of law: It is argued that the Caliph Omar "established a full-fledged department of justice, appointed judges, and gave them instructions, which included the following principles

- All men are equal before the law.
- Justice is an Islamic duty ordained by the Quran and Sunnah of the prophet.
- Human beings are responsible for their actions.
- The burden of proof falls on the plaintiff.
- All parties must be allowed to produce evidence for their positions.

- If the evidence contradicts a judgment, then judgement must be evoked
- When the Quran and Sunnah of the prophet are silent on a matter, then extrapolation may be used from similar case.
- The collective will of the Muslim community provided a legitimate basis for law" (Nazeer Ahmad. 2018. P4).

The Caliph Omer may have applied these legal norms during his time and yet, all historical evidential reports tell us that these utopian ideals did not grow and progress into any good systemic legal and political administrative system. No doubt the medieval Muslim jurist came up with brilliant legal principles and theories. Yet, these legal principles and legal doctrines remain theoretical in most of the Muslim history. The following historical preview of the political and legal survey illustrates how the western and Islamic legal systems grow in the last ten centuries.

Time line for the development of Islamic law.

Pre-Islamic law: tribal law: pre-six century	Six century Islamic law: Qur'an and Hadith	7th&8th centuries: Formative period of Islamic law	Middle ages 9th - 12the centuries	Closure of Ijtihad:	Ottoman Tanzimath	Colonial period	Modern time

Diagram 3

A cursory examination of the time line of the law development in Islamic and western tradition tells that how both legal systems developed distinctively in different ways; the origin of the Islamic law is the divine revelation and yet, the human legal reason plays a great role in discovering and interpreting the divine law. Moreover, in some cases the human reason plays a great part in legislating laws in accordance with the general philosophy of Islamic law. In contrast to this, the western legal tradition grew from common laws, cannon laws, religious traditions, civic laws and statutory laws made by Parliament. Hundreds of legal acts are passed through different bills in parliament to meet the demands of social changes with legal changes in Europe countries. It has been argued that Islamic law had greatly influenced the legal norm and practice of common law. In his famous article, John. A. Makdisi argues with some historical evidence that some aspects of common law had been influenced by Islamic law. What is the connection between the general philosophy of Islamic law and the influence of Islamic law upon common law? It can be argued that the notion of public interest and equitable justice in English law had also been influenced by Islamic law. He argues that "the major characteristics of the legal systems known as Islamic law, common law, and civil law and demonstrates the remarkable resemblance between the first two in function and structure and their dissimilarity with the civil law.' (John. A. Makdisi. 1999. P.1638) John. A. Makdisi argues that "beyond the borders of Europe the origins of the common law may be found in Islamic law" (Ibid, 1638). He argues the three legal institutions in English law are identical with Islamic legal institutions.

1) "For the first time in English history, contract law permitted the transfer of property ownership on the sole basis of offer and acceptance through the action of debt;
2) property law protected possession as a form of property ownership through the assize of novel disseisin; and
3) the royal courts instituted a rational procedure for settling disputes through trial by jury.

The action of debt, the assize of novel disseisin, and trial by jury introduced mechanisms for a more rational, sophisticated legal process that existed only in Islamic law at that time. Furthermore, the study of the characteristics of the function and structure of Islamic

law demonstrates its remarkable kinship with the common law in contrast to the civil law. Finally, one cannot forget the opportunity for the transplant of these mechanisms from Islam through Sicily to Norman England in the twelfth century. Motive, method, and opportunity existed for King Henry II to adopt an Islamic approach to legal and administrative procedures. While it does not require a tremendous stretch of the imagination to envision the Islamic origins of the common law, it does require a willingness to revise traditional historical notions. This tells us that Islamic law and common law has some historical connection and similarity and yet, what happened in the Muslim world is that law did not grow as we have been it in many parts of western world. Even today in this modern world, the Muslim legal theorists and jurists go back into traditional way of providing legal interpretation. The use of religious legal interpretation methodology is obstructing the creative thinking in the Muslim world in the legal studies. The focus of the Muslim jurists has been to develop the religious law at the expensive public law. because of this religious nature of Islamic law, the public law did not grow in the Muslim countries as we see it in many parts of the world today. The following the diagram tells how the Muslim jurists derived laws from the corpus of primary source of Islam.

The structure and the functional nature of *Usūl al-fiqh*

Mujtahid: المجتهد	The person who exercise the legal reasoning.
Daleel: الدليل	Textual proof or evidence or the points of reference.
Dalala: الدلالة	Indicatives of rules or circumstantial indicatives
Hukm: الحكم	Religious verdicts that jurist consults arrive at

Diagram 4.

The Islamic legal tradition is inherently rooted in the limited religious texts and medieval legal precedents. The method of legal interpretation also limited into the literal interpretation of the divine texts. Because of this the mind set of Muslim jurists is confined in these religious frameworks and they find it hard to provide legal interpretation for the burning problems of humanity in this modern world. This diagram illustrates how the traditional Muslim legal theorist deduced legal rulings from the divine texts. The individualistic legal interpretation with mere literal adherence to the scriptural texts would not be always helpful for this modern complicated world rather a collective intellectual effort is needed to address the challenges of the Muslim community today. But, the Muslim world has not yet, devised any such constructivist legal studies. The Muslim scholars should go beyond the literal meaning of the text to know the rationale of the text to apply them to the modern social context and we no longer could depend on the traditional legal methodologies to resolve the modern problem of the Muslim community. Today, human challenges and the social realities are different from those of medieval Islamic ages. The following diagram illustrates the difference between the school of objective and traditional school in providing legal interpretation.

Mujtahid: المجتهد is traditionally known to have some prerequisite qualifications, knowledge and skills to derive rules of law directly from the primary source of Islam. It is believed that the handful competent Mujtahids appeared in Islamic history. It is my contention that the role of individual Mujtahid may have been appropriate to the medieval social structure of Muslim communities in old ages but today, life is complicated with so many modern challenges and social realities that were unprecedented in human history. To address modern challenges no longer individual legal reasoning and individualistic religious verdicts are appropriate modern time. Therefore, some sort of constructive intellectual exercise is much needed for the Muslim community across the globe. The problems and challenges of the Muslim communities in the west are different from the problems and challenges of

communities in the East. Therefore, today in this modern world to exercise intellectual legal reasoning and provide solutions to the problem of modern world, the Muslim jurists need to go beyond methods of legal interpretation and must have the knowledge of the modern world. Unfortunately, the Muslim world has not yet devised any collective intellectual mechanism to do this.

Daleel: **الدليل.** The rules of Islamic law are drived from the primary and secondary sources of Islam. These are divinely inspired textual evidence in Islamic law. There is no any doubt about the authenticity and categorical nature of these scriptural texts. Yet, today, the intellectual approaches of the Muslim jurists to the primary sources of Islamic law are questionable. How we read the classical materials of Islamic law? how do we relate the meaning of the divine texts to the realities of modern-day life? how do contextualise the divine texts? All these are some of the basic questions that today in this modern world we should ask about the application of divine texts? Yet, to relate the literal meaning of the text to our modern social text is not always viable in some cases. This is missing link between the literal and *Maqāsid* schools**.**

Dalala: **الدلالة.** This means that word and sentence structure of divine texts and prophetic traditions proffer different linguistic meanings and implications. The Arabic language used in the divine texts gives contextual, metaphorical, conventional, and linguistic meanings with its all linguistic traditions. The general, specific, rhetoric, and metaphoric meaning and connotation of text and its grammatical knowledge is imperative for the Muslim jurists and yet, this linguistic knowledge alone is not enough to give legal interpretation for the texts, they must know how to apply the meaning of the texts into modern social context.

Hukm: **الحكم.** The Muslim jurists deduce different rulings from the divine texts relating to human actions using this legal methodology. Human actions are classified in Islam in accordance with divine law. Human actions are classified as obligatory, prohibited, recommended, permissible or detested acts using this legal methodology of deducing rules. There is nothing wrong in this method of deducing rules of law within the scope of divine texts. The divine texts regulate the actions and behaviour of the Muslim community in this way and yet, textually unregulated human actions and activities are more than what has been regulated by divine texts. The Muslim jurists find it hard to regulate those human invention, discovery, and development in humanity? What do we say about nuclear disarmament? Is it haram? Is it permissible? Is it detested in Islamic law? what do we say about euthanasia? Is it allowed? Is it haram? Is it disliked in Islamic law? what about abortion in Islamic law. Is it allowed or is it not allowed in Islam? There are so many ethical, moral, scientific issue and problems that have no Islamic precedents in Islamic law. These are some of the areas that the jurists of legal and *Maqāsid* schools differ. The jurists of legal school find it difficult to address these social issues and consequently, Islamic solution for issues like these are not discussed with the circle of literal schools. Unregulated human activities are more than regulated human acts. So, Islam provides some legal mechanisms to regulate all those unregulated human activities.

Functions of (*Usūl al-fiqh and Maqāsid al-Shari'ah)*

Usūl al-fiqh	*Maqāsid al-Shari'ah.*
It determines the five Islamic *fiqh* rulings such as what is an obligation and what is a permissible act and what is not	It determines the rationales and wisdoms of each ruling of Islamic law
It deals with evidence and proofs of Islamic laws	It determines what is public interest of the Muslim community.
It's deals with primary and secondary sources of Islamic law.	It determines the priorities of Islamic laws in light of primary sources.

It deals with technicalities of Islamic legal terms and terminologies.	It makes connection between Human action and its consequences.
Deductive methods are used to subtract laws from primary sources of Islamic laws.	Inductive methods are used to know wisdoms and rationale of Islamic laws.
It deals with legal maxims of Islamic law.	Functions as overriding guidelines to interpret or enact any Islamic rulings.
	It enhances and facilitates policy making in Islamic communities.

Diagram 5.

It is undisputable fact that both Islamic sciences are inherently interrelated as this diagram illustrates and yet, the general philosophy of the Islamic law is generally accepted as a holistic and overriding legal methodology in Islamic law.The functional nature and practical dimension of the traditional science of the *Usūl al-fiqh* is somewhat limited. Yet, no one denies the fact that the students of Islamic law are still benefiting from *Usūl al-fiqh and Maqāsid al-Shari'ah.* Therefore, both sciences are indispensable for the study of Islamic law. I propose that modern the Islamic scholars should come up with some solid mechanisms to combine these two sciences of Islamic legal studies. This will shape the future of studies of Islamic law. This could save the time and energy of the students from engaging unnecessary linguistic and dialectic debates about Islamic legal methodologies. We need to make some reconciliation and synchronization between these two branches of Islamic legal studies so that we could come up with some dynamic mechanism to direct future legal studies in Islamic law. No one denies the fact the knowledge of both these Islamic legal sciences are indispensable for the students of Islamic law. Some Muslim scholars argue that traditional Islamic knowledge alone is not enough to address the modern problems of the Muslim community. Jasim Sultan argues that the knowledge of modern politics, modern economics, modern legal systems and modern scientific and technological sciences are prerequisites for modern Islamic legal theorists. What he argues is that today the science of Usūl should incorporate the knowledge of these modern developments in the study of Islamic legal theories. He argues that Islamic legal methodology has got some problems. He contends that Islamic legal methodology was created in the classical period of Islam and it does not meet the demands of our modern time. His argument is that unless and Muslim jurists understand the modern world in its socio-political, economic, scientific contexts they would not be able to come up with any solid solutions for the problems of the Muslim world. So, it is imperative that they understand the contemporary world before they come up with any Islamic legal opinions to the problems of humanity.

So, like al- Imam al-Shātibī who sets some prerequisites for those who want to understand Islamic law. Today in the same way but in a different tone, Jasim Sultan sets some prerequisites for those who want to engage in Islamic legal studies. This makes absolute sense. How on earth could any one issue an Islamic legal verdict on any contemporary world affairs if he does not understand the contemporary modern world and its problems. The problem is that today Islamic sciences are taught in Muslim schools, colleges, institutions and universities separately and in isolation from modern sciences in arts and humanity subjects. I think it is imperative that these academic institutions in the Muslim world must introduce interdisciplinary subjects which involves the combination of many academic subjects. This method of learning will expand the knowledge, skills and experience of Muslim students in Islamic studies. This method of learning draws knowledge of other fields such as sociology, history, the physical sciences, psychology, anthropology, economics, politics and other subjects. Today, Muslim graduates in Islamic studies must have some knowledge in all these modern subjects to relate Islamic studies to the modern world. Consider for instance, the

consequences of Mullah Omar or Bin Laden issuing fatwas on waging war against the US military establishment in the modern world. Why did they do this? It is simply because, they do not have any idea about the geopolitics of this modern world or how today politics works in this modern world. They did not have any idea how the modern world works or anything about international politics. Or consider for instance the consequences of the Muslim clerics issuing fatwas on modern medical issues without any background knowledge of medicine. Likewise, consider the consequence of the Muslim clerics issuing fatwa on modern finance and economic issues without knowledge of modern economic theories. Likewise, we could compare this knowledge gap between modern science and Islamic science. I do not propose any mechanism on how to combine Islamic studies with modern social sciences and yet, it is a high time for Muslim academics to think about this. otherwise, Islamic studies will grow in isolation from the realities of the modern world. I think that Muslim countries should come up with teams of scholars to discuss the contemporary challenges that the Muslim world and humanity face today. These teams should not only include traditional Muslim scholars, but also the experts in all other fields should be included. Muslim countries need the advice and guidance of experts in all modern sciences to relate them to Islamic ethics and moral values. Therefore, for any attempt to apply and implement the central themes of *Maqāsid* in a meaningful and comprehensive way in the Muslim countries we need the support and cooperation of all sectors of public authorities and government officials. Many Muslim countries do not lack natural and human resources but what they lack today is the political will of their leadership. Singapore, China, Japan, Korea and Malaysia were some of the poorest countries of Asia in the 1960s and yet, today, they have managed to become some of the richest countries in the world? How did they do it? I think that one of the main reasons for the success of these countries is the political will of their political leaders. yet, Arab and Muslim countries have been suffering from a lack of the political will to develop. Even though many Arab and Muslim countries are rich in natural and human resources (oil, gas, and manpower), most Muslim countries are poor in the world today. Countries such as Iran, Iraq, Palestine, Syria, and Egypt are some of the Muslim countries that are rich in human resources. Their human potential is as good as the human potential of many Asian countries and yet, these countries cannot make any significant progress in many developmental indexes. On the other hand, oil rich gulf countries, due to the lack of political will, mismanagement and authoritarian rules cannot make much progress in any meaningful way. People have been enslaved in these countries without political freedom and human rights. The political leaders of these countries are misusing the political power entrusted upon them by the people. Basically, the political system, public management, and distribution of wealth, go against the basic values of the general philosophy of Islamic law.

It can be convincingly argued that most people in these countries uphold the social, religious and moral values that are enshrined in the general philosophy of Islamic law. Yet, to apply the political, economic, educational, and administrative value and ethics of the general philosophy of Islamic law the Muslim countries need political will. There have been no conducive and constructive relations between the political leaders and intellectuals of Muslim communities for centuries. That is another reason why all good ideas, principles and concepts of the general philosophy of Islamic law cannot be applied in Muslim countries today. At the individual and community levels, some ideas, values and principles of the general philosophy of Islamic law could be applied and implemented and yet, to apply the political, economic and educational policies and principles that are enshrined in the general philosophy of Islamic law, Muslim countries need good governance and good political leadership. Unlike the medieval political system, today, politics controls many aspects of modern-day life. The basic economic provisions, educational facilities, health and safety, employment opportunities, freedom, housing, and all other modern-day needs, and necessities are controlled and managed by central governments. Therefore, inept political leadership could do more harm and damage to Muslim

communities today than anyone else. Muslim countries could have brilliant ideals, social values, moral principles and religious concepts that are enshrined in the general philosophy of Islamic law. To put these beautiful ideas into practice, Muslim countries need an honest political leadership. Otherwise, these excellent Islamic ideals and values will remain as theoretical and dogmatic without any practical value and application. Therefore, I would argue that executive power and political authorities are given an important role in the general philosophy of Islamic law. For the most part of Islamic history, Muslim communities failed to create a democratic political leadership and the Islamic concept of political consultation has remained a theoretical one for centuries. I would argue that there would not be any meaningful development in the Muslim world without political reform. To reconstruct the ideals of the general philosophy of Islamic law, today, the Muslim world urgently need the collaborative intellectual, economic and political cooperation of different sectors of Muslim communities. I propose that Muslim countries should create panels of experts in different fields in collaboration with the government to implement the ideals of the general philosophy of Islamic law. The diagram below illustrates this collaborative mechanism

Team A	**Team B**
Experts in the Quranic studies	Experts in politics
Experts in Hadith studies	Experts in economics
Experts in Islamic legal theories	Experts in in geopolitics and international relations.
Experts in Islamic jurisprudence	Experts in science
Experts in Arabic language conventions.	Experts in technology
Experts in Islamic history.	Experts in psychology
Experts in other field of Islamic studies.	Experts in sociology
	Political, military leaders.
	Policy makers and executives.
	Experts in education and human resource development.

Diagram 6.

One of the negative aspects of education systems in the Muslim world is the demarcation of education into secular sciences and Islamic sciences. Although during the colonial period, some new educational policies were introduced, and after independence many countries adopted dual education systems, the education system grew in Muslim countries in two contrasting paradigms: religious and secular education. As result of this, we find specialists in religious education who do not have any sound knowledge of modern sciences. So, they find it hard to relate their knowledge to modern challenges. That is why with any attempt to reconstruct the general philosophy of Islamic law in our modern time we should seek the expert advice of many scholars in different fields. Recently, T. Ramadan initiated a research centre for Islamic legislation and Ethical studies (CILE) in Doha to reconstruct the general philosophy of Islamic law in a new paradigm. This centre aims to renew the legal, political, economic, and socio-religious thought from new perspectives. It gauges and evaluates the defects and deficiencies of classical Islamic thought and acknowledges the dramatic social changes that have taken place in modern human life in all aspects of modernity. The centre realises that to relate Islamic teaching to the modern-day life. Muslim intellectuals and policy makers should review the entre corpus of Islamic law, the historical precedents and intellectual legacies of the Muslim world. The philosophical objective of this centre is to renew Islamic law, Islamic ethical thought and propose some appropriate and viable ethical framework to deal with contemporary scientific, technological, environmental, educational, political, social and religious issues of the Muslim world and humanity.

The methodology of this Islamic legal reformation must go beyond the literal meaning of the divine texts and study the contextual meaning of the texts in the light of the general philosophy of Islamic law. This method is as the called the school of objectives of Islamic law

that goes beyond literal meanings of the texts to find solutions for the modern challenges of the Muslim world. He wants to reform the Muslim minds and the perception of Islam from the percept of the general philosophy of Islamic law. After, almost 6 centuries since the death of al-Shātibī, T. Ramadan comes up with the same legal reformation methodology that Al-Shātibī initiated. T. Ramadan's strategic ethical and legal reformation is no different from that of Al-Shātibī's legal reformation. al-Shātibī initiated his legal reformation program from the philosophical perspective. To go beyond the literal meaning of the text is to know the rationale and the context of the divine texts. Yet, the difference is to examine the modern problems of humanity from an ethical perspective what is more convincing. Why? Because ethical, moral and humanistic values are eternal. All humanity shares these ethical, moral and human values. You may be a Hindu, Buddhist, Christian, or a Muslim, but as human beings we all share the same human values so, to initiate Islamic legal reform from an ethical and moral perspective is to be more convincing. In this way, Muslim jurists and academics in different fields of specialization could examine human challenges from Islamic perspectives. Yet, I have some qualms and hesitation about this initiative. I think that any meaningful legal or educational reform should start at a grassroots level, taking on board the Muslim public and Muslim student communities at all levels. From schools to universities. It is a collective reformation project that we need today. To begin with we should stimulate the creative and critical thinking at primary and secondary school level across the Muslim world. Still we have outdated education systems of copying and dictating. We are nowhere near to producing philosophical, creative and innovative think tanks in the Muslim world. The modern educational theories of Dewey, Piaget and Vygotsky can be used to initiate creative educational reform in the Muslim world. Without producing a generation of creative, analytical and critical thinkers, the Muslim world can do nothing except copy the old traditional Islamic legacy. The Muslim world does not suffer from a shortage of legal theories, but it suffers from a lack of academically qualified people to relate Islamic teaching to the modern world.

d) ***Maqāsid al-Shari'ah*****: as a research methodology.**

There are two research methodological approaches or techniques applied today by social scientists in the fields of arts and humanities. These are qualitative and quantitative research assessment methods. They are commonly accepted analogical and critical research methods. I think that the qualitative research method is somewhat identical to the Islamic legal research methodology of the general philosophy of Islamic law.

1) Quantitative research method**:** This method includes statistical analysis, empirical and experimental studies, numeral studies, and lab research. Quantitative research is empirical research where the data are in the form of numbers
2) Qualitative research method: This includes case studies, narrative analysis, interview evaluations, literature reviews and individual perspectives. Qualitative research is where the data are not in the form of numbers (Keith F. Punch p3)

Julia Brannen notes that "qualitative and quantitative research have been represented as two fundamentally different paradigms through which we study the social world. …...on the one hand, qualitative approaches embrace even greater reflexivity and on the other hand, the quantitative research adopts over more complex statistical techniques" (Julia Brannen 2013: p. 282) Quantitative research methods deal with the question of how or how many times or how much and qualitative research methods deal with the question of why? This questioning method is used to find the reasons behind human actions. The Islamic legal philosophy deals with interpretative, narrative, descriptive, holistic and comparative critical analysis methods in legal studies. It could be political, legal, religious, economic or social or any matter related to the Muslim community or humanity. Ian Dey finds more than 45 different approaches to the qualitative research method. (Ian Dey 1993:). Most of them are applicable to Islamic studies. J. Auda argues that the general philosophy of Islamic law deals with this question of knowing

why. In that sense, the qualitative research method is an identical one with the basic questioning method in legal philosophy of the Islamic law. Yet, no Muslim academic has not yet, explored this inherent connection between qualitative research method and the questioning method in Islamic legal study. The differences between qualitative and quntative research methods are numerous. Quantitative research methods include statistics, surveys, and content analysis while qualitative research methods include case studies, in-depth interviews, and historical analysis. Moreover, social scientists also tend to focus on a single or on very few cases when they use qualitive analysis to be able to gain an in depth understanding of their research subject. Ian Dey describes that the qualitive research methods deal with meanings or with quality or with the question of why, while quantitative research methods deal with quantities and with the question of how (Ian Dey. 1993.p10). Thus, qualitative research methods assert that the explanation and understanding of human social and political behaviour cannot be independent of context. Therefore, the qualitative researcher tries to convey the full picture of context. In the same way, the general philosophy of Islamic law too emphasises that Muslim jurists should take this into context before they issue any religious verdicts. Otherwise, they could come up with an inappropriate religious verdict. The uniqueness of the case studies is that we collect the contextual information first so that we have the context within which we understand the casual process and provide any critical analysis or interpretation according to the context of case. It can be said that qualitative is more appropriate for our purpose than the quantitative research. Because, it is qualitative method is the more inclusive, forceful, contextual, holistic and interpretative method. The general philosophy of Islamic law has indeed incorporated these critical methods in its legal interpretation. It is an all-inclusive policy making a strategic mechanism that is enshrined in divine guidance. Contemporary Muslim jurists are not trained in these research methods in their legal interpretation. The classical Muslim jurists used many forms of deductive, inductive legal reasoning and analogical methods to subtract laws from the primary source of Islamic law and yet, today creativity in the Islamic legal studies has ceased and very rarely do we find experts in Islamic law and common law.Today, many new legal principles and concepts have been introduced in legal studies in western countries and legal studies are rapidly growing in western countries like many other fields of studies. Classical Muslim jurists produced many innovative legal theories, principles and legal maxims to demonstrate the flexible nature of Islamic law for all places and all ages and yet, many of these legal theories are not applied in the laws of Muslim countries today. Today, creativity in legal studies has ceased in many Muslim countries due to the unhealthy relationship between the political and intellectual stratas of Muslim countries. Judiciary and legal experts in many parts of the Muslim world do not have freedom and liberty and intellectual integrity as we see in many in western countries. As result of this, many dynamic legal theories of the general philosophy of Islamic law have been marginalised, ignored and neglected in many Muslim countries.

Today, academic communities in western countries enjoy academic freedom, and politicians and judiciary do not interfere with intellectual freedom of the creative and innovative thinking of intellectuals. This none-interference of government encouraged healthy intellectual development in many areas in western countries and yet, the governments in many Muslim countries suppressed intellectual freedom and creativity. More importantly, legal experts, judges and judiciary are not given freedom and liberty to come up with new ideas, principles and doctrines. There has always been a sense of resentment and antagonism between ruling elites and Muslim jurists in Islamic history and this resentment continues. That is why is Muslim countries are lagging in legal studies. The Islamic legal legacy is rich with many kinds of legal doctrines and legal principles and yet, there is no political will and help to integrate Islamic legal theories into all aspects of modern-day life in many Muslim countries. Because, many politicians fear that if the Islamic principles of justice, freedom, liberty, equality

and other religious values are applied in Muslim countries the authority of many Muslim politicians would be challenged. That is why Muslim world does not encourage academic freedom, creativity and free thinking. Like many other areas of education, the science of the general philosophy of Islamic law has been neglected and ignored by the Muslim political leaders today. That is why some of the brilliant legal principles, doctrines and social values of the general philosophy of Islamic law are not applied today. The Muslim world is not suffering from a scarcity and shortage of Muslim intellectuals and scholars in Islamic legal studies but, the Muslim politicians do not give them the freedom and liberty to promote social-religious values that are enshrined in the general philosophy of Islamic law. Jassem Sultan argues that the Muslim world suffers from methodological crisis in its outlook into the realities of modern world and in its approach to divine texts. He argues that there is there is a huge gap between the realities of the modern world and the Muslim approach to divine texts. He argues that the Muslim world finds it hard to relate Islamic teaching to the modern world. He argues that the Muslim world should create a new theory of knowledge, a new intellectual tool to address the realities of the modern world.

The historical model and precedents are not always applicable to the modern social conditions. He argues that we should introduce a new methodology into theories of Islamic knowledge to meet the social realities of the modern Islamic world. He argues that Ibn Khaldun produced a new methodology in his sociological studies into Muslim world. Ibn Khaldun produced some sociological theories to respond to social realities of his time. yet, Jassim Sultan argues that we must not resort to medieval history to find solutions to the problems of modern world. He asserts that we need a modern intellectual revolution in the Muslim world to compete. How do we read the modern world? How do we place the divine text in the modern world? What is the role of reason and the general philosophy of Islamic law in this task of the understanding the realities of the modern world? He argues that the Muslim world suffers from an intellectual crisis in its understanding of the modern world and in its methodological approach to divine texts. The concept of knowledge has been confined into Islamic sciences by some Muslim clerics. They have made a demarcation between the religious and worldly knowledge. Some Muslim graduates in physical science prefer the Islamic science over their fields of specialization. He claims that the mindset of the Muslim community is shaped in religious paradigm in that it gives religious interpretation to all human actions. We have given the religious connotations to the concept of good deeds in Islam. We have confined the meaning of good deed in religious rituals. Yet, the concept of good deed encompasses the entire life of the Muslim community. The Qur'an defines duties and responsibilities of all prophets in a wider context. It tells us the duties of the prophets were not limited within some religious obligations and rituals rather they guided humanity in all aspects of human life. For instance, the prophet Moses fought against the injustice of pharaohs, the prophet David excelled in weapon product, the prophet Jesseph asked God to appoint him for the post of finance minister, and Dhu'l-Qaranayn excelled in his engineering skill. All this tell us that the prophets were not merely the messengers of divine revelation rather they helped people to develop a civilization on earth and yet, what is the mindset of Muslim communities today. Do they want to follow the prophets or their own desires? so, he argues that there is a huge gap between the meaning of divine texts and our understanding.

Many modern scholars in the Muslim world try to reconstruct Islamic thought to meet the demands of our time. Many of these modern Islamic scholars agree that something terribly went wrong in our reading into divine texts and Islamic history. Most contemporary Muslim scholars propose some new ideas and concepts how to revive Islamic thought in our modern time. The projects of Dr Jassim Sultan, T, Suwaidan, Dr Tariq Ramadan and works of al-Furqan foundation are some of inspiring projects. These projects are most viable and practicable intellectual projects that can direct the next generations of the Muslim communities to come

out of this intellectual crisis. Yet, these projects need a collective support of the governments and public. The governments in the Muslim countries must support these inspiring projects to get the Muslim communities out of this intellectual crisis. Today, knowledge transfer from one nation to another nation is not a difficult task. Learning is made easy today by the modern technological revolution. Therefore, these Islamic projects and programmes proposed by these contemporary Islamic scholars are reasonably achievable within a short span of time. Today, even the nomadic communities in the Arabian deserts have access to modern technology and therefore, an intellectual revolution within Muslim communities is not difficult task to accomplish. Yet, all this need some collective effort from the political and intellectual leadership of the Muslim countries. Moreover, I think that we should review Islamic religious teaching at Muslim schools, colleges and universities across the Muslim world. We have been teaching Islamic religious education using some classical materials that do not deal with modern problems. Moreover, some radical changes are needed in the field of Islamic education. The radical changes are needed in the syllabi, teaching materials, teaching pedagogies and student enrolment system of Muslim college and universities. Today, students with less IQ skills enter into the field of Islamic studies across the Muslim world. These students find it hard to understand the modern world and its challenge. They are educated and trained in an old traditional learning setting with an outdated syllabus in Islamic studies. They find it hard to relate what they learn in Islamic universities into modern complicated world that the humanity lives in today. I think that with all these projects proposed by many contemporary Islamic scholars, the Muslim world must review its policies in Islamic education. Introducing the subject of the general philosophy of Islamic law is imperative to stimulate creative thinking in the mindset of the student communities in the Muslim world. The subject matter of the general philosophy of Islamic law has been a forgotten chapter of Islamic legal history. It could be argued that introducing the science of general philosophy of Islamic law across the Muslim world could guide the Muslim students to understand the modern challenges beyond the scope of literal interpretation. This science will help them to expand their understanding of the modern world and guide them how to relate Islamic texts with realities of modern world.

Chapter 3: A Historical Preview of Maqāsid al-Shari'ah.

The general philosophy of Islamic law (*Maqāsid al-Shari'ah)* went through different stages in its evolutionary process of development. A. Noor Baza (2014. PP 140-180) notes that the general philosophy of Islamic law went through five stages from its inception to the present time. I proffer a historical preview of the different stages of the evolution of the general philosophy of Islamic law to illustrate that the origin, history and ideas of it are profoundly rooted in the primary sources of Islam. I would argue that the general philosophy of Islamic law is a unique Islamic science that has no parallel in any legal system. This science was created by the classical Muslim jurists to identity the rationale of Islamic law and to provide some legal mechanism to find the solutions for ever increasing human development. Like many other Islamic sciences such as the science of Quranic studies or Hadith studies, this Islamic legal science was developed by the classical Muslim scholars. Contemporary Muslim scholars have expanded its scope and frame work. Hence it can be evidentially proved that the general philosophy of Islamic law is unique Islamic science is not an alien science. Thus, the creation of Islamic legal philosophy is not a religious innovation as claimed by some critiques. The critics of the *Maqāsid al-Shari'ah* have been coming up with some unfounded charges against the supporters of the general philosophy of Islamic law. This evolutionary process of *Maqāsid al-Shari'ah* can be classified in some historical epochs. I give this preview for the origin and development of the general philosophy of Islamic law so that we can understand it in a historical context.

a) **The different Stages of *Maqāsid* development.**

1). The Foundational period: Prophetic and his companions' period.	Themes of *Maqāsid al-Shari'ah* are enshrined in the texts of Qur'an and Hadith: Initial period of identification, formation and application by Caliph Omar
2). The period of four Islamic legal schools:	A formative period of Islamic legal philosophy and its application by Imam Malik and his followers
3). The medieval to pre-modern time: from Imam Juwaini to Imam al-Shātibī's time	A period of formation and development of theories of Islamic legal philosophy:
4)The period of stagnation and decline	After the time of al- Imam al-Shātibī up to the modern time of Ibn Ashour, studies in the field of Islamic legal philosophy had been ignored.
5)The modern Time: from Ibn Ashour to Tariq Ramadan.	A period of modern development of Islamic legal philosophy:

Diagram 7:

1) **The Foundational period of the Prophet and his companions**

He calls this period a foundational period of the general philosophy of Islamic law. This period begins with the beginning of divine revelation. He argues that the divine revelation is enshrined with the rationale of Islamic law. The Prophetic traditions, his actions, his legal verdicts and his rulings and above all his leadership skills are the foundations of Islamic legal philosophy. The prophet behaved, acted and spoke in a rational way explaining the inner dimensions of the general philosophy of Islamic law. This is in addition to the actions and public administrative activities of his companions in various socio-political and religious issues. These are the epistemological foundations of Islamic legal philosophy and the sources and reference points of Islamic legal philosophy. So, the doctrines of Islamic legal philosophy are created purely from the primary sources of the corpus of Islamic law. The authenticity of the general philosophy of the Islamic law is established in this way. The ideas of the general philosophy of Islamic law are not taken from any other non-Islamic legal sources as some critiques of the general philosophy of Islamic law claim. The themes of Islamic legal philosophy are enshrined and embedded in the texts of the Holy Qur'an and Hadith: the Qur'an speaks about the rationales and wisdoms of divine laws. Hadith literature too contains the wisdom and rationale of prophetic statements. During prophetic time, the legal philosophy of Islamic law was enshrined in the divine revelation, prophetic statements, verdicts and statements. Companions of the prophet asked many questions and queried various religious issues. The answers and clarifications for all these questions were given in some rational and logical ways. As a matter of respect to prophet, some companions did not speak out or question the prophet on many issues. Yet, after the of the Prophet death, the rationale and divine wisdom of the scriptural texts of Islamic law were identified and explored more in detail by his companions. Particularly, the second Caliph Omer who with his rationalist approach to divine law, explored the wisdom of divine rules. Most of his legal verdicts and religious statements were based on the rationale and wisdom of divine laws. Indeed, he changed many of his legal

verdicts in line with the changing of the rationale of divine laws. Imam Malik's legal theories are mostly based on public interest and human welfare. He based most of his legal theories and verdicts based on divine wisdom and rationale. Some find similarities between legal thinking of Imam Malik and that of the Caliph Omer. Both approached Islamic law rationally. They went beyond the letters of law to know the rationales of Islamic law. So, it could be argued that the prophet and his companion laid the foundation stones for the corpus of the general philosophy of Islamic law.

2) **Period of four Islamic legal schools:**

Like many other traditional Islamic sciences, the legal philosophy was not known during the time of either the Prophet or his companions as an identical science itself. Yet, ideas of the legal philosophy of Islamic law were enshrined in the statements, actions, decision and rulings of the Prophet and his companions. Baza argues that the idea of the legal philosophy of Islamic law (*Maqāsid al-Shari'ah)* gradually formed and constituted during the time of second-generation Islam. The initial legal principles, and themes of the general philosophy of Islamic law were shaped into a preliminary theory during this period of Islamic legal history. He argues that neither a single Imam nor a single legal school of Islamic law came up with this theory of *Maqāsid al-Shari'ah*. Thus, no one could claim the monopoly for the creation of this Islamic science in the legal history of Islamic law rather the arts of it were created by the collective efforts of many Islamic legal experts over the period of many centuries. The initial ideas of the legal philosophy of Islamic law were innovated with the collective intellectual effort of different scholars of different schools of legal studies in Islamic law: no single legal school or scholar could claim a monopoly or academic credit for the initiative of Islamic legal philosophy. It was a constructive Islamic legal theory that evolved during the passage of Islamic legal history with the contribution of many Islamic scholars of formative period of Islamic legal thought. So, no single Islamic legal scholar could claim any academic credit for the creation of the theory of the Islamic legal philosophy. Baza notes that 7 classical Islamic legal scholars contributed to the initial innovative creation of the idea of Islamic legal philosophy. There are *Imam Ibrahim al-Nakha'i, (d.69.h), Imam Malik bin Anas, (d179.h), Imam Al-Thirmidi, d. (320 h), Imam al- Qaffal al- Shashi, d. 365), Imam Abu al Hasan al'Amiri, (d. 381h), Imam Ibn Babawaihi, al-Qummi, (d. 381h), and Al-Qadhi Abdul Jabbr*. d. (415 h). He argues that the initial concepts and principles of the ideas of the legal philosophy of Islamic law were found in the writing of these Islamic legal scholars and indeed, methods of knowing the rationale and wisdom of Islamic rules are broadly discussed in the works of these imams. The imam Malik was particularly famous for the application of legal devices of public interest in his religious verdicts and ideas. Yet, these ideas of the legal philosophy of Islamic law remained scattered in the writing of these scholars at a preliminary stage. No cohesive theory was invented by these scholars during this epoch of Islamic legal history.

3) The theoretical foundation of Legal philosophy of Islamic Law: *Imam Al-Juwaini to Imam Al-Shatibi*

Imam Juwaini and his student Imam Al-Ghazali revolutionised the theories of Islamic legal philosophy and laid the foundation for the doctrine of al-*Maqāsid al-Sharī'ah* as known today. Today, many scholars have attempted to reconstruct the doctrines of *al-Maqāsid al-Sharī 'ah* incorporating all modern-day development in human life from politics to human resource development. It has been argued that the theoretical foundation of the legal philosophy of Islamic law was laid down in the works of Imam al-Juwaini who engineered the theories and principles of the legal philosophy of Islamic law from inductive reading into the corpus of the primary sources of Islamic law. He laid a logical framework and structures for his doctrines of legal philosophy of Islamic law. This systemization and organization of Islamic legal philosophy was unprecedented in Islamic legal history. For this reason, it has been claimed that Imam al-Juwiani was the first designer or brain child

of the theory of Islamic legal philosophy. This imam did not write an exclusive book on Islamic legal philosophy and yet, he laid the intellectual foundation for the theories and principles of Islamic legal philosophy and it was expanded and further developed by his students and disciples. Particularly, his disciple Imam al-Ghazali expanded his theory of Islamic legal philosophy with his new legal concepts of public interest and public welfare. Historically, this argument is well suited. During the time of these Islamic legal experts many Greek philosophical books were translated from Greek into the Arabic language.

I think that Greek logic and the rational approach may have helped these Muslim legal experts to devise some logical theories in Islamic law. Using Greek logic and rationality they may have formed the theories and structure of the general philosophy of Islamic law. I do not think that this would have inflicted any damage on the authenticity of Islamic law. *Imam al-Juwiani and Imam al-Ghazali* have been accused of using Aristotelian login and his legal reasoning method in designing the fabric and structure of the general philosophy of Islamic law. The Salafi groups have accused them of using the non -Muslim logic of Aristotelian methods in Islamic legal theories. Although there is nothing wrong with this. It would not make any sense to demarcate the knowledge of any subjects such as logic, mathematics, and any other physical sciences based on any religion. The Arabs translated Greek books into their language and "through the agency of Arab scholars, the West gained its numerals, rediscovered the writing of ancient Greek scientists, made advances in astronomy and gained new learning" (Richard Koch and Chris Smith. 2007, p70). Europeans in the Middle ages did not mind if knowledge came from Muslim or Christian sources or from any other sources. They benefited from any branch of knowledge they could gain from the outside world.

Today, some Salafi groups say that we should not learn modern philosophy from Europeans or any others which does not make sense at all in this modern age. Bazza argues that Imam Izz ibn Abdul Salam and his student Imam al-Qarafi, Ibn Taymiah and his student Ibn al-Qyyim, and Imam al-Shātibī's had renewed the theory of the legal philosophy of Islamic law that was laid down by Imams al-Juwaini and his student Imam al-Ghazali. During the time of these Islamic legal scholars, the Muslim community faced many challenges and many social issues that were unprecedented to previous generations, so these imams argued that religious rulings and verdicts could differ from place to place, time to time, condition to condition and from custom to custom of people. They argued that the legal philosophy of Islamic law was the driving force shaping the nature of all rulings in Islamic law. They argued that Islamic rulings should go along with the general philosophy of Islamic law. Why is this? because when we follow the letters of the primary source of Islamic law we could end up with inappropriate rulings or conclusions. But when we go alone with the general philosophy of Islamic law, they are eternal, and they are not subjected to change. *Imam al-Shātibī'* re-invented the theory of legal philosophy with his legal reasoning. He initiated the introduction of inductive reading into the scriptural texts. Moreover, he expanded the theory of Islamic legal philosophy in response to the social changes of his time. He argued that the legal changes should be made in accordance with social changes. Yet, among all above mentioned jurists, Imam al-Shātibī' is regarded as an architect of Islamic legal philosophy for his renewal of legal methodology in the construction of Islamic legal philosophy unlike traditional legal scholars Imam al-Shātibī who came up with innovative methods in his theories of Islamic legal philosophy.

4) The period of stagnation in Islamic legal thought.

From 14th century or 8th century of *Hijra,* Islamic legal thought went through a period of stagnation and decline. Creativity and legal reasoning ceased in it. *Imam al-Shātibī* came up with new ideas in Islamic legal thought, particularly, he renewed the scope and structure of the legal philosophy of Islamic law and yet, with his death his

innovative legal ideas also vanished and disappeared. His book had been a forgotten intellectual legacy of Muslim history until his legal treatise was rediscovered by Imam M. Abduh in Tunisa in 1884. The legal thought of *Imam ibn Taymiah* was renewed by his student *Imam ibn Qayyim,* the legal thought of *Izz ibn Abdul Salam* was renewed by his student *al-Qarafi,* the legal thought of Imam al-Juwaini was renewed by his student *imam al-Ghazali* and yet, *Imam al-Shātibī's* legal thought was not taken up by his students for further study and examination. It is said that his students and disciples did not fully grasp *Imam al-Shātibī's* doctrines of the legal philosophy of Islamic law and consequently his legal legacy was left untouched until modern time.

5) The Period of renewal of Islamic legal philosophy in modern time:

Studies on the legal philosophy of Islamic law have been a neglected area of Islamic legal history since the time of *Imam al-Shātibī's* time. His book on the legal philosophy of Islamic law was rediscovered after almost six hundred years. Baza notes that it was *Imam Shah Wali Ullah al-Dehlawi* (1762 d) who invigorated this science in his writing after almost six centuries. His writing explores the wisdom and rationale of divine revelation and prophetic traditions. In his book *Hujjat Allah al-baligha* (The profound evidence of Allah) he draws our attention to the subject of Islamic legal philosophy. yet, this science of Islamic legal philosophy was not given due intellectual scrutiny until the famous book of *Imam al-Shātibī's al-Muwāfaqāt* was rediscovered in 1884 in Tunisia. it was re- published in Khazan in Russia in 1909 and in Egypt in 1922. (Baza 2014 p. 230). The studies on the legal philosophy of Islamic law continued to grow rapidly after the discovery of *Imam al-Shātibī's al-Muwāfaqāt*. Many institutions and centres begun to teach Islamic legal philosophy as a separate subject. Now it has become one of famous subjects in Islamic legal studies. This historical preview tells us how Islamic legal philosophy gradually grew in different epochs of Islamic legal history. Like many other traditional Islamic sciences, the origin and genesis of Islamic legal philosophy is profoundly rooted in the primary sources of Islam. It can be argued that a deep understanding of the legal philosophy of Islamic law is imperative today than any previous generations. Today, we live in this global world where humanity is closely connected with its different cultural and religious identities. Moreover, huge social changes have taken place in recent times in human civilization which are unprecedented in human history. To meet the challenge of modern changes in human civilization, the Muslim world cannot find solutions to each modern problem in its religious sources, rather the Muslim world ought to address these modern challenges in the light of the general philosophy of Islamic law. The general philosophy of Islamic law is an all-inclusive and fully-fledged legal mechanism that guides us how to propose solutions for the social issues that are unpreceded in Islamic legal history. This historical preview tells us that the ideas of the general philosophy of the Islamic law are inherently connected to the origin and history of the primacy sources of Islam. It has grown from rudimentary legal ideas into a fully-fledged legal mechanism today. Yet, the social, legal, and religious dimensions of the general philosophy of Islamic law are not applied comprehensively in Muslim countries due to dictatorial political systems.

b) The Leading architects of *al-Maqāsid* scholarship:

The central themes of *al-Maqāsid al-Sharī'ah* are enshrined in the teachings of Qur'an and Hadith and the precedents of all companions and their followers and Islamic scholarship: both classical and modern: yet, some Muslim scholars have made some great contribution to the study of *al-Maqāsid* : I have highlighted some of those Islamic scholars who have had opportunities to read the texts of the primary sources of Islam in their rationale, context and meaning. Historically speaking thousands of Islamic scholars have written on this subject and yet, we have highlighted only a handful of people.

Omar ibn Khtab.	Thaha Jabir Al-Alwani,
Abudllah ibn Omar	Sheikh Al-Qaradawi,
Iman Malik,	Ahmad Al-Raisooni,
Iman Juwaini	Abudul Majeed al Najjar
Iman Al-Ghazali,	Sheikh Abdualla bin Bayyah.
Imam Al-Ghamidi,	Tariq Ramadan.
Imam Al-Qarafi,	Jamal Atiyah:
Ibn Abdul Salam:	Thaha Abdul Rahman
Ibn Taymiah	Ibrahim Al-Bayoumi Ghanem.
Ibn Qyyim	Jaser Auda.
Iman Al-Shātibī	Muhammad Al-Ghazali.
Shah Wali Ullah Dehlawi,	Jasim Sultan
Allal Al_Fasi	Kamali. Muhammad Hashim.
Ibn Ashoor	Abdennour Baza.
Mohamed Kamal Imam	Wael Hallaq.

Diagram8

These scholars may have made great contribution to the study of Islamic legal philosophy and yet, these contributions are individualistic contributions. Neither classical nor modern Islamic scholars have tried to construct the legal philosophy of Islamic law collectively with the support of experts in other fields. This diagram tells us that Islamic legal philosophy has been studied largely by legal experts in Islamic law alone. Muslim educationists, economists, political scientists, social scientists, sociologists, doctors, anthropologists, civil servants, and professionals have made little contribution to the field of the general philosophy of Islamic law. No one would doubt the intellectual capabilities of Muslim scholars in the field of Islamic studies and yet, to address the modern challenges and social problems in the light of the general philosophy of Islamic law they need to cooperate and collaborate with specialists in the above-mentioned fields. Yet, Islamic institutes and universities did not come up with any system to incorporate modern sciences into Islamic science. Because the modern world is more complex and complicated. Humanity today, faces some modern challenges that no previous generation faced at. Religious scholars alone cannot resolve the problems and challenges of humanity in this modern time. It is a more complicate and more difficult world. In the modern world collecting information about any topic or any subject is not a difficult task. Today, anyone could access any information with the help of social media or with the support of modern technology and yet, what is more important is the quality of how we analyse and how we relate the collected information in a modern context. That is what is lacking today in the Muslim community. The intellectual legacies of classical Islamic scholars can be great and marvellous but, not all their ideas and concepts are relevant and viable today. Therefore, there is no point in venerating the contribution of all classical Islamic scholars. Rather, contemporary scholars should come up with modern ideas relating to Islamic teaching. M. al-Ghazali. J. Auda, Abullah ibn Bayah, |T. Ramadan and others thought some dieas to create new concepts and a new outlook. These scholars knew well that classical Islamic thought did not always meet the needs of Muslim communities, and they recognise that a huge social change has taken place in the human life. To adapt to this, the Muslim community should expand the ideas and ideals of the general philosophy of Islamic law. but the problem is not with ideas but how we execute those ideas today in the Muslim world? The problem lies with the politics of the Muslim world.

c) The literal school vs *al-Maqāsid* school: some characteristics

***Literal school of Islamic law*:**	***Maqāsid school of Islamic law***
Adhere to literal & outward meaning of texts	Adhere to literal, rational, contextual and inner meaning of texts
Do not consider consequences of application of texts.	Consider the social realities and consequences in application of law

Piece-meal treatment of text	Holistic approach to texts taking into all contexts, rational and cause of texts.
Divine law cannot be rationalised	Divine laws in most cases can be rationalised:
Static sets of law and unchangeable in all time	Time and space factors have been considered
Strictly limits use of reason	Reason plays an important role in understanding of divine law;
Selectively apply supplementary sources of Islamic law:	Apply and adhere to most of supplementary sources of Islamic law:
Do not always consider public interest and public welfare	Primary function of law is to protect public interest.
Do not always consider legal Maxims	Apply and adhere to most of legal Maxims

Diagram 9

There is nothing wrong in the divine texts or the primary sources of Islam and yet, human minds read them with different perspectives and with a different level of knowledge and understanding: Consequently, we have two schools of thought (literal and rational) in our understanding of the divine texts. This is not a new trend in Islamic history. During the time of the companions, they disputed many legal issues. There were two types of legal schools among companions. Some of them read the texts literally and others read the texts with their rationale and wisdom. This different approach to the divine texts has left a far-reaching impact on the Muslim community. Two contrasting legal schools of thought have emerged among Muslim communities since the time of companions. People with different levels of intellect, qualifications, training and social circumstances read the divine texts and come to different conclusions. The manifestation of extremism and fanaticism in the religion of Islam is nothing but a reflection of some form of literalism in Islam: The conflict between these two contrasting Islamic legal schools has left devastating effects on the Muslim community since the formative periods of Islam: Today, in this modern world with all its social changes in many field, the shortcoming of literal Islamic legal thinking is more apparent and more dangerous than ever before. Why do we see this huge disparity in the understanding of the primary source of Islamic law? While some schools of thought consider the knowledge and application of *al-Maqāsid al-Sharī 'ah* is imperative why do some other schools do not pay much attention to the general philosophy of Islamic law? Some Qur'anic and Prophetic traditions give pluralistic meanings. Moreover, the intellect and knowledge of people are different, and the texts of the Qur'an are liable to the different interpretations. In Islam there is no a centralised religious authority and every Muslim person has the right to speak for Islam and speak about Islam. Moreover, the Muslim community is an ideologically polarised community. Each group has their own teaching and training methods. Salafi teaching materials and teaching methods are different from Muslim Brotherhood teaching and training methods. All groups have different approaches to the primary sources of Islamic texts. This results in their outlook onto the general philosophy of Islamic law. Most of Salafis, literalists and extreme Islamic groups do not consider the modern contexts, realities and social changes that take place around us in the modern world when they apply to the texts of the primary sources of Islam to modern contexts. All these radical and Salafi groups do not have deeper understand of the modern world we live in today. This demands a good knowledge of international politics, international diplomacy, economics, sociology, and knowledge of all the social sciences and yet, they do not consider learning of all these sciences important and relevant to religious studies. There is a huge knowledge gap between these Islamic groups.

Chapter 4:

The origin and development of the theme of *maqāsid*.

The leading jurists amongst the companions developed comprehensive and rational approaches to the interpreting of prophetic practice (*Sunnah*), which was used as the benchmark for extrapolating and interpreting the huge corpus of Islamic law. These scholars deliberated upon the effective causes, aims, and purposes of these texts and developed practical rules. While most Islamic rulings were apparently evident from the scriptures, it was also the case that some of these rulings might be re-interpreted to uphold the general spirit of the law. There are many examples in the precedents of the companions where various rulings of *Sunnah* were altered to reflect a change in circumstances, i.e. to accommodate all contingencies. Mahmasāni alludes to those legal precedents to show the changing nature of Islamic legal rulings in accordance with changes in people's interests. For instance, he notes that Umar decided to suspend the share in *Zakāt* revenue that Qur'an had designated for the *mu'allafat al-qulūb*: Qur'ān; 9: 60. "Those whose hearts were to be reconciled." They were a group of waverers whom the Prophet included among the recipients of proceeds of alms to win them over to Islam because of their weak faith or to avoid their mischief. Further, it was decreed to ease the entry into Islam of those with the high esteem which they were held by their tribe. Despite clear Qur'anic text, the Caliph Umar discontinued payments to this group. He turned them away saying "These were payments from the Prophet to you to win you over to Islam. Now, God has given power to Islam and made your support unnecessary and needless. So, you either remain faithful to Islam or the sword will be the arbiter between us and we do not pay anyone anything for embracing Islam. He who wishes to believe, let him believe; and he who chooses to remain infidel, let him do so." What is important to note here is that the text was based upon the needs of *Islamic dawa'* and the urgency of securing support for such a mission.

Nevertheless, as Islam gained power and strength, the reason and rational of this text ceased. Therefore, Umar supplanted the rule of the texts upon which it was based. In addition to this, Umar's rulings in cases of repudiation, punishment for theft and fornication and for many other legal matters were clear examples in which he maintained the underlying rationale to change the rulings in accordance with the changing needs and interests of peoples. (Mahmasāni, 1981 pp. 177-182). However, there are certain prerequisites and qualifications attached to Mahmasāni's elaboration of social and legal changes. First, the rules of change apply only in the sphere of *Mu'amalāt*. Secondly, most rules that are liable to changes and modifications relate to the questions of detail of Islamic law, but not in the sphere of generally applicable principles and legal maxims, which remain constant and firm forever. Thirdly, certain traditions, which emanated from the Prophet in the form of opinion and related to daily life and mundane affairs of this world are not always binding. Evidence of this is that the Prophet passed one day by a group of people pollinating their palm trees when he remarked that if they were not to do so it would be better. Hence, people abandoned the practice of pollination and the fruit did not ripen. When the Prophet was informed of what had happened, he said, "I'm only a human being. If I order you concerning your religion, heed my order, but if I order you concerning an opinion of mine concerning worldly matters, then you are not obliged to follow it. You are better informed on matters relating to your daily life." (Hadith Sahih Muslim. No; 1222)

These changes are not alien to the spirit of the *Sharī'ah* , which aims at facilitating human life. More importantly, the principle of evolution and changeability of legal rules does not mean changing the texts themselves. The texts are divine and cannot be changed in any case. What is meant by change is the change in interpretation of these texts in light of need, necessities and changes in customs and effective causes of legal rulings. Thus, the *Sharī'ah* in its all-historical phases did not conflict with the principles of evolution and it is still compatible with civilization in every time and place. Elaborating the evolutionary nature of Islamic law, Mahmasāni dismisses the arguments of Western writers who advocated that *Sharī'ah was* "doomed to

immutability."(Mahmasāni,1981 pp.177-182). Moreover, throughout the formative period of Islam, one can trace the precedent of Companions who maintained the intentions and objectives whenever the texts did not go in line with the intention of the *Sharī'ah*. In some cases, the rulings of the Qur'an and Sunnah were suspended or halted when those rulings no longer served the purposes for which they were initially introduced. An ideal illustration of such a case was the suspension of Muslim marriage to Jewish and Christian girls during the time of Caliph Umar although it was explicitly mentioned in the Holy Qur'an. (Qur'ān 5:5). He departed from the apparent meaning of the Qur'an in favour of its general purpose in harmony with the spirit of the texts. It was done to preserve the interests of Muslim girls for whom it was hard to find partners as many warriors married girls from Jewish and Christian communities. The important point to keep in mind from such a decision is the legal authority of Umar to do so in line with the general philosophy of Islamic law even though permission to marry those girls was given in the divine texts. How could Umar apply the general philosophy of law in this particular issue against the single verse of the Qur'an, which permitted them to marry Jewish and Christian girls? This is an important question in our understanding of the general philosophy of Islamic law. One should bear in mind that Umar neither deals with issues relating to the fundamentals of religion nor with issues of *Halāl* and *Harām*. On the other hand, the subject matter of marriage is a permissible act *(Mubāh*). Hence, the interference of Umar in this issue is in complete harmony with the general philosophy of Islamic law. The companions of the prophet Muhammad went beyond the letter of the sayings of the prophet Muhammed to know and act in accordance with the rationale and logic of the statement of the prophets. For instance, there is an authentic prophetic Hadith asking some Companions to expedite their journey to the settlement of Banu Qurayza. "None of you should offer the *Asr prayer* but Banu Qurayza". Hadith in Bukhari: 5:5:445. Some companions took the literal meaning of this hadith. They thought that they should offer their prayer only after arriving at the settlement of Banu Qurayza. They paid attention to the letter of Hadith to mean that they should only pray after arriving that place. So, praying before that would be against the literal meaning of the Hadith. Yet, some other Companions understand the rationale of this Hadith. They maintained that all that the prophet wanted was to expediate our journey to this place. So, when the time was ready for Asr prayer they made the prayer on the way. They went beyond the meaning of the Prophetic statement to understand the logic and rationale of the Hadith. When both groups of Companions came back to the Medina both groups asked the prophet which group understood his saying rightly and correctly. He replied that what both did was right. This tells us that people could read and understand the corpus of Islamic law differently according to their level of intellect and logical reasoning abilities. This historical incident tells us that the rational and literal reading for the corpus of the texts began while the prophet was alive among the Companions.

Numerous examples can be cited from the precedents of the Companions to illustrate the inherent relationship between the rulings and the purposes of the *Sharī'ah*. Such illustrations manifest the nature of the origin and development of the theme of *maqāsid* from a historical perspective. In his study into the contribution of the Companions and their followers to the theme of *maqāsid* al- 'alwani notes that the majority of scholars from the circle of the Companions and their followers maintained that all the rules of law are subject to *ta'lil.* However, the *Zāhirite* challenged this postulate. (Al-alwāni,1998, p. 76). During the formative period of Islamic legal thought, two contrasting schools appeared in Islamic legal history, namely *Ahlul Hadith* and *Ahl al-ra'y*. The first strongly advocated the literal adherence to apparent meanings of the texts and claimed any attempt to make rational enquiries into the body of the texts amounted to a deviation from the religion. Adherence to this type of thought with such an aptitude of mind continued in Islamic history up to the present time. On the other hand, the school of *ra'y* flourished from the time of the Companions. They advocated not only mere adherence to meanings of the texts but also to the underlying rationale behind the texts. It is

generally argued that such a rational approach to the texts began at the time of the companions and this trend of rational enquiry was further developed by the circle of jurists in Iraq in the second and third centuries of Islamic legal history. (Ibn al-Nadim, *al-Fihrist*, pp.12-14). One can convincingly trace the origin and development of the theme of *maqāsid* to the development of this rational school. Moreover, the use of *ra'y* was further enhanced by the development of the notions of *Ijtihād* and *Qiyās*. W. Hallaque argues that rational enquiring methods of *Ijtihād* and *Qiyās* were developed from the very foundation of the use of *ra'y*. Such argument helps to understand the nature of the development of these rational approaches to the texts. One can further contend that the concepts of *maqāsid* have emerged from these scholastic approaches to texts and their relevance to the changing social needs. After all, the ideas of maqāsid manifested in the culmination of the intellectual enterprise of classical Islamic scholars. one can place the development of *maqāsid* in a historical perspective. It can be said that any attempt to analyse the concept of *maqāsid* should begin with that of *ta 'līl* as this process of analysis should reveal the rationale and purpose of the text. Raisūni notes that the issue of *ta 'līl* is the very foundation for the study of the theory of *maqāsid*. (Raisūni. A p.207). He states that the initial appearance of the term *maqāsid* in a technical sense was in the work of imām al Tirmidi (d.245.H). (Ibid. P 40). He was probably the first to employ the terms *al-maqāsid* and '*illah* in a strictly technical sense. In fact, some of his treatise on the wisdom and logic of the acts of worship ('*Ibādāt*) were based on the theme of *maqāsid.* Thus, it can be said that the process of analysing the purpose and benefits of the rules of *Sharī'ah* systematically stems from this scholar's work although the precedent for this concept was incorporated in the texts and opinions of his predecessors. The Qurānic injunctions in most cases reveal the rationale, cause and objective of the ruling in question and the reward that one would gain from following its guidance or the punishment for not adhering to it. This idea of rationalisation in the Qur'an means that the laws of the Qur'an are not imposed just for the sake of conformity to such rules, but that they aim at the realisation of certain benefits and objectives. Furthermore, when a ruling of *Sharī'ah* no longer serves its original purpose, it is incumbent upon scholars to substitute with suitable alternatives. Thus, one can argue that the pioneers of Islam from the Companions, Followers and Imāms had a clear vision to comprehensively understand the texts. They understood it not merely as a set of rules, commands and prohibitions, but as a broad mission and philosophy of Islam with a set of clear-cut purposes and wisdom.

Although the above description depicts the nature of the development of the ideas of *maqāsid* from a historical perspective, there was strong opposition from the circle of *Ahlul hadith* and *Zāhirite* Schools of legal thought. Moreover, several historical, religious, theological and legal factors negatively contributed to the healthy development of a rational approach to the texts as demanded by the changing circumstances and needs of societies. It can be said that their anti-rational approach to the texts of the Qur'an and Sunnah further marginalized studies in the field of *maqāsid.* It is the aim of scholars to identify and elaborate upon these various dimensions and relate them to changing circumstances. This may be called a specific method of induction, which ultimately leads to the discovery of general ground rules. Indeed, the legal authority of these rules cannot be called into question. Moreover, they can be universally applied to cases of law. This also predicates that the body of Islamic law as derived through such processes is not immutable. Several Qur'ānic verses can be quoted to support that the ultimate purposes of the *Shari'a* are explicitly indicated by the texts. It can be the case that the actual use of the term *maqāsid* is conspicuously absent from the earliest treatises on the principles of Islamic law. However, the theme of *maqāsid* was developed into a form of induction that was implicitly understood by numerous scholars as an intricate part of the fabric of Islamic law. It is also clearly linked to several other legal terms such as *Qiyās, maslaha* and *ta 'līl.* It is largely due to the efforts of al Shātibī that the phenomenon of *maqāsid* was analysed in the most categorical manner. However, one must bear in mind that the ideas of *maqāsid* and

the procedural devices associated with it were not the innovative brainchild of al-Shātibī; his legacy relates to the monumental work he produced circumscribing all aspects of its manifestation. Before al-Shātibī, several Classical scholars discussed the theme of *maqāsid* in various works of *Usūl.* An examination of selected works of Classical material should enhance our understanding of this subject. For this purpose, we discuss the works of al-Juwayni (d.478/ 1085), al-Ghazālī (d.505/1111), al-Rāzi (606/1209), 'Izzu-Dīn Abdul al-Salām (660/1263), Shahab al-Dīn al-Qarāfi (d.685/1275), Ibn Taymiyya (d 728/ 1327) and Ibn Qayyim al-jawziyyah (d.751/1350).Numerous Classical scholars treated the subject of *maqāsid* under various legal terminologies and sometimes, it was treated in their discussion to *Qiyās, ta'līl* and *maslaha*. However, it was al-Juwayni who refined the entire structure of *maqāsid* in a strictly technical sense. Hence, one can argue that its codification and definition in a technical sense began from the work of this scholar in Islamic legal history. This does not mean that the ideas of the general philosophy of Islamic law were absent in the thought of previous generations to these scholars.

a) al-Juwayni: (d.478/1085)

Abū al-Ma 'ali ibn Abd Allah al-Juwayni (d.478) was considered the first classical scholar to technically define the concept of *maqāsid al-Sharī'ah* in his *al-Burhān,* a legal work on the fundamental principles of jurisprudence. He discusses the theory of *maqāsid* within the context *of Qiyās*. It can be said that the process of rationalisation of Islamic law through the legal device of *Qiyās* eventually made its way to the evolution of the concept of *maqāsid.* The significance and importance of understanding the general philosophy of Islamic law was highlighted in his legal writing in many places. An example that al-Juwayni argues, is "one who does not understand the high objectives of divine commands and prohibitions will never grasp the real meaning of Islamic law in depth.".(al-Juwayni, *al-Burhān,* Vol. 1, P.295). According to him all divine commands and prohibitions have some rationale and wisdom behind them and yet, sometime, man may know them, divine instructions inherently carry some wisdom behind them. It has been argued that inductive and deductive methods of knowing the rationale and wisdom were already in practice by his time due to the widespread availability of the Greek books of logic and philosophy. It was reported that he was greatly influenced by theological and philosophical ideas. His legal and theological works reflect this influence vividly. Thus, for him, understanding the higher objective of Islamic law constitutes an important part in our understanding of Islamic law itself. Taking this into account, he analyses the theme and structure of *maqāsid* in an extra-textual basis of rational reasoning. He then proceeds to classify '*ilal* or *ta 'līl* (the process of rationalising or attributing causes to the various rulings of acts) into five categories, which can be summarised into three basic sections.

1) The first category deals with the element of necessities (*darūriyyāt*). Acts of retribution (*Qisās*) are rationalised in terms of protecting innocent life in all circumstances. For the first time, al-Juwayni introduces the technical term of *darūriyyāt* to identify certain aspects of life as necessities. (Al-Juwayni, al-*Burhān*, vol. 2, p.923/7). Such classification has no direct evidence either from the Qur'an or the Sunnah. Yet, he identifies certain aspects of life as necessities from his general reading of the Qur'an and Sunnah using the inductive method (*Istiqrā')*. However, his idea of *darūīiyyāt* seems rudimentary compared to the latter development and enhancement of this theme by other classical scholars. Yet, one cannot deny his initial contribution to this concept from which the ideas of *maqāsid* flourished in the works of his successors.

2) The second category of *maqāsid* according to al-Juwayni relates to the broad requirements of life (*al-hâjjat al- 'āmma*), which are not necessarily related to the exigencies of life. A useful example is the form of contracts such as general renting among people *(al-Ijārāt).* (Ibid, p.924. Ibid, p.924) Under such classification of *maqāsid*, all basic requirements of life are included although these aspects of *maqāsid* are not as essential as the first category. Basically, these aspects of law alleviate hardship in carrying out certain religious obligations. These

religious licences are allowed from this perspective of *maqāsid.* However, he did not elaborate it. Subsequently, his successors elaborated and contrived this area of *maqāsid* in its full scale.

3) The third category is concerned with noble acts (*mukarramāt*) which are neither compulsory nor related to general needs. An example is purification *(Thahāra).* This aspect of *maqāsid* later developed into the area of *tahsīnīyyāt,* which aims at improving the quality of life. Ibid, p.924. The purification for prayer constitutes an obligatory duty as it is prescribed in certain clear-cut texts of the Qur'an and Sunnah. What al-Juwayni means here is not the obligatory type of purification but beautification of all aspects of life in a general sense. These aspects of *maqāsid* although not obligatory improve the quality of life.

The absence of such classification in his predecessor's works justifies the argument that al-Juwayni was the first architect of the idea of *maqāsid.* However, a deep analysis of his work reveals that he was more concerned about the issue of *ta 'līl* rather than contriving the theme of *maqāsid*. He advocated the extensive use of *Qiyās* and endeavoured to attribute the causes and rationale even in most spheres of *Ibādāt*. It is only in some forms of *Ibādāt* that one cannot understand their rationales such as why obligatory prayers five times are instead of more or less or why it is done in a specific form and why fasting is prescribed in that particular month. (Ibid, p. 958). The rationale for these detailed questions is not comprehensible by the human intellect. However, he argues that if one were to consider the wisdom of prayer and related acts of worship, it becomes clear that taking part in such acts prevents the commission of sins. Therefore, they are subject to a clear rationale in a very general sense. In summary, it can be said that Juwayni's approach to *maqāsid* portrays a tripartite division, namely into *darūrīyyāt, hajjiyyāt and tahsīnīyyāt*. Support for this categorisation can be found in A. Raisūni's argument that the tripartite division of *maqāsid* originated from al-juwayni's legal theories on the purpose of law. What is important here is to note that the structure of *maqāsid* continued to be the same from the time of al-Juwayni up to modern times. However, the notion of *maqāsid* is interpreted through these categories and with various degrees of significance. In the context of *darūrīyyāt,* one can preserve and protect religion, life, intellect, offspring and wealth. Moreover, A. Raisūni notes that the initial reference to the hierarchical order of *darūrīyyāt* was done by al-Juwayni in his works. Anyhow, the consideration of these constituent elements rests at the heart of the theory of *maqāsid* ever since expounded by this scholar. Thus, the initial contribution of al-Juwayni to the general philosophy of Islamic law cannot be underestimated.

b.) al-Ghazālī: (d. 505/1111)

Imam al-Ghazālī was one of the greatest philosophers in Islamic history. He wrote extensively refuting some fundamental questions in philosophy. He refuted the heresy of philosophy from an Islamic perspective. He documented all his refutations in his famous book called *"Tahāfut al-Falāsifa:* Incoherence of the philosophers. He finds some intellectual errors in the arguments of philosophers on the subject matter of theology. He refuted the argument of philosophers from an Islamic theological perspective. The philosophers argued that the world is eternal. They argued the world must have existed eternally. This philosophical perception goes against the basic theological teaching of Islam. The Qur'an clearly says that this universe was created by Allah from nothing. Imam al-Ghazālī refuted the arguments of the philosopher on the creation of this universe with logical and scriptural evidence. The philosophers argued that God knows the generality of worldly affairs not the of munities. This contradicts with the Qur'anic notion of God knows everything. The philosophers also doubted the question of bodily resurrection of human beings on the Day of Judgment. He refuted this argument too with textual and rational evidence. (Sabih Ahamed. Kamal. 1963, PP15). Through this philosophical and theological background, he went on to create some legal theories in the general philosophy of Islamic law. It means that he rationalised Islamic law but, within the limits of divine guidance. It is no surprise to find that al-Ghazālī also ventured into the area of *maqāsid*. He outlines the view that "the goals of the legislator ultimately seek to benefit man in relation to

his life in this world and, indeed, the hereafter; this is accomplished through furnishing that which is considered beneficial; or eliminating that which is harmful." (al-Ghāzalī, *Shifā al Ghalīl,* p.159, *Mustasfa* p. 174). Accordingly, he offers five constituents of existence, which the *Sharī'ah* endeavours to promote and protect: i) religion; ii) life; iii) Intellect; iv) offspring and v) wealth. Anything that enhances the development of these five fundamentals *(Usūl)* is *maslaha* and anything that damages them is *mafsada.* (Ibdi p. 174). Although one finds the initial appearance of such classification in the works of al-Juwayni, the hierarchical order in al-Ghāzalī's works differs from others in that the latter proffers priority to the element of religion. The reason for his emphasis on this point is that Islamic law sanctions severe punishment for any form of conversion from the religion of Islam and for any attempt to introduce an innovative doctrine into the domain of Islamic faith and practice. Although the concept of *maqāsid* was initially introduced by al-Juwaini, it was al-Ghazālī who developed it into a well-established theory. The structure he proposed can be formulated in the following way. In the initial stage, *maqāsid* is divided into two categories. The first one is said to be *dini* (pertaining to religion), which are the purposes that concern life in the Hereafter. The second one is *dunyawi* or pertaining to the affairs of this world. The latter is further divided into four types, namely the protection and promotion of *nafs* (life), *nasl* (offspring) *'aql* (intellect) and *māl* (wealth). With religion, the ultimate purposes (*darūrīyyāt*) of *Shaīi'ah* are five: this is the key difference in al-Ghazālī's classification that he divides the purposes of *maqāsid* in relation to this world and the next. Such a classification seems to be inconsistent and illogical for the simple fact that Islamic law gets its fundamental principles from religion. The primary purposes of *Sharī 'ah* are accompanied by its additional purposes of *hājīyyāt*, which deal with easing hardship in acts of worship and other *mu'āmalāt.* Apart from this, there is another type of *maqāsid* that seeks to establish latitude and flexibility (*tawassu*'and *taysīr*) in law.(Ibid, p.162) In the structure of *maqāsid*, al- Ghazālī incorporates the theme of *maslaha* into his general philosophy of law in that he maintains that the legal device of *maslaha* is contrived for the promotion and protection of the intention of the legislator. Moreover, al-Ghazālī classified the legal device of *maslaha* into two areas, namely *al- maslaha al-mursala* and *al- maslaha al-gharība.* First, any *maslaha* that is compatible with the objectives of the Qurān, the Sunnah and the *Ijmā'*is considered to be *al-maslaha al-mursala*. He upholds such *maslaha* as textual evidence or a legal source (*hujja).* He considers it as one of strongest legal sources of Islamic law and one should not dispute the validity of this legal device in Islamic law. While many classical scholars questioned the validity of *maslaha* to be an independent source of law, al-Ghazālī considered its validity with certain qualifications. Occasionally, he uses the term "al-*munāsabah*" to substitute *maslaha* in that he upholds that *al-munāsaba* is related to the maintenance of objectives. Thus, al-Ghāzalī incorporates the legal device of *maslaha* into the framework of *Maqāsid al-Sharī'ah* without any precedent as such. Any issue that human intellect detects as of public interest should not go against the notion of the general philosophy of Islamic law. He limits the use of human reason to protect the orthodoxy of Islamic teaching as he did in his debate with heretic philosophers.

One of the examples that al-Ghazālī notes for this kind of public interest is the example of lost property or lost cash. He argues that suppose you have found a huge amount of money, but you do not know whose money is that you have found. You are morally and ethically not allowed to take it He argues that this kind of money should be given to poor people so that they would benefit rather than throwing it away. He compares the positive and negative impact of using this money. It would be better someone use it rather than lose. On the other hand, he argued that any *maslaha* that does not preserve the objectives of the Qur'an and the Sunnah and *Ijmā* '' is called *al-maslaha al-ghaīiba* which is not compatible with the intention of the *Sharī'ah* . *(*Al-Ghazālī, mustasfa', vol.1, p 179). It is this kind of *maslaha* that is identical with the notion of *bid'a.* He did not make any comparison between these two identical concepts. Although he gives new impetus to the understanding of the general philosophy of Islamic law,

it can be noted that the basic ideas of *maqāsid* in his legal theories are taken from his predecessor's works. In short, he categorically argues that any consideration to maintain public interest should go hand in hand with the higher objectives of Islamic law. Unlike al-Juwayni, al-Ghazālī also introduces the laws of equivalence (*fiqh al-muwāzanāt)* in his study into the legal device of *maslaha* to choose either the greater interest or the lesser evil in case of conflict between two interests or two evils. It can be said that he does not permit coming up with any kind of public interest that contrasts with the Islamic teaching. Today, some Muslim countries open gambling centres, pubs, and clubs in order to develop tourist industries. A. Raisūni argues that these kinds of development initiatives contrast with the general philosophy of Islamic law. Because the fundamentals of Islamic law do not change in accordance with economic interest. The primary sources of Islamic categorically state that dealing with interest, alcohol, gambling and prostitution are completely prohibited in Islamic law. One could refer to hundreds of traditional Islamic texts that prohibit these dealings One cannot go against the clear-cut textual evidence to secure any economic or development interest and yet, today many Muslim countries go against the basic teachings of Islam on this issue. So, when, al-Ghazālī encourages Muslim jurists to identify public interest, he put some conditions and prerequisites in place for such intellectual exercises So, to secure some material benefits, Muslim jurists are not allowed to go beyond the limitations of divine texts.

c Fakhr al-Dīn al-Rāzi (d. 606. 1209)

It can be said that al-Rāzi treats the subject matter of *maqāsid* from a different angle. According to al-Rāzi's biographical account, he summarised the ideas of al-Juwayni and al-Ghāzalī in his famous book *al-mahsūl*. In fact, it is said that he memorised the entire works of al-Ghazālī by heart. (al-Asnawi, 1943, Vol. 1, p, 4). An examination of this legal work of al-Rāzi reveals the similarities between the legal thought of al-Ghazālī, al-Juwayni and al-Rāzi. Although he discusses the concept of *maqāsid*, his main concern was to defend against the rationalisation of rulings of the *Sharī'ah* i.e. attributing causes to the rules. Like his predecessors, al-Rāzi divided the *maqāsid* into three categories with the same terminology. However, his ideas on *maslaha* differ from that of his predecessors in that he maintained that both acts God and His rulings are not open to causation (rationalisation) in any sense. *(al-muwafāqāt,* vol, 2, p.4). What this means is that no reason or cause can be attributed to the commands and acts of God; rather they simply imply His mercy. God is not obliged to act based on *maslaha* as perceived by the *al-Mu'tazilites*. *Mu'tazilites* categorically argued that God must do what is good for man i.e. he must inevitably consider the interests of man in all His acts. Thus, they impose an obligation on God to act according to the interests of man. This contradicts the generally accepted view in classical Islamic scholarship. The classical view on this issue was that the sovereignty and freedom of God cannot be questioned by human reason and man has no right to question God's acts. No one can question Him if he sends all of mankind to Paradise or otherwise to Hellfire. However, his mercy does not work in that way. It is true that God considers human interests although he is not obliged to do so. However, he chooses to so do by the very nature of his sovereignty. It is mercy and grace that is the foundation of the divine scheme, not rational necessity. Our examination of divine texts reveals God's consideration of man's interest. Man has no knowledge of this issue in advance except through what God revealed in His Book. However, it can be argued that al-Shātibī misunderstood Rāzī's theory on the issues of *ta'līl.* In fact, al Rāzī was one of the leading proponents of rational enquiry in the sphere of Islamic law. What Rāzī opposed is the rationalisation of God's acts *(af'āl),* but not His rulings (*ahkām*). In his juristic compendium of Islamic legal philosophy (*mahsūl*), he eloquently argues that the rules of Islamic law are instituted for the very purpose of maintaining the interests of man for numerous reasons. First, God is all knowing and wise and therefore none of His rules are without wisdom and rationale. This is evident in that specific rules and events in the Qur'an always carry rationale and wisdom behind them. Secondly, the Qur'an

itself manifests that the *Sharī'ah is* instituted for the preservation of man's interests. An example is the verse 107:21, which reads, "We sent you as a blessing to the whole of mankind." Further, the Qur'an clearly notes in many places that everything in this universe is created for the sake of human beings. It reads in verse 2: 29 "It is He who created for you all that are on the earth". From these, we understand that the rules of *Sharī'ah* are introduced to promote human interests. (Al-Rāzī, vol. 2 p.237-242). In a theological sense, al-Rāzi's argument is overwhelmingly stronger and weightier than *Mu'tazilite's* argument on rationalising God's acts. In fact, his arguments in relation to understanding the rationale of the rules of law are consistent with the view of most Islamic jurists. This was, however, not as assumed by al-Shātibī. Hence, one has to see al-Rāzī's argument on the issue of *ta'līl* from a theological point of view rather than from a legal perspective. Theologically, he contends that no one can question God's actions for the fact that understanding the rationale behind divine rulings is somewhat different from understanding the rationale behind His actions.

d) 'Izza Dīn ibn Abdul Salām. (660/1262)

Ibn Abdul Salām perceives that the aim of *Sharī'ah* is to promote and protect the interests of mankind in this world and the Hereafter. His analysis of *maslaha* and *mafsada* has more mystical dimensions than legal dimensions. The mystical influence is more apparent in his legal thought in that he sees the issue of human interest from a theological perspective. He notes, "All the obligations are designated in the interest of human beings in this world and the next. God is neither in need of His servants' worship nor does he benefit from the obedience of the people. The disobedience of the people, on the other hand, does not harm Him at all." (Ibn Abdul Salām, Vol. 2. p.240). Hence, God sent down divine messages from time to time in the interest of man but not in His own interest. Moreover, He identifies the interests of man in relation to this world and the next in that *maslaha* of the next world is to protect oneself from hellfire and achieve reward for his good deeds. Further, *mafsada* of the next world is to lose this reward and be subject to punishment. Such a definition of *maslaha* is a pure theological and mystical one. In his understanding of *maslaha* of this world, he discusses various aspects of *maqāsid* as identified by his predecessors. For him, all elements of the *hierarchical* orders of *maqāsid* are *maslaha* whether they are from *darūrīyyāt* or *hāīiyyāt or tahsīnīyyāt*. On the contrary, whatever goes against these fundamentals of *maqāsid* are *mafāsid* of this world. Moreover, he notes that *maslaha* of the next world and its *mafsada* can be recognised only through the divine commands whereas most *maslaha* of this world and its *mafsada* can be recognised by man's reason. Man understands these through his experiences, tradition and customs. (Ibid, p.6). A major part of his works deals with the theological classifications of *maslaha* and *mafsada*. What is the most and the least important *maslaha* for man? How do we reconcile the conflict between the two elements of interest and evil? The book mainly deals with the issue of man's success in this life and the next. From a spiritual and mystical point of view, Ibn Salām sees the notion of human interests as incorporating legal perspectives. He outlines this in his introduction to this work. However, this book depicts the nature of the development of the ideas of *maslaha* in a historical context. A mystical element permeates his legal thought. However, he attributes causes for divine rulings. 'Alwani notes that Ibn Abdul Salām is the first classical scholar who attempted to reconcile the higher purposes of law and the juristic principles (*Qawīid Fiqīiyah*). (Al-alwāni. T. J, 2000). vol, 9and 10. p.46). More interestingly, he is also the first classical scholar to treat the subject matter of the laws of equivalence exclusively in his works. Moreover, it is his firm conviction that most good and bad acts are identifiable by the human intellect to a certain extent. It is human instinct that he chooses what is best for him and avoids what is evil for him. It is through human experience, customs and interaction with others that he learns what is beneficial to him and what is harmful to him. However, man has his own limitations and weaknesses. Therefore, God revealed his books explaining what is best for him and the entire body of Islamic *Sharī'ah* is instituted to preserve human interests either by means of averting

evils or promoting good. Whenever God addresses the believers, for example, He either persuades them to do a good thing or discourages and forbids them from evils. In short, his legal work is another innovative contribution to the study of *maslaha,* which undoubtedly deserves and demands an exclusive treatment.

e. Shahāb al-Dīn al-Qarāfi (d.685/1285).

He was a disciple of 'Izz al-Dīn Ibn Abdul Salām. He is famous for his book of *furū 'q* on the legal philosophy of Islamic law. This work is regarded as a precise summary of his teacher's legal ideas on the theme of *maqāsid* and *maslaha.* He argues that the general legal philosophy of Islamic law is manifested in the corpus of universal juristic principles. He discusses all the categories of *maqāsid* as his predecessors did and sometimes gives the rationales of rulings. An example is that he argues that cutting off the hand is sanctioned to protect the wealth and stoning for adultery is prescribed to protect the institution of family. Thus, he attempts to attribute the causes to the rulings of Islamic law in its all spheres. More fascinatingly, it is al-Qarāfi who introduced an element of human dignity into the doctrines of *maqāsid* as an essential element (*darūrīiyāt*) of the general philosophy of Islamic law. Thus, he expands the essential element of *maqāsid* from five to six because the Qur'an dignifies human beings in its many places and respects them as God's best creation. For that reason, al-Qarāfi argues that protecting and promoting human rights and dignity is an essential part of the general philosophy of Islamic law. What is more interesting in al-Qarāfi's legal philosophy is that he differentiates between the personal interests and actions of the prophet as an ordinary human being and the actions, deeds, statements and rulings of the prophet as a divine messenger. Such a distinction is very important to our understanding of the general philosophy of Islamic law in relation to the prophetic Sunnah because some deeds and actions of the prophet are more exclusively and specifically related to his personal life, while believers are not always required by law to follow him in such deeds and actions. Examples include fasting for two or more days without breaking the fast (*Sawmul Wisāl*) or combining more than four partners in marriage or the prophet's personal interests in eating, drinking and habitual things. Thus, certain deeds and actions of the prophet are not binding upon all people to follow in all circumstances. Unless one knows such difference, it is highly likely that one will misunderstand and misinterpret Islamic law. Thus, al-Qarāfi draws our attention to a significant point in our understanding of the aims and objectives of *Sharī'ah*.In addition to this, he also differentiates between religious duties and human actions from another perspective. He argues that religious actions are two kinds. First, representing someone or substituting items in certain types of religious duties are allowed as in the case of returning one's debt or returning one's trusted items. Here the substitution is in to benefit of the owner and hence, it is permitted. Secondly, representation and substitution are not permitted at all in certain types of duties as in the case of obligatory prayers. Because prayer bring benefits for those who perform it and substitutes cannot pass on the benefits of prayers to others. He draws our attention to such differences for a comprehensive understanding of Islamic law. Thus, he, like all other classical scholars adds new concepts and ideas to our understanding of its general philosophy.

f.) Ibn Taymiyah (d.728/1327)

Unlike his predecessors, *Ibn Taymiyah* broadens the scope of *maqāsid* in that he does not limit the *maqāsid* categories; rather he encompasses all aspects of *Sharī'ah* into its scope. Moreover, he strongly criticised those who limited the *maqāsid* to five elements. Hence, in addition to those five categories of *maqāsid*, he includes the fulfilment of contracts, preservation of one's relationship with relatives and respecting the right of neighbours. However, these issues can be included in the scheme of *maqāsid* under various other subheadings. This is in relation to this world. In addition to this, he further extended the list of *maqāsid* about the next life to include the love of God, sincerity and hope in His mercy and supplication to Him. His ideas of *maqāsid* are not confined to certain areas of the *Sharī'ah.* His

approach is a holistic one. He endeavours to restructure the scope of *maqāsid* as a set of values secured in the spirit of the law. However, one wonders how to limit the scope of *maqāsid* if we consider the ideas of Ibn Taymiyah. Thus, according to his scheme, everything that is mentioned in the divine texts of the Qur'an and the authentic traditions of the prophet constitutes a part and parcel of *maqāsid* doctrines. Therefore, it can be said that his scheme is open ended based on certain sets of religious values and social justice. He differs from the classical scholars in identifying the primary purposes of law. While he recognises that the primary purpose of *Sharī'ah* is to protect and promote one's religion, life, offspring, intellect and wealth, he argues that the overriding purpose should be man's obedience and submission to God. Believing in the oneness of God and absolute obedience to Him is the highest purpose. Thus, promoting spirituality in man and protecting his soul from disobeying God comes first in his understanding of *maqāsid*. He argues that the interests of the soul should be given preference over the interests of the body based on the following verse: 51: 56, which reads, "I created the Jinn and mankind only to worship me." For him, this is the most important thing demanded of mankind and all other purposes of law are secondary. However, all the classical scholars who identified the five primary purposes of law do not deny the fact that religion is the first element of *maqāsid*. Furthermore, all the other elements promote and protect the religion in one way or another and enhance human life in this world.

In a recent study on Ibn Taymyiah's concept of *maqāsid*, Yousuf Ahmed al-Badawi argues that Ibn Taymiah made it a precondition for scholars of Islam to seek the knowledge of the purposes of law (*Maqāsid al-Sharī'ah)* for the simple fact that only those who mastered this science can rightly distinguish between various concepts of *Sharī'ah*. Moreover, Ibn Taymiah encourages those who want to study the prophetic reports to first comprehend the purposes of the prophetic message in his commands and in his prohibitions. (Ibn Taymiah, n.d Vol, 20, p. 583 and Vol.10. p.664). Hence, he argues that the knowledge of *Maqāsid al-Sharī'ah* is a precondition to attain the rank of *mujtahid*. Al-Badawi argues that long before al-Shātibī, Ibn Taymiah established the intrinsic relationship between the *maqāsid* and *Ijtihād* in that the knowledge of the former is a prerequisite for attaining the rank of *Ijtihād.* (al-Badawi,Y. 1998. pp.108-111). Above all, it is interesting to read Ibn Taymiah's stand on attributing causes to rulings of God. He agrees with most Islamic jurists to contend that attributing the causes is acceptable in Islamic law. However, he vehemently rejects arguments of the opponents of *ta'līl*.(Ibid, pp.159-162). While dealing with the verses related to Islamic theological aspects, he strictly follows the outward and apparent meaning of the texts of the Qur'an in that he gives a literal interpretation.

However, when he interprets the verses related to Islamic law, he endeavours to understand the underlying rationale and wisdom. Unless one knows this difference in *Ibn Taymiyah's* approach to the texts, one could easily misunderstand him. An explanation for these two dissimilar approaches to the texts may be that the rationale and wisdom in the sphere of Islamic theology is not always comprehensible to the human intellect. whereas the rationale and wisdom of underlying rules of Islamic law in most cases are understandable by human intellect. It is a generally known fact among contemporary Islamic jurists that al-Shātibī was the architect of *maqāsid*, but contrary to this widespread view, al-Badawi argues that Ibn Taymiah was its first architect. His contribution was not well recognised for the simple fact that people did not fully appreciate it. *(Ibid, p.505-6).* While nobody can deny Ibn Taymiah's great contribution to *maqāsid*, it can be said that his ideas are expounded throughout his treatises. He did not write on this theme exclusively and extensively whereas al-Shātibī, for the first time in Islamic legal history wrote a book exclusively on this subject. Moreover, the later treats this subject profoundly and comprehensively in a scholastic way devoting an entire chapter in his legal treatise of *al-Muwāfaqāt,* introducing some fascinating new ideas to the general philosophy of Islamic law. No one can deny or underestimate Shātibī's contribution to Islamic legal thought in any sense. Ibn Taymiyah was a theologian and his contribution to

Islamic theology is greater than that of his contribution to Islamic law and yet, Al- Shātibī was a legal theoretician whose contribution to Islamic legal theories are more than that of his contribution to Islamic theology.

g) Ibn Qayyim al-Jawziyah (d.751/1350).

Ibn Qayyim al-Jawziyah argues that divine laws can be rationally interpreted and explained. Often he strongly criticises those who reject the issue of *ta'līl*. However, he notes that, in general, there are some areas of *Ibādāt* where the rationale behind certain rules are not comprehensible by human reason in detail. (*Ibn Qayyim,* I*'lām al-Muwaqq'īn* Vol. 2, P.88). Broadly speaking, he argues that behind each act and rule of God, there is some wisdom, although man does not understand all the details comprehensively, Nevertheless, he can understand the rationale of certain aspects of Islamic rituals even in the sphere of *Ibādāt*. In defining the general philosophy of Islamic law precisely, he notes, "The foundation of *Sharī'ah* is wisdom and it aims to secure the interests of people in this world and the next. In its entirety, it is justice, mercy and wisdom. Every rule, which transforms justice to tyranny, mercy to cruelty, good to evil and wisdom to triviality does not belong to *Sharī'ah* . It is God's justice and mercy towards His people. He entrusted His prophet to transmit it as the pillar of the world and the key to success and happiness in this world and the next." (Ibid, Vol.3, p14). Moreover, *Ibn Qayyim* stresses that one has to understand the rationale and wisdom of the *Sharī'ah* to gain the status of *mujtahid.* Ignoring this aspect of the *Sharī'ah* is a great mistake, which would cause unnecessary difficulties and uneasiness in the application of the law. He makes a staunch attack on the use of invalid legal stratagem, which goes against the fundamental purposes of law. Although he repeatedly notes that the *Sharī'ah* is mainly instituted to safeguard the interest of mankind, he did not treat the subject matter of *maslaha* and *maqāsid* exclusively as his mentor Ibn Taymiah did. He treats this subject matter casually in different places in his works. Moreover, in his study of the legal philosophy of Islamic law, he deals with the issue *Sadd al-Zarī'a*, which means all acts that encourage us to do prohibited acts are unlawful in Islamic law. He argues that any act that leads to a forbidden act such as adultery is prohibited by law in Islam. He also notes that even if a permitted act is done with the intention to achieve something which is prohibited is also not allowed as in the case of marriage *muhallal*.(Ibid, Vol.3,171). This is a clear-cut legal stratagem that goes against the general philosophy of Islamic law.

According to Islamic law, a person is not allowed to remarry his divorced wife unless she marries another and divorces again without any duress. However, it is not allowed for her to go through a sham process of marriage and divorce with another person to remarry her divorced husband. However, if it happens naturally without any such deceit, then it is allowed in Islamic law. Some people use this legal concession as a legal stratagem to remarry their first husbands. But, marriage *muhallal* in this way is not allowed in Islamic law. *Ibn Qayyim* argues that the mere understanding of the literal and apparent meaning of the texts of the Qur'an and the Sunnah is not enough to understand Islamic law but one needs to understand the general philosophy of Islamic law methodically and comprehensively. He stresses the importance of contextual understanding of the texts, which is called *al-maqāmāt*; because, the same statement can be understood in different ways by different people. Even an imperative divine command may imply different meanings in different contexts. Hence, he notes that people differ in their understanding of the general philosophy of Islamic law according to their intellectual capabilities and the extent of their knowledge in the contextual understanding of the texts, considering the Arabic language traditions and linguistic conventions. He further notes that only few scholars understand Islamic law from this perspective (Ibid, Vol. 2, P.354, Vol, 1, p.220, Vol. 1.p.218). In analysing the development of *maqāsid* in an historical context, the following remarks can be made. The rational inquiry into the body of texts continued from the time of the Companions, although the proponents of literalism opposed such a trend. Historically speaking, we can trace the origin of *maqāsid* in a technical sense in the works of al-Juwayni.

Its initial structure in three taxonomies was the brainchild of this great scholar. Its theme was further developed by his successors from the very foundations that he laid down. All other classical scholars' works on this subject are the extended studies of his pioneering work to some extent, sometimes in the form of elaboration, explanation, summary or commentary. Hence, the credit and tribute for introducing the theme of *maqāsid* in a systematic way should initially go to him. However, no one can also deny the great contribution of others to this field.

Another interesting aspect we recognise from the historical development of the theme of *maqāsid* is the difference in its classification. For the first time, al-Ghazālī classified it in relation to this world and the next in his early writings. (Al-Ghāzalī, Shifā *al-Ghalīl*, p.159). However, he dismissed such a classification to bring religion into the most important element of the five universal principles of *maqāsid*. He notes that the purposes of legislation are five, namely preservation of religion, life, intellect, offspring and wealth. (al-Ghazālī A, al-*Mustasfa*, p, 174) However, its classification in terms of religious matters and worldly affairs dominated Islamic legal thought even after al-Ghazālī. While al-Rāzi's legal thought is highly influenced by philosophical and theological arguments, Ibn Salām sees the general philosophy of Islamic law from the perspective of the laws of equivalence in that he compares man's interest in this world and the next and according to him, success in the next life is of greater interest. On the other hand, al-Qarāfi expands the scope of *maqāsid* by introducing the element of dignity as its sixth essential part. He also expands our understanding of the prophetic Sunnah in relation to the general philosophy of Islamic law. Ibn Taymiah argues that the ultimate purpose of man in this world is to worship and obey God and all other purposes of law, which are expounded by the classical scholars, are secondary to this end goal. Thus, there is no unanimity amongst the classical scholars in their classification of *māqasid.* Ibn Qayyim calls for the contextual understanding of Islamic law in accordance with Arabic linguistic traditions and conventions. It can be said that all research work of these classical scholars should have inspired and influenced the legal though of al- Shātibī'. This viewpoint is supported by the fact that al-Shātibī refers to al-Juwayni quite frequently. He has indeed referred to al-Ghāzalī alone more than forty times in his works. Furthermore, Ibn Qayyim was a teacher of one of al-Shātibī's teachers. Thus, it can be said that all these classical approaches to the general philosophy of Islamic law would have influenced al- Shātibī's legal thinking. Indeed, al-Shātibī's limits the scope of *maqāsid* in classical codification. However, the way he devises its entire theme totally differs from the classical scholars' ideas. The central theme of *maqāsid* studies deals with the core issue of preserving human interest *(maslaha).* Hence, it is imperative that we examine the genus and development of *maslaha* as a general concept of welfare in Islam. Moreover, we should also examine it as a classical legal device that was created to legislate new laws in Islam.

Chapter 5: The concept of public interest (*maslaha)* in Islamic law.

The concept of public interest has been the central theme of the general philosophy of Islamic law. Indeed, the general philosophy of Islamic law determines what is good and what is bad for the Muslim community within the frame work of the divine guidance. Classical Muslim jurists argued that Almighty Allah revealed His last divine message through His last prophet to secure human interest in this world and the next life. God sent his divine message to protect and promote human interest in accordance with divine will. Yet, Muslim jurists found it difficult to define the basic notion of human interest. The definition and the scope of the notion of *maslaha* has been a contentious subject in Islamic legal studies. Here we trace the origin and development of the notion of *maslaha* and *Istihsān* in the writing of classical scholars with reference to the jurists of four legal schools before the time of al-Shātibī. Neither the Holy Qur'an nor the Prophetic tradition use the term *maslaha* in this apparent linguistic format with exact term. Yet, the classical Muslim jurists came up with this base term of *maslaha* from its root verb *saluha.* Literarily speaking, *maslaha* (pl. *Masālih*) is the abstract noun of the verb *saluha* i.e. meaning to be good, beneficial, suitable and to repair or improve. It also means something suits, or something fits or something reforms. Thus, *maslaha* is an Arabic word, which means utility, good, benefit and public good, interest and welfare. Thus, anything that helps assists ro remove *mafsada* or *darar* is *maslaha.* Furthermore, human welfare is equated with *maslaha*. Moreover, as a legal concept, *maslaha* is different from *istislāh*, a method of legal reasoning through which *maslaha* is considered as a basis for legal decisions (E.I. 1995, p.738).

Technically, the concept of *maslaha* has been defined as one of the supplementary or additional sources of Islamic law. This legal device has been used to enact new rules and regulations in Islamic law. In the legal sense, it renders a specific meaning in that it specifies the aims of legal rulings and the intended benefits of the law. Moreover, in classical Islamic legal theory or *Usūl al-fiqh*, the legal device of *maslaha* is closely connected to the doctrines of *Maqāsid al-Sharī 'ah*. The significance of this legal device lies in making new regulations and clarifying old ones. Tracing the genesis of *maslaha* as a concept and a legal device has been a subject of intellectual dispute among Muslim and non-Muslim scholars. The scholars disagree about the precise period when the concept of *maslaha* appeared in Islamic law. It is generally agreed by scholars that in a technical sense, *maslaha* did not exist in the corpus of Islamic law in the formative period of Islamic law as a concept and legal device. However, most Islamic scholars trace the genesis of *maslaha* to the legal thought of Imām Mālik (d.179/795). Contrary to this general perception, it is argued that no direct reference to *maslaha* or *istislāh* is to be found in the writing of Mālik. (Ibid, p.739). Muhamad Ahmad Al-Qayati, argues that Imām Mālik based his legal interpretation on four basic legal theories namely legal theory of *maslaha and Istihsān and customary tradition* of people of Madina. (Ahmad Al-Qayati, 2009, p. 797). Hallaq argues that according to the existing source materials some time at the end of the third and at the beginning of the fourth century the concept of *maslaha* appeared in Islamic legal discourse. It further appeared in an identical legal principle in the middle of fifth century. (Hallaq, W. 1994 Legal theories. P.132).

However, it is reported that both al-Shāfi in his *Risāla* and Sahnūn in his *mudawwana* cited the case of *āraiyā* sale (the sale of fresh fruit for dried dates) as an example of the use of *maslaha*. This sale is contrary to the general ruling, which dictates that fresh fruit cannot be exchanged for dried dates. This ruling is based on Mālik's view of public interest. (E.I.1995, p.739.) because, the value of dried dates will be different from that of fresh fruit yet, Imām Mālik permitted such a business transaction on the basic of public interest (*maslaha).* I do not think this kind of analogical issue is relevant today. Today, no one deals with such a business transaction. Yet, I understand the underlying rationale of this legal argument. One

could depart from an apparent literal meaning of the text to secure the public interest (*maslaha).*

Moreover, the Encyclopaedia of Islam 1995 edition traces the first use of the notion of welfare *(al-Khayr* and *al-nafa'*) to the work of Abū Yūsuf (d. 182/ 798), a disciple of Abū Hanīfa, in a general meaning not in a technical sense. It is reported by Abū Yūsuf in his *Kitāb al Kharāj* that Umar in his legal reasoning maintained the notion of public interest as in the case of *al-Sawād* land which he declared as state land and imposed a land tax *(al-kharāj*) on it. This was done contrary to the practice of the Prophet who divided the conquered lands among the Holy warriors. The Caliph Umar departed from the Prophetic tradition to protect the public interest of people during his time. because, if that land was divided among the warriors only a handful of people will benefit from that and yet, if the land tax were imposed it would give more revenue to the treasury for the benefit of the public.

It is believed that the retention of lands under state control would have greater benefits for the people in general. Thus, it is argued that Umar's legal reasoning in this way may have persuaded his successors to follow him in similar cases. Although this case and similar cases are reported in support of *maslaha* as precedents some argue that these did not establish *maslaha* as an independent legal principle or source of law.(Ibid, E. I. 1995, pp. 738/9).But according to al-Shātibī *al-* maslaha al-mursala or *istidlal al-mursal* is a form of legal reasoning or legal principle that has no direct textual evidence yet, it is in harmony with the conduct and spirit of the law. This legal principle is a derivative source of *Qiyās* and *Istihsān*. Mālik relied heavily on this form of reasoning. (*Al-muwāfaqāt*. Vol. 1, P28). So, he argues that there is nothing wrong in the application of this legal device to find a solution for any problem using this legal device. I think that the notion of the legal device of *maslaha* is the core theme of al-Shātibī 's writing. The central theme of al-Shātibī's legal theories deals with this issue of public interest in Islamic law. How to apply the rules of Islamic law for ever increasing social changes and how to relate the divine texts to the ever-increasing social issues, using human legal reasoning. He makes some sort of reconciliation between the divine text and human reason that helps to find solutions for increasing social changes. He argues that human reason should go alone with the scope and limits set by divine texts.

Historically speaking one could trace the thematic origin of *maslaha* in the texts of the Qur'an and in the Sunnah of the prophet. Most Muslim scholars argue that both the corpus of Qur'anic texts and prophetic traditions most probably indicate explicitly and otherwise the rationale and wisdom (*Hikma*') of the rules in their commands and prohibitions. For instance, when the Qur'an speaks about the rationale of performing ablutions for ritual prayers it reads "God does not wish to inflict hardship on you but to make you clean and to complete his favour to you" (5:7). So, the rationale behind this divine command is to clean man physically and spiritually. So, why does a Muslim do this ritual for prayer, because it gives him some physical and spiritual benefit. So, the benefits of divine commands and prohibition are explicit. In another instance about the wisdom behind a just war the Holy Qur'an declares, "Permission is granted to those who fight because they have been wronged". (Qur'an: 22:39). The rationale for waging a just war is to stop all kinds of aggression and injustice. So, the apparent rationale and benefit of this divine command is very much clear. There are numerous verses of the Qur'an which al-Shātibī refers to identify the rationale of divine commands (Ibid, vol: 2, p.4)

These and many other verses indicate the underlying rationale and benefits of divine commandment. Sometime, in some cases the underlying rationale of divine command is not always comprehensible to the human intellect. This does not mean there is no benefit behind those divine commands, but it is not comprehensive yet to human intellect. Hallaq in his study of Islamic legal theories notes that the *ratio legis* of rulings may be stated in the texts

either explicitly or, implicitly. He argues that textual commands whether these are from the Qur'an or the Sunnah, carry a rationale for the ruling (Hallaq,1994 P.87). Allah did not command us to do anything or avoid anything without a logical reason. Thus, the benefits or harm of the rulings are explicit in the divine commands.

Likewise, Khallāf notes that most prophetic traditions included the rationale for rules in their legal sanctions. For instance, he refers to the Hadith of the prophet, which prohibits marrying a woman and her aunt at the same time. The logic and rationale for this prohibition was given by the Prophet that "if you were to marry a woman and her aunt at the same time, indeed, you have severed the bonds of kinship". The rational of this prohibition is very much clear to the minds. Khallāf argues that these and many other prophetic traditions have created an impression in the minds of jurists that the ultimate purpose of Islamic law is securing benefits for man. He further argues that in the absence of any Qur'anic or Prophetic traditions to determine what is the *maslaha*, man is capable of realising and perceiving the divine intentions and rationale by using his intellectual capabilities. (Khallāf,197, P.7). It is generally believed by many classical Muslim scholars that man is guided by external and internal divine guidance. The external divine guidance is the divine revelation and the internal divine guidance is human intellect. So, in the absence of any divine texts either in the Holy Qur'an or prophetic tradition man is guided by his instinct of intellect. So, Khallāf argues that man can know what is good and what is bad for him by his own intellect. But, for a Muslim man he should go along with the general philosophy of Islamic law. Khallāf's main contention is that throughout the formative period of Islamic legal thought, Muslims rulers and jurists applied the legal device of *maslaha* to legitimise and sanction many rulings for which they did not find legal precedence either in the Qur'an or in the prophetic traditions.

He quotes al-Qarāfi in support of his argument. Al-Qarāfi argued that there is a consensus among most scholars of maintaining the public interest and welfare in unprecedented cases. The confirmation regarding the utility of public interest can be deduced from the actions of the companions who pursued affairs in pursuit of utility without any legal precedence. It is argued by al-Ghāzalī that "the companions were the pioneers in the usage and application of *Qiyās* and their reliance on *maslaha* is categorically known".(Al-Ghazālī, *1980*..P.353).Examples of such are codification of scriptures, designation of successors from Abū Bakr to Umar, registering of administrative affairs, the inception of the prison service and many more examples, which did not have legal precedence in Islamic legal history. Yet, these were approved by the jurists purely because of public interest.

a) **The concept of *maslaha* in four legal schools of Islamic law.**

The legal device of *maslaha* has been an integral part of *Maqāsid al-Sharī'ah* in classical Islamic legal theory. Some *Hanafis, Hanbalites* and the majority of *Mālikis* argued that the legal device of *maslaha* is an important legal instrument by which one can justify new rules and laws with changes in circumstances. For them the central theme of *maslaha* is something that incorporates change and flexibility in Islamic law. However, the main debate on this is whether the legal device of *maslaha* constitutes a valid justification and grounds for new rules that do not exist in legal precedents. The issue of *maslaha* refers to Islamic legal speculation pertaining to what is now called "hard cases" or new rulings.(Bagby. 1985I, Vol. 2: No: 2. p.3.1985). However, on the other hand, adherents of the *Shāfi's, Zāhirites and Mu'talilites* schools argued that all legal rulings must be based on the sources of Islamic law. i.e. *Qur'ān, Hadith, Ijama'* and *Qiyās*. Therefore, any legislation that has no inherent connection with the primary source of Islam is not valid for them. One could argue that the texts of the Holy *Qur'ān* and the Prophetic traditions are limited, and human problems and social changes are unlimited so, how could one always make inherent connections between limited texts of the primary sources of Islam and ever-increasing social issues of humanity. It could mean that any enacted rule based on this legal device should not go against the general teaching of the Holy *Qur'ān* and Prophetic traditions. With such a flexible legal device, the application of Islamic law would be irrelevant to many social issues of the contemporary world. The proponents of the legal device of *maslaha* argue that the application of the legal device of *maslaha* is only the viable method to bridge the gap between ever increasing social changes and the primary source of Islam and yet, they set some conditions. They argue that when we apply the legal device of *maslaha* to enact new rules it should always go along with the general philosophy of Islamic law. It should not go against any clear-cut texts of the Holy *Qur'ān* and Sunnah nor should it go against any unanimously agreed upon collective consensus of the Muslim community. It does not mean that these Muslim jurists have free licence to come up with any contractionary ideas against the established practice of the Muslim community rather that all new rules enacted should be line with the general philosophy of Islamic law.

On the other hand, the opponents of the legal device of *maslaha* argue that any attempt to introduce new laws in the name of social change would be an act of religious innovation in Islam and it should be condemned. Yet, they do not propose any viable legal mechanism to find solutions for the ever-increasing social issues of the Muslim world. The opponents of the legal device of *maslaha* argue that many Muslim countries have introduced many anti-Islamic practices in the name of public interest and development and they claim that most of them go against the general philosophy of Islamic law. For instance, the spread of alcoholism, bank interest, brothel houses and gambling clubs are against the general philosophy of Islamic law so, they claim these are not acceptable according to Islamic law. The main contention is about the use of the legal device of *maslaha* as an independent source of Islamic law. How far this classical legal device applicable today in this modern world? How do the Muslim jurists use this legal device today? Is it applicable and viable to use it in this modern time? what are the examples for the application of this legal device in the Muslim world today? These are some of the fundamental questions we need to clarify on this issue of the legal device of *maslaha.* before we find the answers to these questions, we need to understand the origin and development of this legal device from its historical perspective. Historically speaking, the original idea of *maslaha* emanates from the primary sources of the *Sharī'ah*. It is regarded as a supplementary source of Islamic law. However, the legal device of *maslaha* has been a subject of intellectual dispute among Muslim jurists. Some legal school consider it as an independent source of Islamic law. others do not consider it as to be an independent source of Islamic law. They fear accepting it as an independent source of Islamic law may free up a licence for anyone to introduce new religiously innovative ideas into the fabric of religion. For

this reason, they argue that the notion of public interest should always have some connection to the primary source of Islam.The very basic concept of public interest was devised by classical Islamic scholars to meet the social change with legal changes. Yet, the classical examples and models of this notion are not always viable to modern time. This concept should have a wider implication and a wider meaning. I would argue that the notion of public interest should reflect a wider meaning than merely the legal device. It should be basis of policy making in the modern time. I would argue due to politically incorrectness in Muslim countries the application of this Islamic concept has not yet, been fully implemented in any Muslim country. It can be used as a strategic tool to design socio-economic, political and educational policies of the Muslim world.

a) Imām Abū Hanīfa. (150/767d)

Abū Hanifa was one of the followers (*Tabi'un)* of the Companions of the Prophet. This was due to his companionship with some of the Companions of the prophet. He was famous for his extensive use of ra'y, reason, logics and Qiyās. Although, he did not use the legal device of *maslaha* extensively in a technical sense, he has extensively used *Qiyās* and *Istihsān* as a means for his rational reasoning. According to Abū Zahra, Abū Hanīfa exercised his own *Ijtihād* and opinion in the absence of legal precedents from the Qur'an or the Sunnah or the legal opinions of the companions. He was accused of using his personal reasoning in religious matters excessively. Yet, he did not give preference to his opinion over the divine texts at all. All he did was to use his personal reason in the absence of texts on any mundane affairs of this world. So, it could be convincingly argued that that the rationalization process of Islamic law begun with the works of this great Imam. In his legal interpretation he was guided either by *Qiyās* or *Istihsān*. The legal device of *Istihsān* gets prominence in his legal interpretation. The application of *Istihsān* is needed to avoid harm and hardship. However, his application of personal opinions, Qiyās and *Istihsān* was in most cases confined to the sphere of *mu'āamalāt.* Interestingly, he respects the personal freedom of each sane person in his legal reasoning. Neither rulers nor the community has the right to interfere in the personal affairs of a sane person until he or she violates religious injunctions. Thus, from this perspective, contrary to many others, he argues that the sane adult woman could marry without the consent of her guardians. (Ibid, pp.250-255). It relates that Abū Hanifa did not merely follow the apparent letters of the divine texts rather he went beyond the literal meanings of the text to find the rationale and wisdom of the them He was strongly criticised for his use of analogy and equity (*Istihsān*). In his comparative analysis of the use of *ra'y* in both the *Hanafi* and *Māliki* schools, Hallaq notes that *Hanafites* labelled those cases related to *ra'y* as *Itihsān* while *Mālikites* subsumed them under designation of public interest *maslaha*. (Hallaq, A 1991. P.130). Therefore, there is no doubt the Imam Abū Hanifa was one of the pioneers of Islamic legal thought who supported the rationalization process of Islamic law in line with the general philosophy of Islamic law. To protect the sanctity of Islamic law and its divine origins some literal schools of Islamic law do not allow excessive use of personal opinions in Islamic law. They limit the use of personal opinions in matters of religion for fear of distorting the divine nature of Islamic law. Imam Abū Hanifa has been accused of leaving the Sunnah of the prophet and following his own opinion. Yet, he strongly refuted this claim on in many places in his books. After all, there was no harm in using his opinion in religion as long as it did not go against the basic teaching of Islam.

b) Imām Mālik (179/795)

It is generally argued that Imām Mālik recognised *maslaha* as an independent source of Islamic law in its own right. Indeed, he deducted the legal rulings based on *maslaha* in certain legal issues. The rational reasoning based on *maslaha* i.e. *(istislāh*) is recognised as *Māliki* legal principle. This means that the Māliki school devised the method of reasoning based on *maslaha.* This is the only school that gives full recognition to this method of legal

reasoning as an independent source of Islamic law: the fifth source of Islamic law. It is argued that *maslaha* is given much prominence in this school. However, some supporters of the *Mālikites* are very reluctant to attribute such a claim to Mālik. (Ibid, P.112). Most jurists approve of this method of reasoning if it is in harmony (*mulāim*) with the general philosophy of law. Al-Shātibī argues that Imām Mālik had based many of his legal rulings on *maslaha*. In his theological treatise, he gives ten examples to substantiate his claim that Imām Mālik used the legal device of *maslaha* in a pragmatic way in the formative and classical period of Islamic law. Most of these examples are taken from the Māliki school of legal thought. He makes frequent reference to Imām Mālik in support of his argument. For instance, it is reported by Al-Shātibī that Mālik approved the oath of allegiance *(bay'ah)* to the lesser-qualified one *(mafdhūl*) between the two qualified candidates for the leadership of the Muslim community. However, this legal reasoning applies only in exceptional circumstances to prevent disorder and chaos affecting the community due to a rivalry in leadership. The argument here is that the damage of leaving Muslims without leadership is greater. So, selecting the lesser-qualified person is done to avoid greater harm. With all respect to this legal reasoning, I would disagree with this legal perception. I think that this kind of legal reasoning has been one of the main factors that encouraged Muslim scholars to support lesser qualified political leaders throughout Islamic history. It may have been an appropriate choice during the time of Imām Mālik. However, Yet, today the contemporary political situation is totally different from that of medieval times. Therefore, I would argue that today by not electing more qualified people for political leadership we bring more harm to the Muslim world. Unlike in the past, politics controls ever aspects of modern life. So, by not selecting more qualified people into political leadership we would bring destruction and danger to the Muslim world. Some Muslim clerics resort to this kind of outdated legal reasoning to support dictatorship in the Muslim world.

al-Shātibī notes that "we are faced with a choice: either people are left in chaos, the consequence of which will create more confusion and corruption in society, or we accept the less qualified to avoid chaos and harm. Such logical and rational reasoning is made based on protecting the public interest, although there is no explicit text to support it. *(al'tisam.* P.126-128). I personally think that this sort of medieval legal reasoning is not good enough today in this modern world. I think that the Arab world suffers due to following this kind of outdated legal reasoning blindly. No sound statesman would agree with this kind of legal reasoning. In the 21th century, positive political power is very much imperative for the development and progress of the countries. Moreover, Mālik was of the view that if several people collaborated in killing a person, all those who committed such a crime should be executed. According to al-Shātibī the legal reasoning for a such f*atwā* lies in the textually unregulated benefits. There is no textual evidence to support the idea of sentencing a group of people to death for their involvement in killing a person. Yet, al-Shātibī argues that it is permitted to execute several collaborators for killing one person. The basic contention is that such a group of people should be executed to protect the public interest. al-Shātibī argues that life is so sacred, and unless we maintain such a legal ruling on this issue people may collaborate to kill many people. Moreover, the application of laws of retribution would be meaningless. He further notes that one can argue that executing a criminal other than murderers is not logical because the collaborators are not murderers. However, al-Shātibī contends that the killer in this case is not a single person rather a group of collaborators. The murder is lined to all those who collaborated in but attributed to a single killer. The main question here is holding those people responsible for the murder of one person. Preserving life is one of the higher objectives of the *Sharī'ah.* It is in the interest of the public to uphold such legal rulings to protect the public in the case of such collaborative killings. One can observe similar rulings in *Mālik's* legal rulings such as amputating off several hands in retribution for the cutting of one hand. In some cases, cutting

off both hands are a mandatory theft punishment. (Ibid, 125) Moreover, Mālik legitimised the imprisonment of a person charged with theft. His disciples even sanctioned beating such a man to find the stolen items and to set an example to the thief and others. Nevertheless, they note that confession by means of torture is unacceptable. (Ibid, pp.120-121).In addition to this, A. Raisūni establishes an inherent relationship between the legal thought of Umar and Mālik in that he argues that Mālik's legal reasoning in most cases emerges from Omar's legal opinions and *fatwās*. He finds similarities in both the legal reasoning of Omar and that of Mālik. He concludes that Mālik in his legal reasoning depended on Omar's methodology of legal thinking. Indeed, the legal principles of Mālik are taken in abstract form from the legal principles and doctrines of Umar. More interestingly, Umar had been an authority on the usage and application of the legal device of *maslaha.* Obviously, A. Raisūni argues that Mālik's work such as *mu'atta'* is self-evidence for the use of *maslaha* and rational reasoning. (Raisūni,1994,, pp.74-90).On the other hand, Abū Zahrā argues that on the authority of al-Qarāfi the most precise the principles of the Māliki legal school are " the Qur'an , the Sunna, the consensus of the people of Madina, Analogy, the statements of the Companions, together with *masālih Mursala* (considerations of public interest), *'Urf* (custom), *'Adat* (common usage), *Sadd adh-dhara'i'*(disruptive the means), *Istishab* (presumption of continuity), and *Istihsān* (discretion)" (Abū Zahrā,*2001,* pp. 89-90). Hence, the prominence of *maslaha* in Mālik's legal thought is unquestionable. Most Muslim jurists agree that the general philosophy of Islamic law initially originated from the legal thought of the Caliph Omar and Imām Mālik. He went beyond the limits of the divine texts to propose legal rulings for many socio-religious matters on the basis of public interest in line with the general philosophy of Islamic law. It does not mean he ignored the authenticity and authority of the divine texts rather in light of them he provided legal interpretation and legal reasoning.

c) Al-Shāfi'i (d.204/ 825)

To understand comprehensively the difference between these schools of thought on the issue of *maslaha*, one needs to outline the theoretical background of classical legal theory. Al-Shāfi'i (150-204/767-820) maintained that all laws must be derived from the revealed sources of Islam i.e. the Qur'an and divinely inspired hadiths of the prophet. The third source of Islamic legislation is considered by him with some reservations in that he contended that *Ijmā'*is a legitimate source of law due to the fact that the consensus of the Muslim Ummah reflects the divine will and it is believed on the basis of certain prophetic traditions, that God would not allow his community to agree on an error. Al-Shāfi'i maintained that if a new case or issue is not mentioned in these main sources of law, the only option to derive ruling is to maximise the use of the legal tool of *Qiyās* (Analogy). It was his contention that a ruling must be analogous to an already established ruling(asl). Thus, He endeavoured to relate each issue to the sources of law. For him *Qiyās* is only a means whereby law can be extended to new cases. He deliberately endeavoured to equate *Qiyās* with *Ijtihād.* In his perception *Qiyās* was *Ijtihād* and *Ijtihād* was *Qiyās* as if they were the same thing. Thus, he interrelated these two legal principles to narrow down the use of *Ijtihād* to analogical reasoning. (Hallaq, W. P.19) Abū Zahrā was of the view that the sources of law provide an answer for each and every issue in that he asserted, "one of the major premises of ash-shāfi in his discussion of analogy is that all events and occurrences must be subject to a ruling in Islam. Since the *Sharī'ah* embraces all things, there must be ruling a on every occurrence, either from a text or from an indication or evidence … for al--Shāfi *Ijtihād* on points for which there is no text or consensus can only be made through analogy. One could say that for him, *Ijtihād* means analogy" (Abū Zahrā', P. 378).Consequently, al-Shāfī'invalidated the use of *Istihsān* and *maslaha* in that he says "All that is described as I have mentioned regarding the ruling of Allah, then the ruling of the messenger of Allah, and then the judgement of the community of Muslims, is evidence. No judge or Mūfti is permitted to judge or give *fatwās* unless it is based on a binding report:

that is, the Book, and then the Sunnah, or what the people of knowledge said and is not disputed, or an analogy based on one or more of these" (Ibid, p.378). Accordingly, outside these sources, any human legislation is antithetical to divine legislation and ruling based on *Istihsān* was considered by al-Shāfi'i to be pleasure- seeking and indulgence in personal opinions. (al-Shāfi. P.244.)

It would be interesting to note what made al-Shāfī'restrict the sources of law to these four. The historical background for this strong stand of al-shafi was that during his period jurists and judges issued legal verdicts based on their own personal opinions. Due to different and contradicting legal judgements that were made during his period, a disorganised legal system was developed. The legal theory advocated by al-shafi was in one way or another a direct response an attempt to unify the legal principles in a coherent method. Hence, he defined the sources of law or restricted them to four and narrowed down the means and methods to derive legal rulings from the texts. Thus, al-shafi not only gave primacy to the primary sources of law, he also limited the sphere of law to the divinely revealed texts of Qur'an and prophetic Hadiths. Thus, he considered *r'ay* (opinion) and *istihsan* (Juristic preference) to be products of human thought and feelings that have no connection to the law. Consequently, *r'ay* and *Istihsān* are condemned as human legislation. The reason for this strict legal theory was due to the fact that Islamic law was viewed as divine, eternal and immutable. Consequently, the legitimacy for legal reasoning was not extended beyond the divine texts to the concepts of justice, morality or the concept of *maslaha*. Hence, the functional nature of classical legal theory was confined to how to derive rulings from the existing sources. In short, his argument is that revelation is all-inclusive, and that God left nothing outside his decree· Ibid, p15.) Therefore, all aspects of deriving positive laws must be based on the texts. However, these *Shāfite* and *Zāhirite* tendencies were challenged by other schools of thought. The Hanafi, Māliki, and Hanbali Jurists considered *Istihsān* as valid proof and a convincing legal principle to derive rulings. (alsābūni,P 119,). Our understanding of the meanings and definitions of *Istihsān* should clarify the different approaches to this legal device. There are many definitions of the legal principle of *Istihsān* with different terminologies with the same meaning. The Hanafi Jurist al-Karkhi (d. 340H) defined it "as a departure from the already existing precedent in a particular case in favour of a different ruling for a strong reason". (Ahmed Hasan, P. 410). Al-Jassās (d. 370H) defined it as "a departure from a ruling of Qiyās in favour of another ruling which is more appropriate and suitable" (Ibid. 410). These definitions are somewhat clarified by al-Shātibī with some solid examples of the cases of *Istihsān.* He notes that a departure from the ruling of *Qiyās* in favour of Juristic preference is not only determined by the revealed texts alone, but consensus and the principle of necessity are sometime applied. One example noted by al-Shātibī was that of loans. In a way, a loan can be deemed to be usury because a dirham is exchanged for a dirham for a period, but it is permissible under the principle of *Istihsān*. Such exchanges help people. Otherwise, people will face hardship if loans are not permitted. *(Kamāli.H, Istihsān. p. 13-139)*. Al-Shātibī argued that Mālik had extensively used the legal principle of *Istihsān* giving preference to a specific *maslaha (maslaha Juz'iyyah*) over the general ruling of *Qiyās*. While *Istihsān* is perceived by al-Shāfī 'as an act of pleasure seeking, Mālik and al- Shātibī see it as a fundamental legal principle of Islamic law. al-Shātibī notes that *Istihsān* constitutes the foundation of knowledge (Ibid, P.152). The reason for a such difference of opinion is that Mālik and Al-Shātibī consider *Istihsan* as an independent source of law, while Al-Shafi'i excluded *Istihsān* from the sources of Islamic law. However, one can perceive that al-Shafī's refutation of *Istihsān* was partially motivated by the desire to respond vigorously to the challenges of the rationalists (ahl *al-Ra'y)* in favour of the traditionalists (*ahl- al-Hadith*).

d) Imām Ahmed Ibn Hanbal (d. 241/ 862)

It has been argued that Imām Ahmed and his followers extensively used the legal device of *maslaha*. For instance, Kamāli argues that Hanbalite jurisprudence is neither literalist nor stereotypical rather it made a great contribution to the development of the *Sharī'ah.* It has been claimed that many rulings of law in his school were validated based on *maslaha.* Kamāli further contends that Imām Ahmed had issued many fatwās based on *maslaha*. For instance, he demanded the owner of a large house shelter the homeless due to necessity and *maslaha.* (Kamāli, H P.26) Abū Zahra notes that Ahmed ibn Hanbal gave fatwās on the ground of *maslaha* in the absence of relevant texts since the public interest is the basic intention behind most legal judgements. In this issue he was like Mālik although Mālik was more famous for the use of *maslaha*. (Abū Zahrā', P.472). According to Abū Zahrā most Hanbalite jurists considered the legal device of *maslaha* as one of the legal principles to deduce rules. Some of them claimed to have used the legal device o*f maslaha* excessively as in the case of Najm al-Dīn al-Tūfi (d.716/1316) who became a controversial figure for his excessive use of *maslaha.* Abū Zahrā further argues that Imām Ahmed used the legal principle of *maslaha* in line with the legal reasoning of his predecessors from the Companions, So, he followed the companions of the Prophet in the application of this legal device not in his own way. He quotes many examples from Imām Ahmed's legal opinions, which draw on the notion of *maslaha* in his legal reasoning. For instance, According to Abū Zahrā, Imām Ahmed upheld the *fatwā* of the companions who agreed that the *hudud punishment* for wine drinking should be eighty lashes on the grounds of *maslaha*. This was maintained on grounds of an analogy that one of the consequences of intoxication was the slander of chaste women. In the interest of preventing such, Ahmed upheld the legal opinion of the companions. Moreover, Ahmed demanded liability for the damage caused by manufacturers while working on their customers' goods. However, under Islamic rule, the trustees are not liable for their unintended damage. Thus, on the grounds of *maslaha* Ahmed maintained such legal opinion in the interests of people (Ibid, pp. 494-498). Ibn Qayyim al-Jawziyah notes, "all human acts, transactions, dealings and contacts should be based on human needs, necessities and public interest." (Ibn Qayyim al-jawziyah. vol 4. p288) From our reading into classical legal thought we can identify the basic differences between the schools of legal thought in the issue of *maslaha* in the following way. When textual evidence supports any aspect of public interest, the *shafites* recognise it as a valid notion of public interest in Islamic law. In other words: textually regulated interests are valid according to them. They relate the public interest with analogical legal reasoning (*Qiyās*). In his legal treatise of *Risala* he consistently argued that the intellectual exercise of *Ijtihād* should be done after consulting the primary sources of law. Hence, *al-Shāf'ites* make an inherent connection between the *maslaha* and the primary sources of law. According to them pure human reason cannot recognise what is *maslaha* and what is not. In this sense, the entire concept of *maslaha* is limited with some textual evidence.

a) The Hanafites took public interest into account based on *Istihsān* in that *Istihsān* is tantamount to *maslaha*. They extended the scope of *Qiyās* incorporating the legal principle of *Istihsān*.
b) Some radical *Hanbali* jurists claimed that *maslaha* could override the textual meaning. Najm al-Dīn al-Tūfi argued the maslaha is the foundation of Islamic law and texts cannot go against it. Nevertheless, most Hanbalites maintained the concept of *maslaha* should go along with the general philosophy of law.
c) According to *Mālikites* the legal device of *maslaha* should be the foundation of legislation in the absence of textual evidence. They extensively used the legal device of *maslaha* in their legal reasoning. The legal device of maslaha is an independent source of law according to them.

It can be very convincingly argued that there was no unanimity among the scholars of the four leading schools of legal thought in accepting the legal device of *maslaha*

as an independent source of law. Some argue that the legal principle of *maslaha* has been a fundamental legal principle in Islamic legislation in all four of these leading legal schools. Historically speaking, Imām Mālik had given preference to the legal device of *maslaha*, followed by Imām Ahmed. However, al-Qarāfi maintained that if one scrutinised all the schools of legal thought, one could conclude that all the schools of thought used the legal device of *maslaha* in one way or another with different technical terminology such as *munasaba* (suitability) (Hasbullah, A. p. 183). Nevertheless, D. Abdelkader maintained that such a difference of opinion in the application of the legal device of *maslaha*, is not relevant today. The genesis of difference among the classical jurists on this issue was related to the degree of conservatism and liberalism in understanding the texts of the Qur'an and the Sunnah. Some understood the texts literally while others understood the rationale of the texts in the light of the general philosophy of law. some considered the legal device of *maslaha* equal to the other sources of law. Not only did they differ in the comprehension of the texts, but they also adopted different methods of deducing and inducing law. (D. Abdelkader, pp.49-50). In his study on the theory of *maslaha* Hassan summarises various trends among classical Islamic scholars in defining the legal device of *maslaha*. According to his analysis, the debate on *maslaha* could be divided into two important areas. a) *maslaha* that has been prescribed by the divine text, b) the public interest that has been identified by jurists outside the text. (Hassan, H. pp.12-22). According to him there are three kinds of public interest.

1) The textually regulated public interest is a first kind of public interest that has been clearly mentioned in the text. For instance, he notes that holding a thief responsible for returning stolen goods after he has been punished for his theft is to deter him from further transgression. He argues that this is an example of a public interest that has been supported by textual evidence. The *Sharī'ah* has stipulated that the thief should offer back the value of the stolen goods.

2) Nullified *maslaha* (*maslaha mulgha*): the *maslaha* that is in clear contradiction with *Sharī'ah* and has been recognised as invalid. This type of *maslaha* contradicts a text from the Qur'an or the Sunnah and did not gain consensus. For instance, one might argue that a daughter should receive an equal share of inheritance to that of son because they are equal in the degree of kinship and she shares her life burden with her husband. Rationally, the status of daughter is equal to that of son from this perspective. However, Islamic law invalidates this type of *maslaha* by the very fact that a Qur'anic text states that the male should receive double the share of the female in inheritance.

3) Textually unstipulated public interest *(maslaha mursala*). Neither the Qur'an, nor Sunnah or Ijmā '' has approved it. Al-Ghazālī depicts this type of *maslaha* as a *munasaba* (lit suitability), which goes in harmony with the spirit of the general philosophy of law. His contention is that Almighty Allah only commands what is good for humanity and divine mercy is apparently manifested in divine actions and rules. Therefore, creation of this universe and revelation of divine are nothing but divine mercy. That is why Mu'talizites argue that God is obliged to reveal what is best and what is beneficial to man.A. Raisūni argues that each rule of divine law is prescribed based on human interest. Allah revealed his laws to promote human interest and protect man from any inimical factors. So, the divine laws contain nothing but goodness and beneficial things for humanity. Therefore, all divine texts should be interpreted in the light of public interest that goes alone with the general philosophy of Islamic law. He gives some examples to illustrate how divine texts should be interpreted in the light of public interest. For instance, suppose a group of people kills a man. What is an Islamic punishment for this collective crime? Some jurists argue such a group of murderers cannot be killed for their collective involvement in the killing a single person and some others argue that this group of murders should be killed if they are convicted. The first group says that Allah clearly says, "We prescribed for them a life for a life". (Qur'an 4;45). They argue that the laws of retaliation

demand justice and equality. Therefore, it would not be fair to punish a group of people for killing a person. Yet, Imam Ahmad disagreed with this interpretation saying that Allah revealed the laws of retaliation to protect human life from all kinds of murder. This includes any type of collective murder. Otherwise, he argues that people may conspire to kill any person collectively in groups to spare the laws of retaliation. He argues that we should take public interest into account in interpreting this divine text.

Almost all classical and modern scholars make such a classification in their study of *maslaha.* In a way this idea is taken directly from divine commands and prohibitions. According to this type of classification what God commands is a *maslaha* and what God prohibits is a *mafsada.* This is a general idea of *maslaha* derived from a general reading of the texts. Identification of this sort of *maslaha* is limited to the scope of the texts. However, what draws the attention of scholars in the subject of *maslaha* is the *maslaha* that is neither regulated nor stipulated by the texts but is according to some Islamic jurists an important legal principle of Islamic legislation. This classification is proffered by al-Ghazālī. Al-Ghazālī argued that certain types of *maslaha* deal with the interests of individuals and certain other types of *maslaha* constitute the interest of the public. Killing a religious heretic for instance constitutes a general *maslaha* since the heretic could harm the public by propagating his heresy. The consequence of such propagation is inimical for all in general. Hence, killing such a person is a *maslaha* to protect the public and he further argued that the repentance of a (*zindīq*) should not be accepted but he should be killed in the interest of the public. This kind of legal reasoning may have been suitable one time. In this modern time no moderate scholar would agree with this. Today, in this world of globalization and religious freedom this kind religious verdict is not acceptable at all. It may have been fitting for his social context in 11th century but today the world and the social context are different from his time. No scholar would come up with such a religious verdict even in a Muslim country. This may be applicable in some Muslim countries where some radical clerics such as ISIS or Taliban give religious verdicts and yet, such a religious verdict has no place in this modern world. Of course, if someone is making mockery of Islam or acting on treason it would be a different case. The blasphemy law could be applied in this case if it is appropriate.

al-Ghazālī further said that if an entire Muslim community is endangered by enemies and a Muslim is being used by the enemies as a shield to protect them and so sparing him could lead to the defeat of Muslims, it is assumed that the dominance of the enemy is anticipated. In such a scenario al-Ghazāli strongly argued for the killing of the hostage Muslim in the greater interest of the entire Muslim community. However, such a stand goes directly against the Qur'ānic text, which forbids the killing of souls except for a specific reason. Here, al-Ghazālī maintains the greater interest of Muslim communities over the specific or personal interest of the individual. It can be said that al-Ghazālī came to such a conclusion based on his reading of the general philosophy of Islamic law and its end goals. Al-Ghazālī further contended that there are some other kinds of *maslaha* that preserve the interest of people. He notes that holding the manufacturers responsible for any deficiency in production is in the interest of consumers. Such a guarantee protects the interests of a certain group of people if not all. Concerning the *maslaha* of individuals, he notes that the demand for the termination of a marriage contract for the wife of a missing person is in the interest of the individual. He argues that for such a woman it can terminate her marriage contract after several menstrual periods. All these studies on the legal device of public interest and its implications are elaborated on classical jurists in their social contexts. All these may have been suitable religious verdicts for their time and social context. Today we live in a different world altogether and these kinds of explanation for the notion of public interest are not viable. The definition and connotation of public interest have got a wider meaning in this global world. Beyond the legal implication the concept of public interest has got a wider implication and meaning. It is all about protecting the national, regional,

international interest of humanity and the environment. It is not merely protecting the interests of the public and Muslim communities rather it has wider implications.

b) **The critiques of *maslaha* and *al-Maqāsid al-Sharī'ah:***

The general philosophy of Islamic law and the legal device of public interest have been heavily criticised by some Muslim clerics and scholars. There are two groups of Muslim scholars on this subject matter. A very few legal theorists such as radical literalists oppose the notion of *maslaha*. They argue that legal rulings should be based on divinely inspired sources. Otherwise, the rulings should be based on some supplementary sources of Islamic law. Any legislation outside the primary sources of Islam is a religious innovation. On the other hand, Some Muslim scholars support the ideas of the general philosophy and the use of the legal device of *maslaha* to legislate new laws. Yet, they set some strict conditions for the use of *maslaha.* They do not give a free licence for anyone to use these legal doctrines to come up with some alien concepts against Islamic teaching. The supporters of *maslaha* argue that *maslaha* is the central theme of the general philosophy of Islamic law. They claim that *maslaha* manifests the dynamic and flexible nature of Islamic law. They maintain that the corpus of Islamic law has two kinds of text. The changeable and unchangeable text. Or mutable and immutable texts. The unchangeable kind of text mostly deals with belief, religious rites. Any changes of rules in these texts would mean altering divine law. The supporters of the notion of public interest, argue that the scope of legal reasoning can be expanded beyond the literalistic understanding of divine text. The rules of law may be upheld with the changes in the underlying rationale of laws. Moreover, they argue that if the law is silent on any issues, *maslaha* should be the grounds for legal reasoning. Otherwise, the scope of law will be confined within the limited sources of law and there would not be any room for the flexibility in law. Raisūni argues that the legal concept of *"istislāh* or identification of public interest is introduced by Muslim jurists to regulate unpreceded issues in Islamic law. In recent study, I. B. Ghanem (2014) argues that it has been a difficult task to define the greater interests of the contemporary Muslim world. He argues that the social structure of the Muslim community has dramatically changed with radical changes in geopolitics, international relations, modern economic, scientific and technological changes that we have seen in recent times. He argues, with all respect to the classical Muslim legal scholars that some of their legal concepts are not viable today in the modern world. He gives some examples to illustrate the marginal or peripheral nature of some t classical legal thought to the present time.

He argues that the notion of public interest has been defined differently by different people. The Muslim legal theorists identified the major public interest of the Muslim community or shared interests of the Muslim community in the preservation of religious principles, the protection of human life, offspring, wealth and human intellect. Yet, Muslim political leaders argue that their mission is to protect the national interest with their internal and external political interaction. For them protecting national security, maintaining peace and political stability, enhancing economic growth, and securing national development, and protecting the sovereignty of the country are the most important duties in their political life. So, it is in the national interest of the country to engage in politics to protect the country and the public. Muslim sociologists and humanists argue that it is in the national interest of the Muslim community to protect and promote community cohesion and social interaction. They claim that they should protect and promote humanistic values and ethics. Ibrahim Al Bayomi Ghanem argues today, that countries should set some developmental goals for progress. When countries successfully accomplish these goals the public interest of people are secured. Material success and accomplishments strengthen the healthy relations between rulers and the public. This healthy relationship between government and public creates a feeling of confidence, security and peace. Yet, when countries fail to meet these goals of development people feel insecure. Because of this, conflict arises between government and rulers. Today, material development of countries is measured by economic and human development indexes. "economic development is a measure of a country's wealth for example agriculture is considered less economically advanced than banking. Human development measures the access the population has to wealth, jobs, education, nutrition, health, leisure and safety- as well as political, and cultural freedom. Material elements, such as wealth and nutrition, are described as the standard of living. Health and leisure are often referred to as qualities of life" (BBC, Bitesize. Geography, P.1. 2018). I.B Ghanem argues that securing material development is imperative to maintain peace and community cohesion in any country. Failure to achieve this may put countries in insecure situations. From this developmental perspective he defines that the ultimate public interest of the Muslim world should be following.

"Muslim countries should set some ultimate realistic goals and they should actively engage in accomplishing those goals. He divides the greater public interest of the Muslim world into two changeable and unchangeable categories. He says the maintenance of law and order, protection of human dignity, upholding unconstitutional justice, protecting human freedom, and promoting peace are some of the eternal public interests of the Muslim world. How do we promote these human values? He says that we should promote and protect these social values through all kinds of community networks and social organizations. He says, the institution of families in the Muslim world, mosques, charity organizations, schools, colleges, political parties, parliaments and social, legal and political establishments could help Muslim countries to enhance these community values". I.B. Ghanem (2014, pp 32-40 Moreover, he argues that establishing a democratic society, Islamic solidarity, shared markets fighting all kinds of corruption and fraud in the Muslim world, defence cooperation, economic cooperation between Muslim countries, economic and implementation of Islamic laws in the Muslim world are some of greater public interests of Muslims today and yet, accomplishment of these goals change from place to place and country to country. These goals could be accomplished in accordance with public opinions. He argues that the concept of public interest had been a theoretical notion in most the classical Islamic period. The application of this concept had been under the authority of a Caliph in most parts of Islamic history. The caliph had been the ultimate decision taking authority in the most parts of Islamic history. He argues that the doctrine of policy making had been in the hands of Caliphs. They had overseen commanding good and prohibiting evil. It has been their duty and responsibility to establish justice and protect the Muslim community. I. B. Ghanem argues that some historical mistakes had been made in Islamic legal

history by giving the ultimate authority to Caliphs to define the public interest of the Muslim community. The Muslim community failed to limit the power of Muslim caliphs. They enjoyed the ultimate power to decide what is good and what is bad and to define the public interest of the Muslim community. They put their personal interest over public interest many times and they have unlimited power and authority to take decisions. They appointed unqualified people for some governmental posts at the expense of qualified people. In short, many Muslim caliphs misused power at the expense of public interest. Working for the public in Islam is one of the rewarding religious duties and obligations. Islam demands that qualified people should come forward to do public service. For instance, the Prophet Yousuf asked his king to appoint him as one of his ministers for finance. He did so to protect public welfare and the public interest. He felt that he was more qualified than anyone else in his community. Referring to this example, some Muslim jurists argue that there is no harm in expressing willingness to be appointed to any public position in Islam. There is no harm for any one in seeking any government position in Islamic law, but he or she must have qualifications, knowledge and experience to work in such public posts. Imam Qarafi argues that all who have been appointed to any public office must work for the interest and welfare of the public. It is reported to have been said by the Prophet that "Paradise will be forbidden to those who have been appointed to public jobs of my community and yet, do not work hard and sincerely advise them". Mohamed Awam argues that the general philosophy of Islamic law in politics has got two objectives. One is protecting religious identity among public. According to Imam ibn Taymyyah the first and foremost important responsibility of the Muslim politician is to protect religious identity and develop religiosity among the Muslim community. The second important responsibility of the Muslim politician is to work hard to develop his country in all areas. He argues that there is an inherent connection between religious welfare and the material welfare of people. Securing both interests is imperative in Islam. He argues that to protect the religious interest of the Muslim community, Muslim politicians must also secure the material interest of people.

Imam al-Ghazālī argues that religious devastation and ruin go along with economic decline and material impoverishment. Therefore, political policies and law should aim at protecting public welfare in this world otherwise, it would be impossible to protect the religious interests of people. so, working for the welfare of the public in any work is regarded as some of the best form of worship in Islam. Not merely for Muslims alone for the welfare of all humanity. According to Imam al-Ghazālī humanity is one and its origin hails from one divine source. So, keeping law and order, maintaining justice, equality, human dignity, protecting human rights, saving a community from corruption, injustice, aggression, and distributing wealth equally and fairly and looking after the public interest of all is part and parcel of Islamic political theory. so, the Muslim politicians are indeed, true servants of the public. So, Muslim rulers cannot behave like the pharaohs of Egypt who, according to the Qur'an, were egotistical and unjust. They claimed that the entire country of Egypt belongs to them at the expense of the public. Any Muslim ruler who behaves like the Pharaohs of Egypt goes against the ideals of the Islamic legal philosophy of Islamic law, so, working for the public is part and parcel of their religious duty. Otherwise, they will be sinful in the eyes of God. Today, it has been noted that the Muslim world is lagging far behind all other communities in the art of policy making. Yet, Islamic divine texts and Prophetic traditions offer some general principles to make policies in the areas of public administration and politics. It has been contended that the Qur'an and Hadith did not specifically state what kind of government should the community form? No description has been given in Islam about any system of government and its political structure. It could be a presidential model, or it could be a Westminster model, or it could be any parliamentary model. The Holy Qur'an speaks about kings, kingdoms, consultations, justice and injustice. It also speaks about war and peace. But it does not speak about any specific form of government or political order. It

left it for the Muslim community to come up with any form of government that would suit the social conditions of the Muslim community. Moreover, it should get the support of the majority. However, the action and behaviour of the Prophet did not give us any specific model of government. Rather his legislative power and authority are primarily concerned with the religious matters and affairs. The Qur'an describes how God gifted King Sulaiman with a great kingdom and yet, it also condemns the actions of some unjust kings saying when kings enter the villages, they spread corruption. So, political power or kingship could be good or bad, it all depends on how politicians use or misuse the power vested upon them.

Bernard Lewis argues that politics in Islam clearly limit the authority of the rulers, whatever form of ruler that may be. He argues that political obedience to the rulers in Islam is conditional obedience. Of course, the Qur'an demands that "Obey God, obey the Prophet, obey those who hold authority over you" (Qur'an: 4: 59) and yet, political obedience to the Muslim rulers is limited by some other Prophetic traditions. "there is no obedience in sin" and moreover "do not obey any one against the will of God" So, disobedience is needed if Muslim rulers do not follow the right path set by the Holy Quran and Prophetic traditions. Bernard Lewis argues that "if the ruler orders something contrary to the divine law, not only is there no duty of obedience but there is a duty of disobedience. This is more than the right of revolution that appears in Western political thought. For the last 1400 years of Islamic history, political despotism continued in the Muslim world. Those ideas of political revolution and political reformation never materialised in the Muslim world. Political dictatorship grew stronger in the Muslim world from the very beginning of Muslim history. Muslim communities in different centuries failed to limit the political powers of Muslim rulers. Although there are some textual references that give some power for the Muslim public to limit the power of the rulers, they have not done this for the last 1400 years of Islamic history. Political anarchy continued in the Muslim world for centuries until modern times. The need for political consultation is emphasised in the Holy Quran and Prophetic traditions. Moreover, political authority in Islam is a sort of trust and contract between the ruler and the public. Islamic politics does not dictate any form of election and yet, the head of state can be chosen. The historical precedent of Islamic politics gave some examples on how to choose political leaders in Islam. It had been a Muslim political tradition that a small group of competent and qualified leaders of the Muslim community select their political leaders during medieval times. Islamic law does not sanction any form of hereditary political success in Islam and yet, political succession always been a hereditary one in Islamic history. Muslim political leaders find it hard to give up this bad historical political tradition in the modern world. In the name of protecting the community from harm, the Caliph misused religious authority by applying the penal code of Islamic punishment for their own political ends. They did not give freedom to Muslim jurists to express their religious opinions freely and they were not allowed to make public policies freely in the interest of the public. This misuse of power by the Caliphs continued until the Ottoman empire introduced some legal reformation and codification of Islamic law. Under article 58 of the legal reformation code of Islamic law, the power of the Caliph was limited. It stated that a Caliph must act in the interest of the public. This was like what happened in England. When the powers of English kings were limited by Magna Carta in 1215.

It is mentioned that the Caliphs have been entrusted by God to protect public interest. Therefore, they must act in a manner that promote and protects public interest. They are obliged by divine command to act in the interest of the public and to protect the wealth, dignity and life of people. In fact, political decision making, and its implementation needed some sort of political advice and religious consultation with experts. This indeed, took place in the Ottoman empire to some extent and yet, toady, most Muslim jurists are powerless in many Muslim countries. They are not consulted in many political affairs that directly affect

the public interest. For instance, in Saudi Arabia, the ruling elite used Muslim clerics for their political needs. The ideology of Wahhabism is used to gain political advantages and sometime, political edicts were issued in support of political decisions. Whoever goes against the government is persecuted in all Gulf countries. So, qualified scholars and clerics are not permitted to freely express their views to protect the public interest. The personal interest and aspiration of politicians are met at the expense of public interest. The politicians in these countries do not care about the needs and necessities of the public but their personal political ambition gets priority over anything else. Sometime, these politicians use emergency and marshal laws in their favour to suppress any political demonstrations. This is indeed, against the basic ideals of the general philosophy of Islamic law. Islamic law gives permission to anyone to express political opinion peacefully. No political party should carry out violent physical attacks on government establishments or on politicians in Islam and yet, they could express freely their political views. Democratic values are not accepted in many Muslim countries today. All this has strengthened political nepotism and dictatorship in many Arab and Muslim countries. The politicians control all the public affairs of the Muslim communities in all Muslim countries. Moreover, the role of Muslim clerics is confined to some religious duties away from any public life or public decision-making process. Yet, some of these clerics are not allowed to discuss burning issues of the Muslim community that damage the public interest of people. The general interest of the public has been continuously ignored in policy making since medieval times, up to the present and yet, Islamic legal philosophy demands that the public interest should be given preference over the personal interest of any individual or groups. Political leaders continuously used religion for their personal political gains. I. B. Ghanem (2014, pp 40-48). He argues that the failure to rightly understand the comprehensive meaning of the public interest in Islamic law and apply them precisely has indeed, resulted in marginalization of Islamic law from public life in many parts of the Muslim world. Moreover, the failure to accept the rationalization of Islamic law based on the public interest has kept the people away from seeking solutions for their problems in Islamic law. The dynamic nature of Islamic law generally depends on its flexibility to apply it to ages and all places. The law should be flexible to respond to the social needs of communities and rigidity in law will give hardship for people and keep people away from Islamic law, because the law should respond to the social needs of people. Moreover, the law should evolve in accordance with social changes, Otherwise, people would resort to secular laws to find solution to their day to day problems. Moreover, if we fail to interpret Islamic law based on public interest, the Muslim community will never march forward on the path of progress and development. Today, the application of Islamic law has been marginalised in many parts of the Muslim world. He argues that there are three reasons for the marginalization of the application of Islamic law today in this modern world.

1) Muslim politicians understand the notion of public interest differently from Muslim legal experts. Moreover, Muslim jurists understood the concept of public interest differently from that of Islamic philosophers. This disparity in understanding of the general welfare of people may have been one of the primary reasons why Islamic law is not applied fully in many parts of the Muslim world.
2) The classical definition of the concept of public interest is no longer clear enough today to meets the changing needs of modern Islamic communities. The concept of the *maslaha* has been a theoretical concept in the majority of Islamic legal history and its practical application has been negligible. The concept has not been employed to address the major general or specific interest of Muslim communities. Therefore, the review of the classical concept of the *maslaha* is very important today.
3) Political dictatorship prevails today in the Muslim world and does not allow the application of this concept in the Muslim world. Today, Muslim political leaders

choose experts and advisors who do not have Islamic backgrounds. Most Arab and Muslim rulers do not take Islamic scholars as their advisors rather they prefer their own confidantes. Therefore, political corruption and nepotism create social environments that facilitate fraud, injustice and corrupt activities. As result of this unhealthy socio-political and religious environment, the application of this concept has been marginalised in many parts.

How does the Muslim world extricate itself from this mess? I.B. Ghanem suggests that the Muslim world should put its socio-political, economic and religious affair right in order of priority. He suggests that the greater public interest of the Muslim world should be protected. For him that human dignity, freedom and liberty, justice, peace and security are eternal and an unchanging greater interest of the Muslim world. Without protecting these social values, the Muslim world cannot come out of its poor socio-political and economic conditions. Moreover, to secure these greater interests of the Muslim world, he argues that we should have some specific public interests to bring about a total change in the Muslim world. These specific public interests according to I.B Ghanem, are Arab unity, political freedom from neo colonialism, national security, the fight against corruption and violence, fight against political dictatorship and extremism, and collective defence and economic cooperation between Muslim nations. These are some of the national interests of Muslim countries. How do we accomplish these goals? The Muslim world should seek public opinion through different means. We could use different social research methods, interviews and statistics to have the consensus of people on various socio-political, and economic affairs of the Muslim countries to secure the public interest of the people in every Muslim country. (I.B. Ghanem 2014, pp 60-80). Yet, Bernard Lewis argues that "the idea of people participating not just in the choice of a ruler but in the conduct of government, is not part of traditional Islam". (Bernard Lewis, 2005, P 40) In deed, there is an Islamic tradition of selecting political leadership and yet, that is totally different from the western election process. He argues that "Islamic civilization made some great achievements in human sciences and yet, the notion of citizenship in the sense of being a free and participating member of a civic entity" (Ibid, p.40) is absent in the classical Islamic tradition. He further notes that "this notion, with its roots going back to Greek Polites, a member of the polis, has been central in Western civilization from antiquity to the present day. He argues that in the great day of Islamic civilization, even in Muslim Spain there was such a notion of citizenship or civic government as we see today in western governments. Even today, there is no any corresponding word in an Arabic for citizenship. He argues that the word normally used in Arabic passport as *muwatin* (compatriot) is different from citizen. The implication of this, he argues is that "with a lack of citizenship went a lack of civic representation. Although different social groups did choose individuals to represent the citizenry in a corporate body or assembly it was alien to Muslims' experience and practice". (Bernard Lewis, 2005, P 45). It may be true that everyone did not participate in or was represented in politics in traditional Islamic and Arab societies. But Islam has given the public the political freedom to choose the political leadership. The method of choosing political leaders may differ and yet, Islamic politics is based on consultation and trust between the public and rulers. Yet, these ideas did not materialise in the bulk of Islamic history. The argument is that dictatorial Muslim rulers did not allow to develop any good mechanism for consultation or the pooling any public opinion on political affairs of the Muslim community over many centuries. Therefore, no parliamentary electoral system or electoral mechanism to appoint representatives evolved in Islamic history.

Muslim scholars have discussed in detail the responsibilities of rulers and yet, no comprehensive system of election or people's representation in politics was devised. Moreover, Muslim jurists did not care that much about public and governmental affairs as much as they cared about personal and religious affairs of people. But, Ibn A'shour notes that the primary objective of the general philosophy of Islamic is to regulate the public affairs of

people and yet, this was ignored for many centuries in Islamic history. Ibn Khaldun also noted that the Arabs did not excel in the art of politics and public administration. He argues that they could not develop the skills of politics because of their toughness and nomadic instincts. It may have been the case in the past and yet, today the social structure of Arab communities has dramatically changed. So, political and administrative changes are dramatically taking place in the Arab world as in many other nations. Many contemporary Muslim scholars argue that "civic government" belongs to people and it gets its power and authority from the public. It is the public who elect the representatives of civic government. People elect the most suitable, most qualified, and the stronger candidate freely through a proper election process. People have the right to choose and dismiss their political leaders as and when they want which is done through an electoral process. The rulers are accountable to the public in civic government. Sheikh Y.al-Qaradâwi argues that the governmental system in Islam is a civic government yet, the ruler is subjected to some conditions. He does not have the power to legislate as he likes rather there are some divine commands and prohibition that he ought to follow. The ruler in Islam is an ordinary man and he does not have any specific immunity or high status. ⁞Therefore, there is no theocracy in Islam. The ruler in Islam gets his power and authority from two primary sources namely from religion and the public There are many differences between western liberal democracies and the despotic governments in many Muslim countries. There are many legal, political institutions and mechanisms to monitor, control and question the actions of politicians in western countries. Political leaders must work within the limits and scope of law and they do not have excessive power and authority to act beyond the rule of the law. There are so many public enquiry commissions and committees to bring them under public scrutiny. Moreover, institutions such as the Police, judiciary and the media work independently. These institutions will not interfere or influence politics. Rather they closely monitor, observe, evaluate, and sometimes, make staunch criticisms about the policies, and strategies and actions of governments. This is done with good intentions to put the government on the right track when it fails to deliver. In this way, public interests are protected in western countries and politicians can not fool the public.

What we see in many Muslim countries is a totally different story. Muslim politicians take absolute authority in their hands and subjugate all institutions and government establishment under their total control. Newspapers, the media and other institutions are not allowed to criticise or give any political opinions in public. Expressing any political opinion against government in Muslim countries is a punishable crime and sometime, people are tortured, beaten and killed for this. Public relation with politicians has not run smoothly in the Muslim world for centuries. The public could not come up with any meaningful mechanism to control the power of the politicians. The police, military, and other forces are used by Muslim politicians to strength their power not in the interest of the public. For many decades, the public in many Muslim countries have not been allowed to vote or participate in political life freely and sometime, some Muslim political leaders want to stay in power for ever until they die. For some historical, socio-political and religious reasons, this unhealthy relationship between the public and politicians has been upheld in many Muslim countries and they find it difficult to move forward from of this old political legacy. All this has drastically damaged public interest in Muslim countries. The core theme of this argument is that Muslim jurists and political leaders have failed to make appropriate policies to protect the national interest of Muslim communities for the last fourteen hundred years. They have failed to make strategic political, economic, social, educational and religious policies to keep the pace with rapidly developing social changes outside the Muslim world. Political dictatorship is one of the main reasons that the Muslim scholars did get the freedom and liberty to make any beneficial policies to meet the needs of the community. Moreover, the Muslim community from the formative period of Islam

up to the present have been engaged in theological and philosophical arguments that hindered healthy intellectual development. Even today, many Muslim sects engage in some polemic and dialectical arguments that do not fit to modern world. Bernard Lewis argues that the Muslim world has long debated the advantages and disadvantages of political struggles. The subject matter of political stability and political obedience has long been discussed in Islamic literature long before political reformation took place in any other parts of the world. He notes that "Muslims have been interested from the very beginning in the problems of politics and government: the acquisition and exercise of power, succession, legitimacy, and -especially relevant here-the limits of authority. All this is well recorded in rich and varied literature on politics. There is theological literature, legal literature, which could be called the constitutional law of Islam, practical literature – handbooks written by civil servants for civil servants on how to conduct the day to day business of government and, of course, there is philosophical literature, which draws heavily on the ancient Greeks, whose work was elaborated in translation and adaptations, creating distinctly Islamic versions of Plato's republic and Aristotle's politics". (Bernard Lewis, 2005, P 40).

The works of many classical Islamic scholars elaborated extensively on this issue of Muslim politics long before the western world fought for political freedom and liberty. yet, the Muslim political leaders continuously adapted the politics of autocracy and they disregarded the ethical political values and ethics of Islamic teaching. Islam came up with some excellent political theories and practices and yet, Muslim rulers continuously ignored those Islamic political values to stay in power instead they introduced some bad practice into Muslim politics. They used the Islamic legal principles to support their political practices and they manipulated some Islamic legal doctrines to continue their hereditary political power to pass on to their children. For instance, the doctrine of *Saddu al-Zari'ah* is used by some clerics to give discretionary power to the Caliphs to punish their political opponents. This legal doctrine in Islamic law is a preventive legal doctrine that was designed to prevent any human action that may lead to sin or grave consequences. For instance, in the name of protecting public interest, Muslim rulers use their discretionary powers under this legal doctrine to suppress public demonstrations or anyone who expresses political opinions. Sometimes, they go far beyond the rule of law to punish the public who expressed their political views against Muslim rulers without any legal process. (I. B. Ghanem, 2014, pp 40-42) Soon after, the Arab spring, many Salafi groups maintained that any public demonstration was not allowed in Islam. This is even if the rulers are mass murderers and committing genocide, They argue that there is no clear cut or single textual evidence to say that demonstration are allowed in Islam. Yet, Islamic history is full of revolts and wars. The problem with such an argument is that these people are looking for particular rule in Islamic law and they forget the inductive meaning and reading of collective textual evidence. For instance, A large amount of evidences prohibits injustice and aggression. So, any demonstration against an unjust and aggressive ruler should be textually supported and yet, some Muslim scholars are of the view that demonstrations are not allowed in Islam. They use this doctrine of *Saddu al-Zari'ah* to support their view point. (Muhammad ibn Muhamad Rafi'. 2014. P. 694).

The misuse of this Islamic legal doctrine continued in Islamic history for many centuries. Recently, we have seen this soon after the Arab spring revolutions in many Muslim countries when the demonstrators and political opponents were put behind bars. Many of them were killed just because of the fact that they expressed their political opinions. They did not give the demonstrators any proper court hearings or any chance to take any legal action against governments in these Muslim countries. Thus, the public interest and political aspiration of the people are suppressed in Muslim countries using some medieval legal doctrines. To protect the personal political interest of rulers in Muslim countries, they use religious legal doctrines at the expense of the basic democratic rights of the public. Moreover, the Arab community has

not had political freedom since the formative period of Islam except for a few years in the early period of Islam. Terms such as "liberty and freedom" -*hurriyyh*- argues (Bernard Lewis, 2005, p.39) were not used in a political sense. It was a legal term. One was free if one was not a slave. To be liberated, meant to be freed, and in the Islamic world, unlike in the Western world, "Slavery" and "freedom" were not, until recently, used as metaphors for bad and good government". One could argue that the primary sources of Islam are more concerned about the theological freedom of man from his slavery to materialism and human desire. Indeed, one of the central themes of the primary sources of Islam is to free man from slavery. It is true that the Muslim world, particularly the Arab countries have not yet had political freedom since the formative periods of Islamic history and yet, it does not mean that the primary sources of Islam have not given them any sense of freedom and liberty. The political authority of the caliphs was questioned in the formative periods of Islam. It is reported that political incorrectness and the wrong policy of the Caliph Omer was questioned by a woman during his reign. However, the political authoritarianism continued in the Muslim world after the Caliphate of Omer. Because of this, public interests are ignored at the expense of the personal interest of Muslim political leaders.

Moreover, creative thinking ceased in political, administrative and sociological themes in the majority of Muslim history. Since 8th century, creative, experimental and empirical studies have ceased in the Muslim world. For the last five hundred years, the Muslim community has inherited a defeated mentality due to political, social, religious and historical factors. Because of all this, creative thinking and policy making ceased in the Muslim world. Political and legal thought grew rapidly in European countries over the last five hundred years. However, these studies did not take root in the Muslim countries. It has been argued that some alien mystical and theological concepts have intruded into the Muslim community since medieval times. The Muslim community sought shelter in mysticism and philosophical debates rather than engaging in creative and productive thinking. Rather than engaging in constructive, innovative and beneficial learning process the Muslim intellectual engaged in unnecessary theological, philosophical, and mystical debates for centuries. In short, a wrong perception of religious ideas and religious interpretation stopped the Muslim community from moving forward. Bernard Lewis argues that for the last five hundred years; the Muslim world could not keep up with Europe in its development process. He says "for many centuries the world of Islam was in the forefront of human civilization and achievement. In the Muslims' own perception, Islam itself was indeed, coterminous with civilization, and beyond its borders there were only barbarians and infidels……in the era between the decline of antiquity and the dawn of modernity, that is, in the centuries designated in European history as medieval, the Islamic claim was not without justification. For centuries the world view and self-view of the Muslims seemed well grounded. Islam represented the greatest military power on earth-its armies, at the very same time, were invading Europe and Africa, India and China. It was the foremost economic power in the world, trading in a wide range of commodities though a far-flung network of commerce and communication in Asia, Europe, and Africa, importing salves and gold from Africa, slaves and wool from Europe, and exchanging a variety of foodstuffs, materials, and manufactures with the civilized countries of Asia. It has achieved the highest level so far in human history in the arts and sciences of civilization. Inheriting the knowledge and skills of the ancient Middle East, of Greece and of Persians, it added to them several important innovations from outside, such as the use and manufacture of paper from China, ……it was in the Middle East that Indian numbers were for the first time incorporated in the inherited body of mathematical learning. |From the Middle East they were transmitted to the West, where they are still known as Arabic numerals, honouring not those who invented them but those who first brought them to Europe. To this rich inheritance scholars and scientists in the Islamic world added an immensely important contribution through their own observations,

experiments, and ideas. In most of the arts and sciences of civilization, medieval Europe was a pupil and in one sense a dependent of the Islamic world, relying on Arabic versions even of many otherwise unknown Greek works. And then, suddenly, the relationship changed. Even before the Renaissance, Europeans were beginning to make significant progress in the civilized arts. With the advent of the New learning, they advanced by leaps and bounds, leaving the scientific and technological and eventually the cultural heritage of the Islamic world far behind them". (Bernard Lewis. 2002, pp. 5-7).

This is what happened between the Islamic and western civilizations in the last five centuries: A gradual but a steady shift took place between the Muslim world and Europe in the fields of learning and education. At some point in history in the medieval era, Muslims were at the peak of their power and learning, then, the decline of Islamic civilization continued from 1400 until present. This decline in learning and education is not only reflected in science and technology but it is also clearly reflected in religious education as well. We notice that many brilliant Islamic books were produced by Muslim scholars in medieval times, and yet, the quality of Islamic research, and books declined gradually. The books of Imam Al-Ghazali, Ibn Taymiah, Ibn Qayyim, Ibn Rush, Ibn Khaldun, Ibn Sina and Imam al-Shatibi reflected the high level of intellectual rigour and brilliancy. Yet, for the last five centuries, books and manuals written on Islam reflected the copy cut summaries and commentaries of the works of previous generations almost in all Islamic sciences. Moreover, Islamic books and treatises that were written over the last five centuries did not reflect the gradual changes that took place in the arts of civilization mainly in the fields of science and technology.This intellectual disparity between the people in Europe and the Muslim world was not only reflected in the field of science and technology but also this disparity was reflected in the field of religious education too. As result of this intellectual weakness, Muslim clerics and scholars could not relate Islamic teaching to the social change that took place around them in many fields. Moreover, today, Muslim scholars, jurists and clerics do not have the skills to relate Islamic teaching to the modern world around them. Today, dramatic changes have taken place in the fields of science, technology, politics and all other fields of human civilization and the Muslim world has produced millions of Islamic clerics and scholars across the world. Yet, a cursory examination of the teaching materials, curriculum and teaching methods of Arabic colleges, Islamic universities and Institutes reveal that these teaching materials, methods and prospectuses are outdated, and they do not reflect the reality of the world we live now.

I agree with I. B. Ghanem that political dictatorship and nepotism greatly damaged the creative thinking of religious research in the Muslim world and yes, Muslim rulers continuously marginalised Muslim scholars and jurists. Sometimes they used the religion of Islam for their political gain. So, they could define what is in the best public interest of people as they think not as people think. All what they wanted is to secure the interest of their personal interest at the expense of the public interest. Public opinions are heavily suppressed in Muslim countries, there is no respect for public opinion. The dictators or self-appointed rulers use their political grip on power to suppress public opinion and sometime, they use Muslim clerics to do this. sometime religious doctrines are misused by these self-appointed Muslim rulers in support of their political ideologies. The problem with Muslim politics is neither in the formative period of Islamic history nor in medieval Islamic history, Islamic civilization did not develop the arts of public administration or any good governmental system. Governors were appointed and yet, what type of governance or political system did they develop? In sharp contrast to the unsystematic medieval public administrative system of the Muslims, western political leaders and public administrators developed some excellent governance systems. It is argued that the British parliament developed naturally over the middle ages from the meeting of the Witan to legislature and some trace its origin back to Anglo-Saxon government from the 8th to 11th centuries. (living heritage: birth of British Parliament: p.1) yet, Muslims in the

middle age did not develop any political administrative systems. They excelled in the arts of warfare in medieval times and yet, it could be argued that the medieval politics and political administration of the Muslims did not evolve as we have seen in Europe.

During the colonial period of over six hundred years, British, Dutch and Portuguese empires introduced some good public administrative systems in colonised countries. For instance, India and many South Asian countries still adopt the British public administrative and democratic traditions and practice. During the British colonial rule, most modern Islamic countries were a part of the Ottoman Empire and the Ottoman empire did not evolve any good political administrative system compatible with the British system or any similar system. One of the positive things that people in those former British colonies have learnt from colonial history is that they inherited the experience and knowledge of public administration and democratic values from their colonial masters. Arab countries do not reflect this in their politics and public administration. Many North African Muslim countries were colonised by the French and yet, the French did not make any public administrative changes in North African countries except they sought material benefits from these countries but, British did not merely colonise the countries, but they contributed for the development of the infrastructure and public administration of their colonies. One could argue that many Arab and Muslim countries have gained their independence within the last few decades therefore they have not yet, gained enough skills and experience in politics and public administration. This is true to some extent and yet, most Middle East countries have had thousands of years of heritage in civilization, knowledge and culture.

Moreover, the Islamic civilization reached its peak in knowledge and human science in medieval time. yet, today, many Muslim countries in the Middle East cannot put their politics in order. Countries like |China, Japan, South and North Korea were not colonised by any countries and yet, they managed to devise some good political administrative systems today. For this reason, I would argue that despotism, autocracy, dictatorship and authoritarianism are noting but an integral part of Arab nomadic and tribal culture. The religion of Islam is nothing to do with this political aggression and tyranny. In fact, God sent his messengers with the divine message to free mankind from all sorts of slavery. The Holy Qur'an vividly elaborates this truth in many places. Many internal and external factors contribute to the growth of despotism and dictatorship in the Muslim world. This political dictatorship is sustained and continuously maintained at the expense of public interest to keep some political elites in power. As result of this political mismanagement and incorrectness the public welfare and public interest of people in many Muslim countries have been greatly damaged. Unlike in the past, politics now controls every aspect of human life in modern societies. Political decision making has a greater impact and consequence on the life of the public. The public interest of people in education, finance, health and safety, religious freedom, human rights and the national interest of any country is controlled and managed by politicians. Unfortunately, political leaders in many Muslim countries misuse their political power and suppress the will of the public. Unlike in western countries, Muslim political leaders do not take political responsibility and accountability for their political blunders Whatever, the political mistakes they make they are immune from prosecution and punishment.

There is no any system of public inquiry or of investigating them under any laws or public inquiry commissions. As a result of this latitude in the political system of Muslim countries, Muslim politicians have been behaving like dictators with authoritarianism and repression. People are not allowed to freely express their political will and secure public welfare and public interest. The political philosophy of Islam was clearly discussed and elaborated by Imam Mawardi. He outlined the duties and responsibilities of rulers and the public in Islam. Some of the areas he discussed in relation to politics in Islam are, responsibility, accountability, transparency, and the leadership qualities of Muslim rulers in

Islam. Today we do not see any of these characteristics in Muslim political leaders of modern Arab states. They suppress the voice of the people and politically enslave the public just to hold onto their grip on power. Unfortunately, Arabs do not have a democratic tradition of power sharing in politics. People in Arab countries are trying to get their democratic rights through peaceful means. People stood for election many times. In Algeria, Egypt and Tunisia people voted for public election to choose whoever they want to elect. Yet, democratically elected governments could not stand against the internal and external political opposition. Eventually, all democratically elected governments were dissolved in these countries. It is in the interest of some elites in Arab countries not to allow the seeds of democracy to grow in Muslim countries. That is why they use all military power to suppress the democratic rights of people. There are two schools of thought on the political reformation of the Muslim world. Some argue that the Muslim world should separate religion from public life and other schools of thought state that religion should be centre to all human affairs. The first group argues that there must be a separation between religion and government. They argue that religion is the personal matter of people while government deals with civic affairs of people. They argue that Muslim communities have been looking into all worldly affairs from a religious perspective. This group claims that Muslim communities see all affairs through a religious lens. That is one of the reasons why Muslim communities could not develop any sophisticated political systems in Islam. The second group argues that we live in a multicultural world with people of different cultures and religions so, modern government in the Muslim world should be formed in line with the concept of modern citizenship not based on religion or caste. Because, today, the interaction between people of different faiths and cultures is unavoidable. They argue that the separation of religion from public life in western countries helped them to come up with some good political systems and governments. For the Muslim world, if the Muslim communities want to march along the path of development, they should make a separation between religion and politics. Many secularist Muslims upholds this view. They argue that only civic governments put the public interest of people above all the personal interests of the ruling elite, moreover, the public have the right to question their rulers and unseat them from power.

On the other hand, Islamist groups argue that politics and government are part and parcel of Islamic civilization. The prophet of Islam was not merely a religious leader but rather he had been a political leader and religious leader as well. They argue that the Prophet established a political system and government in the city of Medina. His successors followed him in establishing the Islamic caliphate. They maintain by following this political model it is part and parcel of Islamic political system. They claim that Islamic politics is based on consultation and contact between the rulers and people. They argue that the Islamic political system is some sort of democratic political mechanism, but it is a conditional democracy. It is a democracy within the divine command and limits in that politicians are not allowed to legislate as they want, but they are given discretionary powers to come up with rules and regulations in accordance with the general philosophy of Islamic law. The Muslim legislative assemblies are not allowed to go beyond what has been clearly articulated in the Qur'an and Hadith. Yet, parliaments in secular democratic countries can legislate whatever they want. The notion of public interest in Islam is somewhat limited by Islamic values. Not only do Muslim politicians not understand the comprehensive meanings of public interest in Islam but also Muslim scholars too. I would argue something went terribly wrong in religious education in the Muslim world for the last five hundred years. As result of this many Muslim scholars, and jurists cannot relate what they learn in Islamic seminaries to the reality of modern-day life. Because of this, they do not understand the socio-economic, political, scientific and technological changes that have taken place around them in the modern world. Moreover, today, Islamic subjects are being taught in Arabic colleges, Islamic universities, and institution in isolation from the modern sciences. As result of this demarcation in learning, the graduates

of these seminaries cannot respond to modern challenges they face in politics, science, technology and other fields of modern science. How could we expect the graduates of these institutions and Islamic universities to define the priorities and public interests of the Muslim world? How could we expect them to respond to the modern challenges of the Muslim world effectively in this modern world? Today, to define what is in the best national interest of Muslim countries and community's Muslim world needs expert advice in all fields. The Muslim scholars and jurists alone cannot define what the best national interests of the Muslim countries are.

Today, we live in a global virtual world. The greater national and regional interests of the Muslim world are intermingled in the geopolitics of regional and international politics. For instance, the national interest of the people of Afghanistan is not defined and decided by the people of Afghanistan or by the politicians of Afghanistan alone. Rather regional and international powers decide and limit the national interest of that country. To deal with this, experts and politicians in Afghanistan should have a deep insight and wisdom and knowledge on how to save the national interest of Afghanistan. Merely religious scholars cannot define what is in the best interest of Afghanistan today.That needs the advice of experts in politics, diplomacy, economics and other areas of knowledge and education. Likewise, today the Muslim world is divided into 53 nations. Each country has its own national or regional and international interest, the experts in these countries should define and decide what are the best interest of their countries taking into account local, regional and international interest of the people in those countries. Take for instance, Gulf countries can they define and decide what are their best national or regional or international interests without consulting international and regional stakeholders in politics? They cannot freely make decision without consulting or considering regional and international powers. Otherwise, making autonomous decisions on some important issues could have far reaching geopolitical and economic consequence. This is clearly illustrated in recent events regarding Saudi- Iran diplomatic relations and Saudi and Qatar diplomatic relations. Today, the national interest of Saudi Arabia is not defined and decided by the local people of Saudi at election. Imam Ibn Qayyim says that "The fundamental promise of Islamic law aims at securing public interest as much as possible. It aims at securing public interest fully and comprehensively as much as possible if some the Muslim community feel that they are going to miss some public areas of public interest or some element of public interest and welfare, they should give priority to the most important and most needed public interest as defined by the general philosophy of Islamic law". Saudi Arabia, as the guardian of the most sacred of place of Islam, should consider the wider consequences of its actions upon the international Muslim community. Its policy making and its influence in the geopolitics of the gulf region and the wider international community will have some far-reaching consequences in the Muslim world. We could refer to many recent events in which Saudi political authorities have made some political blunders and instituted wrong policies against the national interest of Saudi and the wider international Muslim community. For instance, it is reported that Saudi created some Jihadi groups in Afghanistan and supported them financially to oust Russian forces from the country. The consequence of such a wrong policy is still seen in the Muslim world. Many extremist groups emerged following in the footsteps of those so-called fighters in Afghanistan.

Taliban, Al Qaeda, ISIS and other Muslim extremist would not have emerged in the Muslim world, had not Saudi supported the fighters initially in Afghanistan in the 1980s. Moreover, Saudi has been incubating the radical ideology of Wahhabism. With financial support from the government, Wahabi clerics have been exporting this radical ideology to the Muslim world for more than six decades now which has created some far researching consequences. The Muslim world is now divided into many ideological religious groups. It is not in the interests of Saudi or the Muslim world in the long run to see the Muslim world being

divided into these different ideological religious sects and groups. This could further weaken Muslim communities in many parts of the Muslim world. Moreover, its stance with Iran does not protect its national or regional interest at all. Saudi and Iran diplomatic relation are formed and based on the foundation of religious ideology. Iran is dominated by Shia religious ideology and Saudi is dominated by the Sunni version of religious ideology. To appease Wahabi clerics and its supporters, Saudi politicians and policy makers have maintained anti-Iran diplomatic relations since the Iranian revolution. At the same time, Iran has maintained anti-Saudi diplomatic relation for the last four decades. Such political antagonism is neither beneficial for Saudi nor for Iran in the modern geopolitical world. Neither does Saudi appreciate the geopolitical strength of Iran in the gulf region nor Iran recognise the importance of political stability of Saudi in the gulf region. It is in the interest of the Muslim world that both Saudi and Iran get on well. Today, negotiation and dialogues are the best way to resolve the political problems of nations in any part of the world. For the last four decades, the politics of Saudi and Iran has been greatly influenced by their religious ideologies. Now, it is high time that both countries review their political and religious stances in this modern world where people of different culture, religion and tradition live side by side. Neither Saudi nor Iran have drawn their foreign policy and diplomatic relations in line with the general philosophy of Islamic law.

The general philosophy of Islamic law demands that human dignity, justice, peace, equality, universal brotherhood, compassion and liberty should be the basis of inter community and diplomatic relations. Yet, both Saudi and Iran hold historical and religious grudges of the past in their diplomatic relations. Moreover, it is common sense to read and understand the balance of power between the Shia and Sunni power struggles in the Gulf region. Although Saudi is supported now by some western political allies, Iran has a greater political and mass influence in the gulf region. Today, more than 80% of the entire Shia population lives in the Middle East region. Iran has a greater influence in the majority of the gulf countries. 65% of the Iraq population is Shia, 50% of Lebanese population is Shia, and more than 40% Yemen population is Shia. Saudi, Kuwait, Bahrain and Syria all have a large percentage of Shia population. in short, Saudi is apparently surrounded by Shia populations right now. Saudi is militarily stronger with the support of some outside powers and yet, how long can Saudi depend on outside world for its defence and survival. Therefore, it is not in the interest of either Saudi or Iran to hold a historical grudge on religious bias. It is not in the interest of the religion of Islam to keep such a lengthy antagonism. The general philosophy of Islamic law does not permit both countries to maintain such resentment in Islam.Moreover, Saudi relations with many Muslim countries has been very poor and imprudent. For instance, its relationships with Somalia, Turkey, Qatar, Kuwait, Syria, and many other regional powers is counter-productive and negative. Consider its war with Yemen. Whatever political justification is given, this type of war could drain its resources and national budget. How long can it sustain such a long war? Saudi depends on its gas and oil reserves so; its long-term development and prospect are an uncertain and unpredictable. So, its war with Yemen and its diplomatic relation are not a promising move. Moreover, Saudi has been ignoring the public opinion of most people locally in Saudi and in the Gulf regions.

In the Gulf region, there are so many different ideological groups where some are extreme, and some are moderate. Unlike the previous regime, the current regime has suppressed, and oppressed moderate public opinion and Saudi has punished anyone who disagree with its politics. In this modern world where people freely express political opinions in most parts of the world, Saudi suppresses public opinion of its people in politics. Today, hundreds of moderate Islamic scholars have been put behind bars for expressing political opinions. This is not acceptable at all today. Moreover, Saudi has marginalised the Muslim brotherhood movement, which has the greater influence in many Gulf countries. But, by isolating most people in Saudi and Gulf countries, Saudi has already earned the anger of people

in these countries. Isolating the opinions of most people is not good at all for the future of the Saudi regime. Today, power is in the hands of the people not in the hands of politicians. People have right to elect politicians into politics and to remove them from power, this is a matter of fact in politics. Yet, the Saudi regime does not respect public opinion. A few royal elites enjoy 80%|of the wealth as they wish at the expense of public interest. The general philosophy of Islamic law demands that peace should prevail in Muslim nations at all time and in all ages. In Islam war is an exceptional event in human life. It is a general rule that peace should prevail in the world and only a just war could be declared for the humanitarian cause of stopping aggression and injustice. Moreover, the Saudi diplomatic row with Qatar is not justifiable. The Saudi political leadership did not foresee and predict what would be the consequence of such a move. Firstly, US and Western countries would not allow Saudi to destabilise the gulf region. Any instability in the Gulf could lead to some economic consequences in western countries, so, they will not allow Saudi to continue any permanent economic blockage or sanction on Qatar. Moreover, it is not in the interest of Saudi to have a crisis in the Gulf. So, the Saudi row with Qatar indicates the weakness and ineptitude of the Saudi political leadership. All these conflicts arise because politicians and Muslim clerics do not understand the comprehensive meaning of the general philosophy of Islamic law.

The Islamic concept of public interest has a wider implication and wider meaning in Islam. Its definition and meaning are not limited to the legal principle alone rather they cover the welfare and wellbeing of all divine creatures in this universe. Therefore, the studies about the general philosophy of Islamic law and the public interest should not take place in isolation from these realities. The general philosophy of the Islamic law cannot be thoroughly studied in isolation away from the contribution of the different scholars in the field of economics, politics, sociology, and other modern sciences. To find Islamic solutions to modern problems we need to seek experts' advice in all these fields. How could Muslim scholars define and decide the financial and economic interests of any Muslim country in this complicated financial and economic world without the advice of experts on modern financial markets? How Muslim scholars define and decide the political interests of any Muslim country without deeper insight into the political system of the modern world? It can be argued that Muslim scholars alone cannot define the general interest and welfare of any Muslim community in any Muslim country today. The advice of experts is needed in all fields of human development. Yet, there is little collaboration and cooperation between Muslim scholars and experts in other fields of human science. That is why Muslim communities find it hard to decide what is in the best national interest of many Muslim countries. All this demands some radical changes in our approach to the concept of public interest in the Muslim world. Raisūni argues that studies on the general philosophy of Islamic law need some systemization. Studies on the general philosophy of Islamic law should not be for the sake of intellectual pleasure or for any philosophical debates rather the science of the general philosophy should be developed into a new research methodology and a reference point in Islamic legal studies so that the Muslim scholars could understand all the challenges of the Muslim community and humanity in the light of general philosophy of Islamic law. He calls upon Muslim intellectual community to develop this science. He argues that we should make some cohesive connection between Islamic sciences and the general philosophy of Islamic law and he further notes that we should also explore the connection with the modern science.

However, he did not tell us how we do this or what mechanism we should develop to employ the science of the general philosophy of Islamic law in the modern field of arts and the sciences. We live in this complicated world which is technologically, economically, politically and scientifically so advanced and in which humanity has seen dramatic changes within the last five decades. So, to understand those changes from the perspective of the Islamic legal philosophy, the Muslim world needs experts in both Islamic science and modern science.

It is my contention that we cannot demarcate knowledge into water-tight compartment in Islam as subjects called secular and religious science. So, to read about contemporary human challenges in the light of the general philosophy of Islamic law as A. Raisūni argues, the Muslim countries need collaborative and collective intellectual team efforts of Islamic scholars and experts in modern science. The supporters of the general philosophy of Islamic law have argued that the application of the precepts of the general philosophy of Islamic law is imperative to meet the challenges of modern times. They have argued that there is a compelling need to further devise a sophisticated legal mechanism or strategical intellectual mechanism to deal with the unprecedented political, educational, social, and economic challenges of the Muslim world. They claim that the Muslim world is lagging all nations in civilization and development due to the lack of any strategic legal and intellectual mechanisms. They claim that the ideas of general philosophy can be further enhanced to modernise the Muslim world. The mechanism they propose for this is to enhance the human intellect in line with the divine guidance. They argue that we should make integral connections between certain details of divine texts and the universal ideals of the general philosophy of Islamic law and we should also make essential connections between changing social changes and the eternal principles of Islam. This means making some reconciliation between changing social realities of modern world and the eternal teachings of Islam. They argue that otherwise, Islamic teachings will be isolated from the realities of the 21th century. On the other hand, a group Muslim secularist such as Muhammad Arkoun, Muhammad Abdul Majeed Al Sharfi, Muhammed Said Al-Ashmawi, Mohamed Abid, al-Jabirir, and many other secularists claim that the stagnation of Muslim thought goes back to the time of Al-Shāfi'i who limited the creative thinking of the Muslim mind with his legal theories of Islamic law. They argue that Arab and Muslim thought has been greatly influenced by the legal framework of Imam al-Shāfi'i who set a legal basis to correlate Muslim minds with divine texts. It is claimed that the Muslim mind has been inflicted by the Islamic legal theories of Imam al-Shāfi 'i that is why Muslim clerics cannot go beyond their historical Islamic legacy to engage in creative thinking. They blame Imam al-Shāfi 'i for restricting the religious thinking of the Muslim clerics within boundaries of primary sources of Islamic law.

What Imam al-Shāfi'i did was he rejected the excessive use of legal device of *Istihsan.* They argue that by this he has restricted the creative thinking in Islamic law beyond the scope of the primary source of Islam. By this he made the divine texts primary reference points of Arab minds. They claim his works in Islamic law are nothing but legal stratagems to establish the divine origin of the Islamic law. (Wael ibn Sultan al-Harithi. 2014. Pp 853-54). Therefore, some of these secularists argue that they want to liberate Muslim minds from the influence of traditional legal reasoning by means of the general philosophy of Islamic law. They argue that traditional legal reasoning has been interpreted around the letters the divine texts rather than rationales of the texts. The subject matter of Islamic legal philosophy has been heavily criticised by some modern radical Islamic scholars. They argue that in the name of Islamic legal philosophy many innovative ideas and concepts have been introduced into Islam. They claim that only what has been prescribed in the primary sources of Islamic texts should come under Islamic legal philosophy. Any additional concepts or ideas should be excluded from Islamic legal philosophy. It is generally accepted that the notion of equality is part and parcel of the general philosophy of Islamic law. Imam Ibn 'Āshur includes equality as part of his scheme of *al-Maqāsid al-Sharī 'ah.* He notes that "The Arabic term, *hurriyah* has denoted two meanings. The first meaning is the opposite of slavery and it refers to the ability of people to handle their affairs. The second meaning derives from the first by metaphorical usage. It denotes one's ability to act freely without opposition from anyone. These two meanings of freedom were intended by *al-Maqāsid al-Sharī'ah,* for both stem from *fitra* and reflect the notion of equality. Hence the religion of Islam does not go against human instinct (Ibn 'Āshur 2014,

p 12). The primary notion of equality in Islam is to treat all human beings with justice and equality without any discrimination or prejudice. Islamic law does not discriminate against people based on their colour, race, ethnicity, language, country or religion. This does not mean that all human beings are equal in their abilities, skills, knowledge and talents. Yet, critiques of *al-Maqāsid al-Sharī'ah* contend that the notion of equality should not be included in Islamic legal philosophy. Sheikh Sa'd Al Shithry of Saudi Arabi argues that the notion of equality among people cannot be part of the legal philosophy of Islamic law. His argument is that people are born with different level of skill, knowledge and abilities. That is the way Allah created human beings and to treat them all equally would be unfair in some cases. Treating people equally in some cases would be unjust as in the case of school children sitting for an examination. The children with good IQ may excel in examinations while children with lower IQs will perform poorly in their examinations. So, treating them all equally in the marking of examination papers would be a form of aggression. This analogy is not what is meant by the concept of quality in the legal studies. Neither western law nor Islamic law accepts this kind of argument.

The proponents of *Maqāsid al-Shari'ah* perspective never disagree with this view. People are born with different levels of skill, talents and knowledge. It is a divine scheme that Allah created people with such different levels of skill and ability. Islamic law demands us to treat people in accordance with their different skills and talents and yet, it demands we do justice in all circumstances to all people. Moreover, the opponents of *Maqāsid al-Shari'ah* argue that democracy or people's right to rule is not part of the legal philosophy of Islamic law. They argue that the democracy or people's demand to have the political right to rule is not part of Islamic legal philosophy. They argue that only Allah is a true sovereign and they claim political engagement is not part of Islamic legal philosophy rather all sovereignty belongs to Allah alone. Their contention is that we should live and abide by what has been revealed to us by Allah and His prophet. What they fail to note is that the Islamic political ideals that are enshrined in the book of Allah along with prophetic traditions. all these political ideals need some practical dimensions and application. It is duty of the Muslim community as vicegerents of Allah, to implement and apply the political ideals of Islam on earth. That needs some mechanism to do today in this modern socio-economic world and with the political conditions of the modern world. That mechanism is created by democratic politics. Moreover, politics today controls all aspects of human life. A strong and stable political order/ system is imperative for any nation on earth to progress and develop. Politics today control and dominate every aspect of human life. The legal philosophy of Islamic law aims at promoting and protecting public welfare and the public interest. Today to promote and protect public interest, good governance is imperative. The Muslim world suffers from a lack of good political leadership in almost all Muslim countries. Muslim suffering all over the world, has been attributed to a lack of good political leadership. The proponents of *Maqasid al-shariah* perspective argue that the politics and political engagement to reform Muslim politics should be an integral part of Islamic legal philosophy. Today, the Muslim community faces existential threats in many Muslim countries. To protect and save Muslim communities from such existential threats, the Muslim world needs good political leadership with high standards of morality and ethics. For this, reason, political reformation has become one of the higher objectives of Islamic legal philosophy.

The proponents of *Maqāsid al-Shari'ah* application do not want to replace divine laws with any man- made legal system or legislation rather they want to maintain Islamic ethos and social values in applying *Maqāsid al-Shari'ah* doctrines. This is in case there is no textual evidence or legal precedent for any new social phenomenon that Muslim community faces. They contend that wherever there is no clear-cut textual evidence for any social problems in the Muslim community Muslim jurists should find solutions in line with the general philosophy of Islamic

law. This does not mean that they should totally ignore divine laws and divine directives. The critiques of *Maqāsid al-Shari'ah* approach argue that the proponents of *Maqāsid al-Shari'ah* are trying to dilute the divine nature of Islamic law and yet, this is not the intention of the proponents of *Maqāsid al-Shari'ah* rather they want to guide and find solutions for the ever-increasing problems of the Muslim community in accordance with Islamic law. The proponents of the immutable nature of divine law argue that "human thought, unaided, cannot discern the true values and standards of conduct, such knowledge can only be attained though divine revelation, and acts are good or evil exclusively because God has attributed this quality to them. In the Islamic concept, law precedes and molds society, to its eternal validity dictates the structure of state and society which must ideally conform (Coulson.1964, p85). The proponents of the immutable nature of Islamic law argue that the legal doctrines of *Maqasid al-Shariah* and their related legal devices are not a potential juristic tool to derive laws in Islam. For this reason, any codes of law other than divine laws are not considered as laws by the proponents of the immutability of Islamic law. This may be the reason why law hardly exists in the legal terminologies of the countries that apply Islamic law such as Saudi Arabia. The term *Nizam* (regulations) are used instead of law. Most of these regulations are nothing but pure law in every sense. (Mawil Izzi Dien, 1998, P1) In this way, the proponents of the immutable nature of Islamic law make such a distinctive distinction between man-made laws and divine laws. They do not accept that law evolves at different times and different places with different socio-political conditions. In contrast to this argument, the history of Islamic law tells us that evolution has indeed taken place in many aspects of Islamic law. M. Izzi Dien argues that "Islamic law has been constantly developing from the beginning until the present day, even during the period of the prophet; some form of evolution took place due to the passage of time due to a change in circumstance as in the case of emigration from Mecca to Medina. The law in Islam is an organic phenomenon that evolves and changes just like humans do public interest (*maslaha)* is a fundamental feature of this phenomenon that has contributed to its evolution as it stands as one of the dynamic sources of *adillat al-ahkam (*Izzi Dien.P2).

Proponents of the evolution of Islamic law argue that it is flexible and adaptable in all places and at all ages and the Quran and Prophetic traditions have set out some general principles of Islamic law *(al-Kulliyat al-Shariah*) but not specific solutions for the ever-increasing problems of humanity. They argued that the Quran contained 6666 verses and only 500 verses deal with legal matters and prophetic traditions are limited in number. These primary sources do not contain solutions for all the problems of humanity until the Day of Judgment rather it is the duty of Islamic legal juristic consultants and intellectuals to find solutions for ever-increasing human problems considering the general principles of Quran and Prophetic traditions. Classical Islamic jurists have developed some legal theories and mechanism to find solutions for the ever-increasing problems and among these legal concepts the legal doctrines of *Maqasid al-Shariah and maslaha* are considered prominent legal concepts. It is an overriding monitoring legal mechanism that monitors and gauges the function of Islamic law. Islamic law should be working in accordance with eternal religious, legal and moral social values that are universal to all Muslims. The corpus of Islamic rules we have today are the accumulation of 1400 years of Islamic legal heritage and the legal interpretation of earlier times, and different social contexts and values. Today, to choose some appropriate legal ideas, opinions from 1400 years of Islamic legacy we should have not only a thorough knowledge of Islamic sciences, but also a thorough knowledge of the general philosophy of Islamic law.

1) A thorough knowledge of traditional Islamic sciences -
2) A thorough knowledge of the general philosophy of Islamic law in all its dimensions.
3) A thorough knowledge of modern social sciences that have brought rapid social changes in human life is paramount. Knowledge of the modern world we are living in today with all its science is imperative for Muslim jurists. These include a deep

knowledge of sciences, economy, politics, psychology, sociology, technology, diplomacy and all other human sciences. Otherwise, they would not be able to relate Islamic law to the modern world.

The Muslim world produces millions of Muslim clerics, theologians, imams and Muslim jurists and has millions of Arabic colleges, Islamic institutes, and Islamic universities. From the famous Islamic seminary, Al-Azhar university to the recently established Islamic universities in Malaysia and Pakistan which have produced thousands of Muslim clerics. Most of the graduates find it hard to relate traditional Islamic teaching to the modern world. Some of these graduates do not have any idea about the world we live in. They find it hard to relate what they learn in these universities to the modern world. Moreover, they express some classical legal opinions that are irrelevant today or they come up with some classical ideas that are not appropriate at all. No doubt Islamic theological ideas are universal in nature, but classical legal opinion is not universal, but are subject to change. We have already highlighted some of the short comings of classical Islamic thought. Today, Muslim jurists ought to have skills and talents to decide what aspects of classical Islamic legal thought are appropriate and what are not appropriate. So, Muslim jurists have a huge intellectual responsibility to do this task of systemization and harmonization and to select legal opinions that are suitable for this modern world. Some Muslim scholars have already suggested that this type of systemization is urgently needed in Hadith literature too to select valid hadith literature from forgeries. I think that the same systemization is critically needed in Islamic jurisprudence too and this should be done with the collective intellectual effort of all Muslim scholars across the globe. Unfortunately, this is a difficult task to do given the polarised nature of the Muslim community today and moreover the Muslim clerics are brought up with different ideological standards. That makes this unification process of Islamic law and Hadith literature a more demanding task in the Muslim world today. Another suggestion has been made to address the legal reformation. Some Muslim scholars suggest that the Muslim world needs to review the process of enrolling students to Islamic seminaries across the globe. They argue that in the formative period of Islamic history and in many epochs of classical Islamic history, Muslim communities used to send the best brains to Islamic seminaries. Indeed, some of the most popular Muslim scientists in physics, chemistry, astrology and many areas of the physical sciences were Islamic scholars during the period of medieval Islamic history. During early Islamic history, the Muslim community had a habit of sending the brightest students into the field of Islamic education. More importantly, they did not on their own choice. The early generations of Islam, students due to their firm faith in the religion gave their priority to the faith over any other worldly affairs. They sacrificed the best of their manpower for the religion of Islam. Yet, today, that trend has dramatically changed, and the less able, and less intellectually capable students are enrolled into Islamic studies across the globe. As a result, the Muslim world does not produce capable Islamic scholars who can address modern challenges in this complicated world. This has been going on for many centuries since the thirtieth century.

We have millions of Muslim clerics, and jurists yet, they are not capable of critically analysing the challenges of the modern Muslim world. There is a huge knowledge disparity between Muslim Islamic scholars and the secularly educated class of Muslim intellectuals. Therefore, the Muslim world is suffering from some sort of intellectual crisis in Islamic education. Some people blame western countries for this, they argue that more than 500 years of colonization was one of the main causes of the underdevelopment of Muslim communities in education. They argue that colonial powers created some of their educational systems in Muslim countries. This, they claim greatly affected religious education too. I do not agree with this apologetic explanation. Colonization had some negative impact on the politics, economics and education of many Muslim countries but, to say that colonization is the main cause of Muslim backwardness in education is not convincing at all. I would argue that it is not right to

blame others for the failure of Muslim education. The Muslim community had their own sociological, religious, political, historical, and psychological reasons for the underdevelopment of education of Muslim communities. Countries like India, Malaysia and many other far eastern countries were once colonised and yet, today they have made rapid progress in education. Countries like japan, Taiwan, and Singapore do not have as many natural resources as some Muslim countries have and yet they have managed to make dramatic progress in education. I think the Muslim political leadership inherited some poor political practices from the formative period of Islam. Dictatorship, nepotism and feudalism are still conquering many parts of the Muslim world. Despite oil and gas discoveries in many Muslim countries, these countries are still lagging in education. Moreover, empirical and experimental studies rarely take place in the Muslim world. Political incorrectness, intellectual laziness, and socio-religious factors have indeed, contributed to underdevelopment of the Muslim community in education. In religious education all what the Muslim students do is to copy from classical Islamic scholarship or venerate classical legal thought and follow blindly opinions of classical Islamic scholarship without analysing the meaning, rationale, appropriacy of classical legal opinions in a modern context. In short, I think it is essential that the Muslim world reviews and re-structures the entire system of religious education in Muslim countries.

A dramatic change is urgently needed in the field of Muslim education. The general philosophy of Islamic law can be used as a legal mechanism to connect Islamic tradition with the social changes that have taken place in the fields of education, science and technology. For this, the Muslim world needs experts both in Islamic studies and in modern science. Given the extent of the knowledge explosion and growing specialization in the fields of education and knowledge, it is impossible for any Muslim jurist to master both Islamic and modern social sciences, Moreover, no longer can we depend on individual religious legal opinions on many modern scientific and technological subject matters. Collective intellectual efforts are needed to study the problems and community issues of the contemporary Muslim world. I think that religious scholars should work hand in hand with health professionals, scientists, sociologists, psychologists, economists, social care workers and other professionals to study all the contemporary issues that affect the Muslim community today. Muslim clerics who pass religious verdicts on some health and medical ethical issues may not be able do so without shared knowledge. Likewise, the religious verdicts of Muslim clerics would not always be appropriate in many fields without shared knowledge and experience in other fields. Muslim jurists give different religious verdicts on various contemporary socio-economic, political and religious issues due to this disparity in their knowledge. Some of them may have a deep knowledge of religious education and yet, they do not have shared knowledge in modern science. Therefore, they are not able to give appropriate religious verdicts on all issues. I think that the Muslim world needs collective teams of Muslim scholars in other fields to give religious verdicts. Without such collective intellectual efforts, it would not be appropriate now to give religious verdicts. Today, constructionist theorists in education call for a new method of learning as education is so complicated. Educationalists always encourage team work and the collective learning process. It is assumed that when many academics collectively engage in any project the learning outcomes would be more rigorous and more valid. Likewise, Muslim clerics should work collaboratively with experts in other fields so that they could come up with some appropriate religious verdicts. However, the Muslim world has not yet devised any collective system of the learning process. Moreover, in this complicated world, individual religious verdicts are no longer always viable for some medical, health, economic or political issues. Consultative and collective religious verdicts are more appropriate today than at any time in the past. The dramatic changes have taken place in the field of education. More importantly teaching and learning have been revolutionised yet, education systems in many Muslim countries are still primitive especially where religious seminaries follow the traditional

methods of teaching. The modern educational theories of Dewey, Piaget and Vygotsky are still are introduced into Muslim Educational institutes. The educational theories of these educationalists have revolutionised teaching and learning in western countries and, but Muslim religious institutes have no idea about all these developments in the field of education. One of the core principles of the general philosophy of the Islamic law is to deal with the enrichment of the human intellect and human intellectual faculties. Yet, today, Muslim institutes do not know how to enhance human faculties. There is no harm in adopting the western model of learning to enhance the knowledge of Muslim student communities. The educational theories and concepts of above-mentioned educationalists have made dramatic progress in the field of education and yet, the Muslim institutes of learning do not have any idea about these changes in the field of education. The general philosophy of Islamic law as part of its program to enhance human intellect should incorporate these new educational theories into the field of Islamic education.

The general philosophy of Islamic law has some vibrant legal principles and yet, when it comes to law and order we see chaos in many Muslim countries. It can be argued that Islamic law is not a set of civil laws rather it is a set of divine laws. Therefore, it should work more profoundly and more effectively in Muslim countries. We could argue that religious people commit less crime than non-religious people and argue that the crime rate is lower in Muslim countries than in many non- Muslim countries. I do not agree with this argument. some Muslim countries like Saudi and the Gulf countries force the Muslim population to follow some religious laws and many Muslims follow religious law for fear of punishment under an extreme duress. I do not think that the general philosophy of Islamic law goes along with this system of forcing people to follow a set of religious laws. People should have the freedom to practice their religion out of firm conviction with sincerity and devotion. What we see today in most of the Gulf countries is not the true application of Islamic law rather the people are forced by governments to follow sets of religious laws. Compelling people to follow any set of laws goes against the spirit of the general philosophy of Islamic law. Moreover, the religious and secular law dichotomy has created wrong perceptions about the application of the law in many parts of the Muslim world. Maintaining law and order is very important in any civil society. The rule of law is proscribed to maintain peace and protect people in society. The judiciary system and law enforcement agents were created to keep law and order but the Muslim attitude in following civic laws is little bit different. Most Muslims think that following religious law is different from following the rules of laws (man-made regulations and laws that are created through parliament or the judiciary). They think that there is a big difference between divine laws and man-made laws. Some of them disregard man-made laws and think that following them has no religious rewards or merits and yet, they strongly believe that following religious laws is a religious duty and not following them is a grave sin. When religious laws are broken it is regarded as a sin in Islam. For instance, a religious Muslim may regard drinking alcohol as a sin, but he would not bother about breaking any civil law. For him divine laws are more important than civil laws. For instance, abiding by transport laws, environmental laws, or any other type of civic law is sometime regarded as less important than abiding by divine law. Muslims firmly believe that God see what crime you commit, and you will be made to answer for all the crimes you have committed on earth on the Day of judgment. I think that this religious and secular law dichotomy has created some negative impressions in the minds of people in Muslim countries.

This firm conviction in religious law is, indeed, a crime prevention method in Islam. We could argue that this mechanism works well in many parts of the Muslim world. Indeed, the crime rate is comparatively less in Muslim countries than in non-Muslim countries. This mechanism deters criminals and protects society and Islamic law has some strong deterrent mechanisms that are more powerful than western laws. In western legal systems we have

different types of punishment such as fines, probation, community service, prison sentences, penalty payments, and corporal punishment. We have capital punishment too in some countries. Yet, Islamic law enforces more strict and severe punishments than western law sanctions. The punishment systems in Islamic law have stronger deterrent mechanisms. I do not agree with the way Islamic law is applied today in many parts of the Muslim world and yet, I would argue that Islamic law has a stronger deterrent system: firstly, Islamic law is instituted to protect the public interest and the emphasis is not on law rather on the reformation of individuals and society. That is why Islamic law emphasises spiritualism, and piety before the application of law. Almost all Quranic verses that speak about laws and their application connect the law with faith and Islam puts more emphasis on faith. According to the general philosophy of Islamic law, faith gets priority over law in Islam in the order of hierarchy. The implication of this hierarchical order is that if the faith is firmly established in the minds and hearts of people, the application of law would not be difficult. The rules of law will be needed only for those who break laws, but it is a firm conviction in Islam that if someone is spiritually trained, he or she would not commit any crime because they would have the feeling that God is always watching them. if someone has got that feeling they would not dare to do any crime or any sin. But those who do not have firm faith or those who are not trained in spiritualism may dare to carry out all sorts of sins and crimes.

This is what the general philosophy of Islamic law wants to do in Muslim communities. It aims at enhancing spiritualism and enriching them with a strong sense of faith so that crimes and sins could be avoided. To some extent this is true, but one could argue how far Muslim communities succeeded in this method of spiritual reformation. We could argue that in some Muslim countries lower crimes are committed but it would be wrong to generalise this statement. Because, today, the most corrupt countries are Muslim countries. People are oppressed, gross injustice are carried out, fraud is widespread, political dictatorship, and all sorts of aggression, extremism and mass killings take place in many parts of the Muslim world so to say that fewer crimes are committed in some Muslim countries would be wrong. The judiciary and law industries are huge enterprises in many western countries but, judiciary and legal systems have not grown that much in many Muslim countries. One could see that neither religious laws nor state laws have been perfectly applied in many Muslim countries today. We are aware that the law and order is perfectly maintained in many western countries yet, what we see in the Muslim world is a chaotic situation in the application of law. People in western countries respect the law and mostly abide by the law but, in many Muslim countries people disregard the law of the land mainly because they think that not following man-made laws is not punishable by Allah. This mentality has created psychological barriers in the application of divine laws and man-made rules of law. As result of this wrong perception we observe that corruption, fraud, bribery, injustice, murder and all sorts of social crimes are taking place in Muslim countries. Nether religious laws nor man-made rules of law work in some areas of Muslim countries. One could say that religious laws work as a deterrent mechanism in many Muslim countries and yet, my question is how great a percentage of Muslims are religious today? To apply the principles of the general philosophy of Islamic law in Muslim countries today, this myth of the dichotomous perception of religious and man-made laws should be removed from the minds of Muslim communities. The general philosophy of Islamic law facilitates the introduction of new rules and regulations on mundane affairs. According to Islamic law, Muslim politicians and judiciary systems are empowered with discretionary legislative powers to enact new laws and regulations. After all, what is the function of law in any society. Simon Askey and Ian McLeod notes that "law regulates social conduct with a view to enabling or at least helping people to live peaceably, in a well-ordered society. In practice, this means that the law must identify the duties and powers of both government and individuals,

as well as enforcing the duties and regulating the exercise of power in both cases". (Simon Askey and Ian McLeod 2014, P2)

Historically speaking many western countries succeeded in maintaining law and order successfully for many centuries. This is due to effective political systems that many western countries inherited from monarchies in liberal democratic systems of government. Take, for instance, how England came out of an absolute monarchy into a dynamic political system. Yet, for the past five hundred years, forward thinking and creativity in the judiciary was stagnant in many Muslim countries. The slow growth in education continued for six centuries until the present. With the agricultural, industrial, scientific, technological, and information revolutions, western countries went through radical changes in the fields of science, technology, agriculture, economy, politics education and many other areas. All this needed legal changes to keep law and order in society in western countries. Legislative bodies such as the chancery, parliament, the judiciary, and law enforcement agents grew rapidly in western countries. These political and legal institutions are still at preliminary stages in many Muslim countries and it might take ages to develop all these institutions. The political systems in many Muslim countries do not allow healthy growth of legal institutions and because of political incorrectness, many legal theories of Islamic law are not applied.

It can be argued that the Muslim world goes through some period of dark ages in its history. Since 14th century, the Muslim has been experiencing stagnation in creative thinking and rational enquiry. Europe went through nearly 1000 years of dark ages. During that period, people in Europe believed in irrational rituals and engaged in illogical theological and philosophical arguments. But, with the periods of the enlightenment and the renaissance Europe manage to come out of the dark age. It can be argued that the Muslim world today goes through the same experience as that of Europeans did in the dark age. The Muslim world has some of those characteristics of the dark age. In this modern age of information technology and globalization it would not be difficult to educate people in law and order. Today, knowledge transference takes places so quickly between nations, communities and countries. Because, humanity lives in this virtual global village. Therefore, I could convincingly argue that Muslim countries could come out of this socio-economic, political and legal chaos. But this needs political will and political correctness and above all, long-term developmental planning strategies. It can be convincingly argued that the Muslim world does not suffer from a shortage of ideas and ideals. The general philosophy of Islamic law is rich with many brilliant ideas and principles. Yet, those ideas and legal principles are not put into application. We do not find the practical application of the ideals of Islamic law in many Muslim countries and they remain as theoretical and philosophical ideas. Neither the policy makers nor politicians give practical application to these Islamic values in Muslim countries. Most ideals enshrined in the general philosophy of Islamic law are put into practice in many western countries. It has been claimed that some western countries are more Islamic in the application of Islamic social values than many Muslim countries. In a recent article, sheikh Abdulla ibn Bayah says that the Muslim world is sick today and it is going through one of its most difficult times in its 1400 years of history and yet, he says that Muslim scholars should leave the political leadership of the Muslim community in the hands of politicians.

There is no doubt sheikh Abdulla ibn Bayah is one of the best Islamic legal theorists in the modern world and yet, I disagree with him on this point. Contrary to this, I would argue that today the Muslim world suffers due to the irresponsibility and ineptitude of the Muslim political leadership. Historically speaking, the Muslim world has been suffering from leadership crises since the formative period of Islam.In fact, out of four caliphs three were murdered in Islamic history. sheikh Abdulla ibn Bayah argues that politics and international relations are a somewhat complicated subject today and Muslim scholars do not understand them well. It is true that today to understand politics, Muslim scholars need extra skills in

geopolitics and political theories. I would argue that the political leaders of the Muslim world do not thoroughly understand modern politics and political theories. Otherwise, we would not see political chaos in the Muslim world. Political leaders work for their personal interest at the expense of the public interest so, there is no justice or equality in many Muslim countries. There is no any proper election process in many Muslim countries and no democratic principles. Countries like Japan, |China, Malaysia and Singapore do not have natural resources as many Muslim countries do and yet, they have managed to do well in their economies and development programs because of good political leadership. Today, good political leadership is imperative for development and progress. There is nothing wrong with the Muslim public in many Muslim countries and more than 40% of the population in many Muslim countries are youth. They are energetic and dynamic with huge human potential. To apply and implement the ideals of the general philosophy of Islamic law the Muslim world needs some good political leaders. The principles of the general philosophy of Islamic law are nothing but some political, economic, social, educational and religious development strategic mechanisms that aim to develop Muslim countries.

It is through good political leadership that Muslim countries could apply and implement these ideals. I think Muslim political reformation should be the priority of Muslim countries today as political mismanagement, incorrectness, and ineptitude leadership have done greater damage to the Muslim world than anything else. Therefore, it is the duty of intellectual communities in the Muslim world to take some concrete steps to reform politics of the Muslim world. Unless the Muslim world does this, all discussion on the general philosophy of Islamic law will remain theoretical and philosophical without any enough practical implication. There is no need to appease the contemporary political leadership of the Muslim world rather we should make some objective criticism about the political incorrectness of the Muslim political leaders today. For the last 1400 centuries the Muslim world has failed to create any meaningful system to question the political leadership about their duties and responsibilities. In many Muslim countries political leaders are immune from the rule of law.

There is no any system to bring them to public enquiries and there is no separation executive power from judiciary in many Muslim countries. Muslim politicians enjoy excessive executive power in politics and they have abused the vested power upon them by the public. so, it is time that the Muslim world engaged in political reformation. Today, the national and international interest of countries are intermingled. Developed countries with their economic might and veto power in the UN security council control many third world countries. International organizations such as the UN, the world bank, the IMF and many other regional or international organizations are controlled by some developed countries. so, to protect the national interest of developed countries these international organizations have been used and misused by some rich countries which have Veto power. Muslim countries cannot carry out their national economic, political and educational policies freely without the interference of these developed countries. This is another important fact as to why Muslim countries cannot put the ideals of the general philosophy of Islamic law into practice in many Muslim countries. I would argue that some external political interference directly and indirectly has slowed down the process of development in many Muslim countries. Today, in this modern world of science and technology, political and democratic reformation in the Muslim world is not an impossible task. Unfortunately, the tree of democracy did not grow in the Muslim world in a natural way. Some politicians in the Muslim world and outside the Muslim world manipulated the growth of democracy. The notion of democracy, human rights, human dignity, justice and equality have been used for some political objectives in many Muslim countries today. Political reform in Muslim countries is not an impossible task but the Muslim countries need some good political leaders with new vision and mission. That are what Muslim countries need today to apply the ideals of the general philosophy of Islamic law.

Take China as example of development and progress. It does not have western model of democracy and human rights and yet, today china is the second largest economy and it is expected by 2030, it would overtake US to become the number one economy in the world. Graham Allision notes "|For Americans, democracy is the only just from of government: Authorities derive their legitimacy from the consent of the government. This is not the prevailing view in China, where it is common to believe that the government earns, or losses political legitimacy based on its performance" (Graham Allision, 2017, p84). It is all about competency of the leadership, hardworking ethics of public and honesty of leaders that make difference not always democracy according to Chinese political experience. In 1949 when the Chinese community party took power it is reported that "China was mired in civil war, dismembered by foreign aggression, (and) average life expectancy at that time was 41 years. Today, (China) is the second largest economy in the world an industrial powerhouse, and its people live in increasing prosperity" (Ibid. p84). It is reported that once one of the formers chinse leaders described the western talk of "human rights, freedom, democracy, is designed to only safeguard the interest of the strong, rich communities, which take advantage of their strength to bully weak countries, and which pursue hegemony and practice power politics". This is exactly true that when it comes to many Muslim countries. In the name of democracy, western countries invaded Iraq and many Muslim countries and yet, today many Muslim countries are in utter disarray. There are no democratic values or human rights in many Muslim countries despite the fact western countries wanted to implant their own version of democracy and human rights in the Muslim world. Western concepts of democracy and human rights are not universal principles rather they are designed to protect and promote the national interest of western countries not the universal interest of the humanity.

Today, mankind has more human right commissions, judiciaries, and legal systems than any time in human history. So many national and international law commissions are created to protect humanity from slavery, injustice and aggression and yet, today more genocides, more human right violation and more injustice are done than any time in human history. The UN human right commission, the International criminal court and many other regional and international human right commissions are set up to prevent aggression and injustice and yet, today more crimes and more human right violation are committed. For instance, in 1990s we witnessed Rwanda and Bosnian genocides. More than one million people were killed in these two genocides and yet, all these human rights commission and so called the democratic countries did not do nothing to stop these genocides. Recently, one million innocent people are chased out of Rakhine state of Burma and yet, all these commissions could not do anything to stop this human right violation. Moreover, for the last 70 years people of Palestine have been suffering yet, these human right commissions could not do anything to stop the aggression. All this tells us that so-called democracy and human rights are used to protect rights and human dignity of some wealthy nation at the expense of weak and poor in humanity. Therefore, these western ideals of human rights and democratic values are not always compatible with Islamic concept of quality and human values. Islamic law promotes unconditional justice among humanity. Islamic law demands to treat equally with unconditional justice. In Islam the notion of justice is unconditional to all. Islam demands to do justice even the plaintiff is your enemy. All what we see today in international politics is some rich countries exploit the legal loopholes to punish weak countries. Palestine is a classic example for this gross miscarriage of justice.

Moreover, the notion of equality and justice is a myth in many western countries. Many western countries have developed the best legal court system than rest of the world. Legal systems and judiciaries in the western world are far better than rest of the world. The separation of judiciary from executive power is one the best characteristics of western legal tradition. No politician can interfere with the legal and judiciary system of the country. This is indeed, a

unique feature of legal system in the western legal tradition and yet, it can be argued that legal stratagems are widely used in the western legal tradition than any other legal system. Take for instance, financial companies, insurance companies, gambling companies, banks and mortgage companies and many other private companies all use legal stratagems to exploit yet, the legal system and political establishment always support these companies as they are the financial pillars of these nations. It is reported that 10% of population in western countries own the 80% of national wealth. so, called supper rich control the economy of these countries. The notion of equality and fairness in wealth distribution and equal opportunities is a myth in these countries and yet, the welfare and social security system in these countries meet the basic needs and necessities of people. one of the fundamental principles of the general philosophy of Islamic law is that the basic needs and necessities of public should be provided by the government in Muslim countries. The example of the Caliph Omer is cited in support of this argument and yet, political leaders of Islamic world do not have the sense of social responsibilities and commitment to help and support the public rather they are only interested in their power. That is why many Muslim countries despite of all natural and human resource suffers today.

All what the Muslim world needs is to choose honest political leaders who work for the interest of the country and its people. Today, people work hard in many Muslim countries and yet, the political leaders use public wealth and public recourses for their own benefits rather than for the benefit of the public. Theoretically speaking Islam spoke about human rights and democratic values long before western countries come up these ideas. But the Muslim world has failed to give practical application to these democratic values and rights. This is due to the despotic ruling system that many Muslim countries inherited from the medieval political system. All what the Muslim world need is a good political reformation based on the ideals and principles of the general philosophy of Islamic law. The principles and ideas of the general philosophy of Islamic law are universal principles and people could go wrong, but these ideals will never go wrong. The welfare and public interest of the Muslim community is the central theme of the Islamic politics. The Qur'an does not directly address to any form of political authority or government. Rather it addresses directly to humanity. It is the welfare of people is most important not the personal interest of any political leaders or rulers in Islamic politics. (A. Raisuni. pp9-29). That is why the emphasis is given for the needs and welfare of people rather than to the political establishment. The rulers are like trustees and they are entrusted to work for the public. They draw their authorities from public. So, they should work for people. yet, what we see in the Muslim world is the opposite to this Qur'anic teaching. The Muslim rulers behave like kings and queens. They put their personal interest above public interest. They misuse the power entrusted upon them by the public. yet, today, many western countries apply this Islamic political theory in the politics. The rulers in many western countries respect the public opinions in politics. if the public decide to elect someone to power or remove someone from power, the politicians do not go against the wishes of people at all. This is nothing but Islamic political value. Yet, today, the Muslim political leaders do not adhere to this Islamic political ideal. That is why we see this political mess in many Muslim countries.

Part 2

Chapter 1: A short profile of al- Shātibī: (720-790/1388).

A short profile of **al**-Imām al- Shātibī is given here to understand his legal thoughts in a historical context. This short profile of al- Shātibī will give us a comprehensive picture of his upbringing, his childhood life, educational training, family background, the historical setting and the social background in which this legal architect was born and brought up. Like many Islamic scholars, al- Shātibī went through many trials and testing times in his life. It was reported that he was born blind, but it was also reported that he became blind at some point in his life. He was not born blind and yet, sometime in his life something happened to his eyes and he became blind. He was blessed with exceptional skills and talents and with divine grace and mercy he excelled in his scholarship and contribution to Islamic legal thought. He was born in the last era of Muslim history in Spain. With many socio-political and economic hardships, he managed to make a great contribution to Islamic legal thought. It could be argued that the Spanish socio-economic and religious background would have influenced his religious thought in Islamic law: His legal verdicts and his legal doctrines suggest that he had been greatly influenced by the legal school of Imam Malik. Yet, he did not limit himself to any legal school in his interpretation. Rather he adapted an integrated legal mechanism incorporating all legal schools in his interpretation. It could be argued that he was not only a legal scholar in Islamic legal methodology, but he was an Islamic reformist as well. His reformative ideas included theological, intellectual and religious renewal and regeneration. His books and writing tell us he had a comprehensive project to reform Islamic thought and legal schools. He fought against all forms of religious innovation and political corruption.

a) The primary source materials for the study of al-Imām al-Shātibī's life:

Although al-Shātibī is regarded as a pre-modern Islamic scholar, the primary materials for the bibliographical study of his life are very meagre. Al-Shātibī was a contemporary scholar of Ibn Khaldun (d.784/1382) yet Ibn Khaldun did not mention him in any of his works. It was argued that al-Shātibī did not get on well with Ibn Khaldun. al-Shātibī disagreed with Ibn Khaldun on some political affairs of the time. Ibn Khaldun had been supporting the political elites of his time and yet, al-Shātibī did not go behind the politicians seeking any material favours. This may be the reason why Ibn Khaldun did not mention the name of al-Shātibī in his historical and biographical writing. Another contemporary scholar of al-Shātibī was Ibn Farhun (d. 799/1396) who compiled *al-Dibāj al-Mudhhab fi ma'rifat a'yan 'ulama' al-madhahab*: a biographical compendium of *Māliki* scholars and narrators of *Hadith*. Ibn Farhun notes the biographies of nearly 630 scholars of the *Māliki* School of legal thought, yet he did not mention al-Shātibī. Khalid Masud provides a possible explanation for such exclusion of al-Shātibī's biography from the writing of these scholars. According to Masud's assumption it might be that al- Shātibī had not gained such popularity by the time Ibn Khaldun and Ibn Farhūn wrote their works and his monumental work of al-muwāfaqāt had not yet been written. (Masud. K. p.96). This assumption can be supported by our reference to Ibn Farhun's introduction to *Dibāj* in which he emphatically notes that only the biographies of the most famous and eminent scholars of the *Māliki* School of legal thought were included in his *Dibāj* because of their scholastic contribution. (Ibn Farhun, p.2).

However, he further notes that he did include some of his contemporary scholars in his work for their popularity and fame. Hence, one can assume that al-Shātibī was not well recognised by all by that time. It can be also said that those days travelling from one place to another was a daunting task and information did not spread as quickly as we see today. For this reason, it could be argued that Ibn Khaldun and Ibn Farhūn did not have opportunities to

know more about al-Shātibī. It could have been the political condition of Muslim Spain in the 13th century which prevented them from collecting information about al-Imam al-Shātibī. Moreover, it could be contended that imam al- al-Shātibī's intellectual contribution was recognised only after his death. The disagreement between al-Imam al-Shātibī and Ibn Khaldun may be one more factor as to why Ibn Khaldun excluded al-Shātibī in his biographical writing.It is also noted that one more contemporary scholar of his time was Imam Lisanul-Din al- Khateeb (d.776) who compiled a biographical compendium of Grananda Muslim scholars and yet, he did not mention the name of al-Imam al-Shātibī. Why did he not write his name? Was it a deliberate omission or mistake? (Abdul Noor Bazza. (2014) P.48). Had Historians of his time forgotten to take notes of this great Imam's contribution for Islamic legal thought? It was a bewildering question to many modern Islamic scholars. Many people have questioned this issue while writing about al-Imam al-Shātibī. It is said that the al- Imam al-Shātibī's biography and his contribution have been ignored by these historians. Why was this done? According to Abdul Noor Baza it was due to academic resentment between contemporary scholars of his time. A. N. Bazz notes that there is no other logical reason why these biographers omitted this great Imam's name. (A. N. Baza (2014) P.49). yet, Hamaadi al-Ubaidi comes up with another type of interpretation for this omission of al-Imam al-Shātibīs name from their biographical books. Hammaadi al-Ubaidi notes that al-Imam al-Shātibī was an Islamic reformist. He fought against all sorts of corruption and mystical practices. He did not expect any help or favours from the Spanish Sultans of the time rather he distanced and dissociated himself from the Muslim rulers of Spain. Yet, Ibn Khaldun and Lisanul Din al-Khateeb had been influenced by luxury life style of a court yard of rulers of their time and they had been seeking favour and the assistance of the Rulers of Spain. Whereas, al-Shātibī had renounced all sorts of luxuries of life and its enjoyment rather he had been living a simple life: a simple life as a poor religious man. (Hammadi al-Ubaidi.1992. p88).

Abū Ajfān notes that one of al-Shātibī's students Abū Abdulla al-Majari (d.862A.H) gives a brief account of al-Shātibī's life in his *barnamadj al majari*(Abū Ajfān',p.26). His biography would have been a forgotten history had not his student Abū Abdulla al-Majari recorded it. However, nearly two hundred years after al-Shātibī's death, a thorough biographical history of al- Shātibī's life was for the first time written by Ahmed Bābā al-Tanbūkni (d.1036/1626). By this time, al-Shātibī's contribution should have been well recognised by most Islamic scholars of Andalusia. Hence, Ahmed Bābā's work has been a major source of information for the biographical study of al-Shātibī's life. One wonders why for such a long time after the death of al-Shātibī no one ventured to study al-Shātibī's life until Ahmed Bābā wrote a short profile of him. Moreover, why even after Ahmed Bābā's study of al-Shātibī's life no scholar endeavoured to study al-Shātibī's life until Mohamed Abduh drew the attention of modern Islamic Scholars to al-Shātibī's work. One possibility may be that historically speaking since the time of al-Shātibī, *Taqlid* dominated the entire Islamic world. Hence, all intellectual endeavours were confined within the boundaries of the *madhahibs* focusing commentaries and annotations of the respective *Madhhab.* Not only were there monumental works of al-Shātibī, during this time, were ignored but the entire Islamic legal thought went through a period of stagnation. Creative legal thinking ceased to be during this time in Islamic history. Beside Ahmed Bābā's work, al-Wansarishis's *fatāwā* collection contains some of al-Shātibī's *fatāwā,* which in many ways manifested al-Shātibī's legal thought. Al-Wansarishi's f*atāwā* is another primary source material for the study of al-Shātibī's life. Moreover, we could understand his intellectual legacy from his works. More interestingly, al-Shātibī made some correspondence with his contemporary legal scholars; collections of such correspondence should help us to understand al-Shātibī's thought more cohesively. In addition to all the above-mentioned materials, there are ample secondary source materials available on al-Shātibī's works. Most of them were written in the last half

of the twentieth century. In this respect more importantly, Khalid Masud's study on the life and thought of al-Shātibī, Ahmed Raisuni's work on al-Shātibī's legal thought, Wael Hallaq's book on Islamic Legal theories and E.I 1997 edition are very useful secondary materials to study the biographical profile of al-Shātibī. More importantly Abū Ajfān's works on al-Shātibī's contributions include some useful biographical notes. Today there are hundreds of secondary Arabic books on the biography of al-Shātibī's life and yet, I have mentioned only a handful of them for our readership.

b). Al-Shātibī's life and the historical background of his period:

According to Ahmed Bābā al-Shātibī's full name was Abū Ishaq Ibrahim ibn Musa Muhammad *al*-Lahkmi *al*-Shātibī *al*-Gharnāti d.790/1388 (Ahmed Baba, p.46) He was a Māliki *Usūli* scholar. According to Abū Ajfān he was born in 720.AH in Granada and died in 790 AH (Abū Ajfān, *1986* p.32). No historian has given an exact date and place of al-Shātibī's birth in an accurate sense. However, Abū Ajfān endeavours to make such an assumption. It has been a historical mystery as to why his name is attributed to al-Shatiba (jativa or Shativa). He was born in Granada according to one theory, yet he became popular and famous as al-Shātibī. Why was his name was attributed to *Shātibah* (Sativa) instead of *al-Gharnāti*? As far as we know no biographer of al-Shātibī has resolved this historical mystery? One possibility is, that according to Khalid Masud al-Shātibī's ancestors came from *Shātiba.* Hence, he was attributed to *Shātiba*, as was traditional in Arabic culture to name the scholar in relation to his original family background. This does not mean al-Shātibī was born and lived in *Shātiba* anyway, because Muslims were chased out of *Shātiba* in 645/1247 long before al-Shātibī was born. (Masud, K.1977.P.99) Hence, it might be possible that due to religious and communal tension between Muslims and Christians during this period of Muslim Spain, al-Shātibī's ancestors migrated from *Shātibah* and lived in Granada. Such an understanding is possible since neither education sojourns nor travels were reported in al-Shātibīs early life. It may be that *Shātibah* is attributed to his name as his family hailed from the town of *Shātibah* although he was born in Granada. *Shātibah* is a town in the eastern region of Granada and it is reported that many traditional scholars hailed from this town in Spain.

It had been reported that al-Shātibī made four journeys during his life time. It is reported that he travelled into Valencia and *Shātibah*. It is reported that he studied under some scholars from these two cities. Then he intended to go to Hajj and on his way to hajj he visited Alexandria in Egypt. He stayed there for some time teaching and he was asked to take over the leadership of the mosque in there and yet, he refused to take leadership of prayer in mosque saying that he did not want to praise Sultans in his prayer sermons. Then he went to Jerusalem to visit the holy of mosque of al-Aqsa. It appears his journey to Egypt took place in the later part of his life and it is reported that he was died and buried in Egypt. al-Shātibī lived in the middle of the fourteenth century/ eighth century of the Islamic calendar. Historically speaking this period of Muslim Spain had been a period of political and social turmoil and a time of social tension between Muslims and Christians. With the decline of the *Muwahhiīin*, Ibn al-Ahmar founded the dynasty of the Banū Nasr defeating his rival Ibn Hud in 634 A.H. In North Africa Banū Marīn established their rule in Morocco. Often Banū Marīn assisted Banū Nasr to defend against the onslaught of the Christian attack. However, the relationship between these two did not last long and internal conflict continued between them. In the Nasrid dynasty, some victories were gained against attacks of Christians by Muhammad al- Ghani Billah in 755/1354 and Yūsuf II. However, Muslim rule began to collapse in the following periods.

According to some historians, by the middle of thirteen-century Christian forces had already controlled Jativa, Jaen, and Seville. (Harvey. L 1990, P10) Moreover, some historical sources suggest that around 1250, the Christian military and political hegemony were well established in the declining Muslim territory of Spain. Yet there were large enclaves of

Muslims elsewhere in Spanish land until the last expulsion or mass conversion took place in 1492. During the Christian onslaught on Muslims, Granada was a meeting point of refugees from all parts of Spain in the time of al-Shātibī. Because of defeats in many parts of Spain Muslims sought refuge in Cordova to preserve their religion and faith. Consequently. *Ulama'*, traders, and experts in many fields settled down in this city and thus, Granada became a centre of religious, political, and social activities of many sectors of Muslim societies. It had been a political battlefield of various political agents such as *Fātimis, Muwahhid, Murābitūn* and *Nasri* dynasty. On the other hand, there were internal disputes within the political leadership and their supporters and on the other hand; there was the threat from the Christian onslaught on Muslim Spain.Spain in the fourteenth century had been under the political control of the Nasri dynasty.

Although the Nasrid family achieved the establishment of the Nasrid Kingdom of Granada, its survival became a matter of concern for all Spanish Muslims who wished to live under an Islamic polity. However, large numbers of Spanish Muslims fell under the direct political hegemony of Christendom for the first time in Islamic history. Consequently, all sorts of theological and legal problems arose around the legal status of Muslims living under Christian political hegemony. The orthodox view of the Islamic West at that time was cited by al-Wansharishi (d.1508) who maintained that the obligation to emigrate from the land of disbelief would continue right up to Judgment Day. The rationale for such legal opinion is precisely given by al-Wansharishi himself. He argues that intermingling with other religious people and coexisting with them leads to identity crises and erosion of the distinctive feature of the Islamic way of life. " One has to beware of the pervasive effect of their way of life, their language, their dress, their objectionable habits, and the influence on people living with them over a long period of time, as has occurred in the case of the inhabitants of Avila and other places, for they have lost their Arabic, and when the Arabic language dies out, so does devotion to it, and there is a consequential neglect of worship as expressed in words in all its richness and outstanding virtues"(Al-Wansharishi, 1981. Vol 13.p.141)

For all the above-mentioned reasons, living with non-Muslims of ones' own choice is a great sin and migration to Muslim land was an obligation. Such a persuasion to migrate was made to preserve their faith and avoid inferior status (Mudejar status). Under such deteriorating political conditions of Spanish Muslims in the fourteenth -century al-Shātibī was brought up. This socio-religious and political condition would have influenced al-Shātibī's legal thought. For instance, al-Shātibī was once asked about dealing with bartering arms and weapons for the necessities of life such as food and cloth. Al-Shātibī categorically and strictly prohibits any such dealing with non-Muslims even in times of necessity. There is no licence or allowance in terms of need and necessity in this issue. It can be convincingly said that al-Shātibī came to such a conclusion reading the prevailing social and political conditions of his own time. No wonder that the political turmoil of Muslim Spain should have moulded his legal thought. The appropriancy of such a legal opinion to today's socio-political conditions of Muslim societies is another issue. In Muslim Spain, *fuqaha* had a great influence in the political circles of rulers. K. Masud identifies three factors for the political influence of *fuqaha* in Muslim Spain. a) The *fuqaha* of Muslim Spain in Nasri dynasty controlled several lucrative offices of political power. b) Secondly, they controlled seats of learning c) They controlled the movement of free thought. Such were the influences of *fuqaha* in Muslim societies of that time. However, they met strong opposition from *Sūfi* circles of Spain. The primacy of *al-Sharī 'ah* and the authority of *fuqaha* were threatened by the influence of philosophical thought and the dominance of Sufism. Especially these developments had threatened the dominancy of *Mālikism* in Spain. Consequently, the *fuqaha* began to feel the development of *Tasawwuf* as a strong threat to their religious hegemony. Consequently, the philosophical and mystical works of al-Ghazālī were banned by *fuqaha*

and copies of *Ihya* were burnt in public. The *Muwahhid* sultan Mansur expelled Ibn Rushd from Cordova under the insistence of *Māliki fuqaha.*

Despite the opposition of *Māliki* fuqaha, Sufism grew strongly in Muslim Spain in many ways. *Sufi Thariqas, Ribāt,* and *Zāwiyās* were introduced to many parts of Muslim Spain. Even some important works were written defining Sufism in the fourteenth century. The simple life style of *Sufis* based on piety attracted many people into their circles. This rising influence of Sufism was well recognised both, by the rulers and the *fuqaha.* However, total submission to a sheikh was a threat to the religious authority of *fuqaha* and certain practices of Sufis such as *Dhikrs* and *Du'as* were seen as *bid'a*. The Introduction of *bid'a* by Sufis could not be tolerated by *fuqaha* at all. In this trend of celebrating the prophet's birthday was introduced into Spain in the thirteenth century. Such a celebration was fully supported by the rulers. Due to its popularity, the *fuqaha* could not resist this innovative practice. It can be said the *sufis* would have created religious innovation in Muslim Spain. However, historically speaking it can be further argued that Spanish Islam was greatly influenced by Christian traditions. For centuries Muslims and Christians lived in Spain side by side. Therefore, it can be said more convincingly that the pervasive cultural influences of Christian traditions intruded into Muslim traditions. Evidence for such a postulate can be abundantly found in early Spanish Islamic literature. For instance, Spanish Muslims celebrated Christian religious festivals. Indeed, Muslim jurists questioned the validity and the legality of such acts. However, the influence of mystical Sufism and alien traditions was widespread at all levels of the social spectrum of Spanish Muslim life.

Some aspects of religious innovation and the laxity of Muslim Spain were recorded by Ibn Abi Randaqa al-Turtushi520/1126 in his work *Kitāb al-Hawādith wal-bid'a* and by al-Wansharishi (914/1508) in his work *Kitāb al-Mi'yar al-Mu'rib*. (Charles Melville & Ahmed Ubaydli 1992 PP. 28-31). From a socio-economic point of view fourteenth-century Spain underwent a tremendous change, due to the rapid growth in the Mediterranean trade. Italian merchants with business skills and naval leadership dominated Mediterranean trade. At the same time North African interest in Spain had a religious dimension. But also, an economic interest in blocking the development of trade between Granada and the Christian lands of the Western Mediterranean. This struggle for economic interests lies beneath the political and military one. (L. P. Harvey, 1990. P.161). On the other hand, rural agriculture was transformed into business centred cultivation; and thus, the agricultural economy was transformed into commercial and business type economy. Tremendous socio-religious and economic changes occurred during this period of Muslim Spain in all walks of life. Even in this hostile political environment, some degree of social laxity prevailed in the day-to-day life of Grenadian Society of that period. Consequently, all these social changes demanded legal changes. al-Shātibi's legal works address these issues from an Islamic legal perspective. Yet, the intellectual and educational environment of Muslim Spain generally had been promising one. Muslim Spain had been a centre of Islamic civilization and intellectual activities. Two Islamic institutes (al-*Madrasa al-Nasriya* and al-*Jami'ah al-A'lam*) had been famous for spreading Islamic knowledge. These institutes produced many scholars in various fields of education. The governors of Nasrid dynasty had even been renowned for their interest and involvement in literary activities. Islamic reformers and jurists struggled to revive the Islamic civilization even at this point of Muslim decline. al-Shātibī offered his intellectual contribution particularly in the field of Islamic law and theology at this time in Muslim Spain history. The historical, political and social and religious environment of Imam- al-Shātibī was not a conducive one and yet, he managed to make a monumental contribution to Islamic law.

a) **His Teachers:**

His biographers did not mention al-Shātibī's early years of educational training. However, some of his own writings suggest that his educational training had been at the *Al-Madarsa al-*

Nasrīya under some leading scholars of his time. It has been an Islamic tradition to those who want to embark on Islamic studies to begin with the learning of Arabic Language and its grammatical traditions. It appears al-Shātibī was initially trained in Arabic language and in its grammar and moved on to Islamic sciences. His mastery in Arabic language and poems tell us that he was very much fluent in classical Arabic traditions. Abū Ajfān makes a distinction between the teachers of al-Shātibī. He notes that al-Shātibī was trained under the guidance of two groups of teachers. He was trained by some indigenous scholars of Granada and by some others who visited Granada. This suggests that al-Shātibī was neither trained outside Granada nor travelled to learn. It had been a tradition of most of the classical scholars to travel to learn. Nonetheless, his frequent references to other scholars' works outside Granada suggests that he had been greatly influenced by them. Al-Shātibī was trained in Arabic language and grammar by Abu 'Abd Allah Muhammad b. 'Ali al-biri (754/1353) who was regarded as the master of Arabic grammarians of *Shaykh al-Nuhat* in Andalus. (Ahmed Bābā, p.47). It is said that al-Shātibī dictated seven readings of the Qur'an to him. Abū Sai'd ibn Lubb (782) was al-Shātibī's teacher in *fiqh*. He was a teacher in the *al-Madrasa al-Nasīiyah*.

Much of al-Shātibī's training was with this teacher. This teacher greatly influenced al-Shātibī's legal thinking. al-Shātibī describes him as a great teacher. However, different opinions prevailed between him and al-Shātibī on several issues. In addition to these scholars, al-Shātibī mentions the names of many scholars in his books especially in his *ifādāt wal-inshādāt.* The relationship between al-Shātibī and his teachers was not always smooth. There were some occasions o arguments between him and his teachers in their religious discussions. He did not blindly imitate his teachers in his intellectual endeavours. The inherent nature of diversity of opinions (*mura'at al-khilāf*) in the *Māliki* legal tradition has been one of the perplexing issues of al-Shātibī's legal thinking. (Khalid Masud,1977 p.209). Hence, it can be said that the originality of al-Shātibī's legal thought stems from his rational enquiries after lengthy discussions with his teachers. Once al-Shātibī visited his teacher Abū Sa'id b. Lubb, with some friends. On this visit his teacher said to them " I wish to show you some of my basic principles on which I relied in such and such a *fatwā* and I would like to explain my lenient approach in issuing *fatwā'*…. He said, "I wish to persuade you on a basic rule in issuing *fatwā,*' such rule is not to be harsh on the one who comes asking for a *fatwā"*". (Abū Ajfān,, pp. 45-46) al-Shātibī notes that "before this meeting the ambiguity of the statements of Mālik and his companions used to confuse me. God clarified my thought with the light of this discussion." However, al-Shātibī was not entirely convinced by this advice. al-Shātibī strongly believed that the general philosophy of law and its sprit were not well recognised by his contemporaries. He further notes failure of law in meeting the needs and realities of life. Hence, he endeavours to investigate the real nature of law exploring his own legal theory.

d) His students:

Ahmed Bābā mentions the names of his three special students in his *Nayl.* Abū Yahya was one of his students. He was a great scholar and well famous for his bravery. He was killed in one of battles in 813. It is reported that he inherited al-Shātibī's knowledge and methodology. Abu Bakr ibn 'Ashim was another student of al-Shātibī who frequently referred to al-Shātibī's *fatwās*. He was famous for his work "*Tuhfatul Hukkam".* Abū Abdullah al-Bayāni was another student. He used to work as a jurist.

e). Al- Shatibi's works and his career:

al-Shātibī did not copy his teachers in his learning. He created his own legal thought. Although al-Shātibī's legal and religious thoughts were influenced by his teachers, al-Shātibī set out on the pursuit of knowledge with a clarity of thought. In his *Ifādāt* and *Inshādāt* he notes that certain qualifications and characteristics are needed for someone who embarks on the pursuit of knowledge. He notes, "very often we used to listen to our teacher Ali Zawawi saying a descriptive account of scholars. Such description reads that someone

would not be qualified to be a scholar in any branch of knowledge until he possesses four conditions.

1) He who embarks on the pursuit of any branch of *'ilm*, should comprehend all its aspects
2) He should have the skill to articulate about it
3) He should know all related issues of that particular branch of *'ilm*,
4) He should have the skill to clarify any aspect of ambiguity in that particular branch of *'ilm*.

Although al-Shātibī got these ideas from his teachers, it had been an Islamic tradition to define the qualifications and qualities of Islamic scholars in this way. (Haleem. A.1991 Vol. IV, part. I). It appears that this advice was taken by al-Shātibī in his pursuit of knowledge. In his introduction to *al-I'tisām* al-Shātibī expresses how his intellectual career was moulded by such strong advice. For a long time, he was preparing himself for the task of intellectual career in enhancing his qualifications and developing his skills of rational enquiry. In this respect he notes "from the time when the curiosity of my interest was aroused in me for understanding and in the pursuit of knowledge I used to reflect on the rationales, legalities, branches and fundamentals of the *Sharī'ah* …. until God bestowed his mercy and kindness on me and clarified me the meanings of the *Shar'iah*, which had been beyond my knowledge. From this foundation, I was encouraged on this path of learning. God made it easy for me. I began with the fundamental principles of religion (*Usūl al-Dīn)".* It can be said that al-Shātibī's academic career begun with a long-term planning and training. He did it with endurance and patience. He persisted on this career with clarity of thought. His ideas did not emerge from a vacuum; rather his thought surfaced in a direct reaction to the social and legal needs of his society. According to Ahmed Bābā's accounts of al-Shātibī writing, the following books have been preserved.

1) *Sharahū 'ala al-khulāsa fī al-nahw*:

This is a commentary by al-Shātibī on *Alfiyya* by Ibn Mālik. It is in four volumes. Ahmed Bābā describes it as an excellent piece of work on Arabic grammar. (Ahmed Baba P.48). Abū Ajfān notes that this work is preserved in Rabat and it is edited by the Centre for Islamic research at Ummul Qura' University. (Abū Ajfān, *p*.28). According to Ahmed Bābā al-Shātibī mentions the names of two works authored by himself in Arabic grammar in this commentary namely *'Unwan al-Ittifāq fī 'ilm al-Ishtiqāq* and *Usūl al-nahw*. Both have been destroyed.

2). *Kitāb al-Majālis*: This is a commentary on the Chapter of Sale (*buyu*) from Sahih al-Bukhari. Ahmed Bābā notes that this work contains many intellectual treasures. This book is on the application of Islamic Jurisprudence whilst ***al-****Muwāfaqāt* is on Islamic legal theories. The manuscript of *Kitāb al-Majālis* is not available today.

3*) Al-Muwāfaqāt*: This is undoubtedly the masterpiece of al-Shātibī's works. Initially he named it '*Unwan at T'arīf bi Asrāril taqlīf.* However, he changed the title of his work because of his teacher's advice in his dream. (*Al-Muwāfaqāt***,** vol. I, P.17). Ahmed Bābā notes that this work manifests the depth in al-Shātibī's legal thought. (Ahmed Baba, p.48).

4). *Al-I'tisām*: This is another masterpiece of al-Shātibī's work. This book is on Islamic theology. This work is considered an authentic work on the notion of *Bid'a.*

5) *Al-Ifādāt wal-Inshādāt*: This book is a collection of al-Shātibī's discussions and intellectual dialogues with his teachers and contemporaries. This book is a review of useful topics that include theological, legal and Arabic grammatical discussions. This is a genre of *Imla'* materials. This book also includes stories and anecdotes with meaningful discussions.

6). *Fatāwā al-Shātibī*: This is not his book but rather a collection of his Fatwās from al-Wansharishī's *al-m'yār.*

These are some of his books that have been preserved, Moreover, he expressed his ambition to write another book on Sufism. Unfortunately, he could not complete it. He says "if God prolongs my life and facilitates me it is my ambition to write on Sufism. I want to expose the right path of Sufis. I want to tell people what kind Sufism is true. It is the latter

generations that introduced inimical religious innovations into Sufism. They indulged in it without grasping the inner dimensions of *Sharī'ah* … so that the Sufi path becomes another *Shari'ah* different to the *Shari'ah* of the prophet Mohamed. More than that they are not following the *Sunnah*. They follow all kind of innovations. The right path of *salaf* is free from such confusion". (*Al-I'tisām,* vol. I, p.90) However, it is clear that al-Shātibī did not write any book on Sufism. One possibility may be that he died before completing his work or otherwise, he may have included those ideas in his *al-I'tisham.* It was not clear exactly what was al-Shātibī's career. However, some possible speculation can be made in this regard. He may have been an Imām at some mosques. This theory is supported by the very fact that he was very strongly criticised by *sufis* for his attack on popular innovations among his people. This assumption is further sustained by a letter to his friend in which he spoke about his dismissal from his post of khatib. (Wansharishi, vol, xi, p.109). He may have been a *mūfti* at least for some time. Many people sent fatwās asking his religious verdict. He used to reply to them in succinct way. One can therefore, assume he was a *mūfti.* However, we are unable to verify such claims officially. Another assumption suggests that he was a teacher. This last assumption is the most probable one, evidentially attestable by the very fact that he had some students. Among his most important students was Ibn 'Asim who was famous for his *fiqh* compendium and an abridgment of *al-Muwāfaqāt*.

e al-Shātibī 's crusade against innovation *(bid'a*).

During his career al-Shātibī was accused of introducing many heretic ideas by his foes among *Sufis* and some *fuqahā.* These accusations may have been directed to him when he was serving as an Imām. K. Masud suggests that al-Shātibī faced many trials when he was writing his *al-Muwāfaqāt*. Such an assumption is not an appropriate one. Firstly *al-Muwāfaqāt* is a treatise exclusively on his legal theories not on theology. Secondly, he speaks of his trials in the introduction to his theological al-*I'tisām.* It is more logical to say that his treatise on theology was written because of criticisms he faced. He wants to reply to all his critiques in a most convincing way. He depicts his trial in a short poem, which reads, "o my people you put me on trial, but trials are different in nature. You condemn me for repelling wrong rather than praising me for good. My God suffice me in my reason and religion." (Ahmed Bābā, p.49). al-Shātibī was accused of many things.

1) "Occasionally, I was accused of saying that invocation (*du'a*) brings no reward, but I have simply rejected making congregational du'a immediately after the obligatory prayers.

2) On another occasion, I was accused of hating the Companions of the prophet and of following extreme *shi'ism*. Simply, I did not mention the names of righteous caliphs in my Friday sermons, as it was not the tradition of *Salaf.*

3). Sometimes, I was accused of plotting against the rulers for my failure to mention them in my Friday sermons since it was not a tradition of *Salaf.*

4) I was accused of advocating strict adherence and hardship in religion. It was due to my adherence to a well- recognised legal school in the application of religious duties and in my *fatwā,* while they adhere to easiest and convenient traditions and issuing fatwās in accordance to their whims.

5) I was accused of hating *awliyā'* of Allah. It was due to my rejection of religious innovations of *Sufis* contradicting to the *Sunnah.*

6) I was accused of not following *Sunnat wal Jamā'at* for my failure to follow them. They did not know that I was in the righteous *Jamā'at* of the prophet and his companions". (al-Shātibī,, pp.27-8.)

It can be said that al- Shātibī wrote his treatise on *bid'a* in this hostile social environment in order to repel all these unfounded accusations. He may have been compelled to write in response to these allegations. However, it can be noted that al-Shātibī's definition of the notion of *bid'a* is acclaimed and credited as one of the most coherent and comprehensive

definitions of the concept of *bid'a* in the entire history of Islamic scholarship (Rida, R. p.4). al-Shātibī's campaign against innovations generated several enemies from various circles of the social spectrum. His refusal to mention the names of sultans in sermon brought him the antagonism of ruling elites, his opposition to the Sufi way of religious life made him an enemy of Sufis, and at some stage he earned the wrath of *fuqahā* and *Qadis* who held high positions of government offices. (Masud, K. 1977 p. 105). Yet he made a great contribution to Islamic theology articulating his theological theory of religious innovation in way of presentation.

f) Al-Shātibī's dialogue with his contemporaries.

As noted earlier the Granadian society of Muslim Spain underwent rapid changes in all walks of life. These changes demanded legal changes in all aspects. al-Shātibī realised the nature of these changes. He created his legal theories to meet the needs of changing society. In this respect he consulted his teachers and contemporary scholars on many issues that effected Muslim society. His intellectual dialogues were recorded by al-Wansharishi in his collection of *fatāwā* of *Maghrib* scholars. Ahmed Bābā notes that al-Shātibī discussed many issues of religion with several scholars of his time. Raisūni draws our attention to the letters of al-Shātibī with contemporary scholars from Spain and North Africa. According to Ahmed Bābā, al-Shātibī sought clarification for many legal issues from his teachers by writing directly to them. (Ahmed Bābā, p. 48). Among those he wrote to were Abū Abdullah Al-Fashtāli (d.777) (Ibid, *Nayl*, p.265). Ibn 'Arafāt al-Tunisi (d.803) (Ibid, p.274)., and Ibn 'Ubada al-Randi (d. 792) (Ibid, p.279). It can be noticed that frequent reference is made to these scholars in his works especially in his *al-muwāfaqāt* and *al- I 'tisām*. Raisūni notes that al-Shātibī sought the clarification for many issues from a scholar from Fez. Among such issues al-Shātibī happened to discuss with him was the issue of following a spiritual path without a spiritual guide (*Shiekh al-tharīqa*) and the issue of absolute concentration in the prayer. In the first issue Ibn Qāsid al-Qubāb asserts that whoever wishes to follow a mystical path, must have a sheikh to follow. It is not clear whether al-Shātibī was satisfied with this explanation or not. al-Shātibī's concern was not about influences of Sufism on the life of individuals rather he was more concerned about the influence of Sufism in *fiqh* itself. He was concerned about the obligatory nature of Sufi rituals in a legal sense. al-Shātibī failed to treat this issue in detail in his writing. It was his intention to write on the Sufi way of life, but he could not accomplish his work before his death. One can assume that given the importance of the subject matter he might have discussed this in detail had he completed his work. As far as the second issue is concerned, he is more eloquent in his argument.

In the issue of absolute concentration Ibn Qāsim al-Qubāb demands full concentration in that he notes, "If a certain thing preoccupies someone even for second in his prayer, he must free his inner self (*Sirr*) from a such distractive thing by way of getting rid of it, even with an excessive price. al-Shātibī in his dialogue with Ibn Qāsim argues such a demand is beyond human nature. He argues that if an absolute concentration and freeing oneself were demanded universally, it would be against human nature and the obligatory nature of such a thing would demand people to get rid of their properties, wealth, children and families. These things are objects of distraction. Moreover, he argues sometimes that an abject poverty itself can be an object of preoccupation for many people in cases where there is no way of supporting big families. Such explanation was highly appreciated by his correspondent (*al-Muwāfaqāt*, p.72-73). al-Shātibī in this issue maintains that such a demand goes against the very philosophy of Islamic law i.e. the intentions of lawgiver who in every sense does not demand hardship from his servant. Thus, al-Shātibī convincingly argues no hardship beyond human nature is not demanded by the legislation. The issue of disagreement within the *Māliki* legal traditions has been a confounding issue in al-Shātibī's legal thinking. He wrote for many scholars of Spain and North Africa demanding some clarification on the

issue of legal disagreement in *Māliki fiqh.* Some *Māliki* jurists maintained the principles of *Mura'at al Khilāf.* The notion of this principle sustains the validity of all existing of conflicting opinions of jurists. They further argue these types of disagreement are very similar to those of *mutashabihāt* (equivocal statements). On the hand, on the authority of al-Ghazālī, ibn Rushd and al-Qarāfi some mystically trained jurists say it is a religious duty to avoid the difference of opinion in the matters of practice. Otherwise, following conflicting opinions would mislead many peoples into choosing more convenient and lenient opinions. In this issue of diversity of legal opinions al-Shātibī consulted many of his contemporary scholars. But he was not fully convinced by their replies. al-Shātibī firmly argues against the notion of maintaining the conflicting legal opinions. For him it is a false assumption. He strongly believed there is an inherent unity in the origins of *al-Shaīi'ah as* all the rules of *al-Shaīi'ah* originate from one root. Hence, he argues that the textual evidences cannot contradict each other. One implication that one gets from al-Shātibī's argument is that the truth is one, therefore, legal solutions for each legal case should be one not many. As for as al-Shātibī's argument about the nature of inherent unity in the origin of *al-Shaīi'ah* . We can agree with him. However, this does not mean that there is no room for legal interpretation. Given the nature of the sources of Islamic law and the different levels of human intellectual skills, it can be said that the disagreement is natural in Islamic law. What al-Shātibī means by unity of *al-Shaīi'ah* is its unity in the intention of legislation. (Masud, K 1977. p.216)

j) His death: Although different opinions prevailed about exact date of his birth, his biographers unanimously noted date of his death. According to Ahmed Bābā his death occurred on 790 A H. (Ahmed Bābā, p. 49)

Chapter 2: The structure of *maqāsid* in al-Shātibī's writings:

It is generally argued by modern Islamic scholars that al-Shātibī revitalised the doctrines of *maqāsid* in his legal compendium of *Kitāb al-Muwāfaqāt*. Such a claim is made not only by the modern Islamic scholars, but al-Shātibī himself speaks about the innovative nature of his legal thought in his introduction to *Kitāb al-Muwāfaqāt.* He claims that his legal doctrines of *maqāsid* are not traditional, but rather an inventive one. He challenges that should anyone doubt the innovative and unconventional aspect of his legal treatise, and then they must meticulously examine its contents. It is true that no one has compiled a legal treatise in this paradigm in Islamic law. one cannot underestimate the format, structure, value and the benefits of this legal treatise. This work is a creative legal work; nonetheless, its contents are abstracted and derived from the scriptural texts of the Qur'an and the Sunnah and its structure and format are drawn with the ideas of pious predecessors and gifted scholars (al-Shātibī, p.18). What he says is that his legal theory is a new legal theory and yet, it is based on the primary source of Islam. al-Shātibī proposes a radical renewal of juridical methodology in his *Muwāfaqāt*. Instead of following the traditional method of abstracting laws from within the boundaries of the *Madhhabs*, he introduces a new dexterity into the legal theories of Islamic law, elaborating what was subsequently designated the end goal of Islamic legislation: the universal principles and rules (*kulliyyāt*) of law. How far is it convincing to argue that al-Shātibī replaced the conventional *Usūl* with the science of *Maqāsid al-Shari'ah*? How far is it convincing to argue that al-Shātibī's legal thought is an innovative one? How does al-Shātibī incorporate social and legal change in his legal theories? To what extent does al-Shātibī's legal thought influence the legal notions of modern scholarship? What are the modern implications of the doctrines of *maqāsid* in modern time?

I will try to answer these questions in this part of our book. The primary objective of this section of our book is to understand the inner dimensions, as well as the broader implications and meanings of the general philosophy of the Islamic law with reference to the works of al-Shātibī. However, researching in this field begs an important question. That is, what is the significance of learning the general philosophy of the Islamic law in general and

particularly, in the works of al-Shātibī? In other words, why should one learn the end goals and higher objectives behind the Islamic law in relation to the works of al-Shātibī? Is it not enough to know the rules of Islamic law in its abstract form as stipulated in the divine texts? An effort is made to elucidate and clarify such questions. al- Shātibī's treatise of *al-Muwāfaqāt* on the legal philosophy of Islamic law is regarded by most Islamic reformists as one of the masterpieces of research in the history of Islamic law. The treatise of *Kitāb al-Muwāfaqāt* consists of five principal parts. The first part of his treatise gives a general introduction to the preliminaries of the principles of Jurisprudence. The second part discusses rulings of *al-Shaīi'ah* in terms of five strands of law i.e. five legal norms with more focus and emphasis on the permissible acts *(Mubāh*). Unlike other legal theorists he devotes an entire section of this part to discuss the legal type of permissible acts. One logical reason for this might be that the scopes and boundaries of the permissible sphere of *al-Shaī'ah* are unrestricted. This part demands an extensive analysis. The third part of his treatise occupies one fourth of *al-Muwāfaqāt,* which deals extensively with the concept of *maqāsid* and its related arguments. This part constitutes main theme of his treatise. The fourth section analyses the sources of Islamic law. The fifth section refers to issues in relation to *ijtihād* and *taqlīd*. However, a deep scrutiny of his work reveals that the main theme and core argument of this monumental work revolves around very concept of *maqāsid* and its related issues. Before he goes on to give further analysis of all these aspects, he gives a precise introduction to the subject of *maqāsid.*

It is a surprise to note that the general introductory remarks are somewhat meagre given the significance and prominence of this feature in his scholastic treatise. Again, he claims such an introduction is theological *(Kalāmiyyah)* and free from controversial arguments *(Musallama)*. Hence, he argues the framework of the *al-Sharī'ah* is instituted for the promotion and protection of the interest of humans in this life and in the hereafter. (*Ibid* vol. 2, P.4). The core theme of his argument on the issue of *maqāsid* permeates around this point he precisely outlines in this introduction. al-Shātibī asserts that this aim of *al-Sharī'ah* is indisputable as he perceives it as being " *Musallama".* It seems rather strange that he should proffer the view that this matter is indisputable. One possible answer may be that the fact the *al-Sharī'ah* is instituted for the protection and promotion of human interests is not controversial among most jurists according to him. Or otherwise, he strongly believes that it is an indisputable issue for him. However, this remains a disputed point within the legal history of Islamic law; there is no such unanimity among the jurists. Several jurists argued against the notion that institution of the *al-Sharī'ah* is founded based on pure benefit, i.e. the benefit of mankind. Nonetheless, al-Shātibī categorically contends that the *al-Sharī'ah* is founded based on benefits. However, al-Shātibī's argument on this issue is totally different from that of the Hanbalite jurist Najm ad- din at-Tūfi (716/1316 A.D). Tūfi's main argument is that consideration a for human welfare is the necessary objective of Islam or the very pivot of its purpose. (*Qutub maqsūd al- sharī'*), thus, according to him consideration for human welfare in legal matters takes precedence over any other legal consideration. Hence, *maslaha* has priority over all traditional legal sources of Islamic law i.e. the Qur'an. *Sunnah*, *Ijmā* 'and other sources. He strongly argues that these considerations are maintained only on the sphere of social interaction (*mu'malāt and 'adā.*(*Abdullah, 'Al- 'Āmiri, (1982),.P.58).* However, he elaborates how such priority is considered. He asserts that the strongest of legal sources are the Qur'an and consensus but argues that these legal sources either agree on considering *maslaha* or they conflict with it. If these sources agree no conflict arises. However, if the legal sources go against the norms of *maslaha*, then consideration for *maslaha* takes priory over the other two by an explanation and specification of them rather than suspending and denying their validity, just, as the Sunnah takes priory over the Qur'an, by way of explaining the latter. (Ibid, p17. Moreover, he maintains that the welfare of humans can be recognised by means of man's own life experience and his own intellect. (Abdulla. Al-'Āmiri, 1982, p.57).

al-Shātibī differs from al- Tūfi's contention on the application of *Maslaha* from two perspectives. Firstly, in al-Shātibī's thesis the primacy and superiority of *naql (Texts) over (aql)* is always maintained throughout his treatise. He argues that if reason could depart one step from the limits of revelation, there would not be any meaning for explicit limits of legislator. The occurrence of such a thing is not only impossible in the sphere of *Sharī'ah but* also null and void. Moreover, if reason were to depart one step from the limits of God, logically, it would lead to exceed all the limitations of God. (*al-Shatibi*,vo1.2,p.61) Therefore, the primacy of texts should be maintained in all circumstances. The functions of reason cannot exceed the limits of God. The logical conclusion of such a firm stand is that it is God who considers what is *maslaha* for mankind not what man conceives within the limits of his faculties. Even in case reason and revelation are in conflict in matters of *Sharī'ah* the primacy should be given to the authority of *naql*. The authority of *aql* is bound to follow the authority of *naql*. (Ibid, vol.4, p.76). The main question here is does al-Shātibī limit the functions of reason at all? Presumably, it can be said that he limits the functions of reason within the limits of revelation. If the human reason goes along with the guidance of revelation, the function of human reason is allowed.

The special feature of his argument on the issue of conciliation between reason and revelation is that he always correlates the functions of reason within the boundaries of revelation. His views on this issue are like that of Ash'arite's views in one way or another, but not entirely. Unlike the *Mu'tazilites* who maintain greater freedom of thought in religious matters ie who endeavour to indulge in theological arguments the *Ash'rites* maintained that human intellectual capabilities cannot penetrate understanding God's actions and the rationale behinds them. Therefore, humans cannot understand good and evil just through the medium of reason alone. *(al- 'aql la tuhassin wala tuqubbih).* According to *al- Shātibī* this principle is profoundly established in *Ash'arite* theology. (Ibid, p.61). On the one hand he seems to curb and correlate the functions of reason with the limitations of revelation in line with the *Ash'arites* argument, on the other, he demands a rational enquiry into understanding God's command and prohibitions. The comprehensive understanding of al- Shātibī's legal theories depend on resolving this apparent conflict. An interesting aspect of this issue is that al- Shātibī gives complete primacy to the text over reason yet, strictly adheres to the opinions of early jurists and his teachers. Still he produces an innovative methodological legal work of his own. This manifests his intellectual skills and capabilities. However, he does not belong to any of the schools of legal interpretation such as *Zahirite, Mu'tazlite or 'Ash'arite.*

Since he gives primacy to texts over reason, he was accused of following the *Zāhirites* schools of legal interpretation. (Thurki, A.1990,Vol.8.P.242). This is basically not a solid argument at all. The rational interpretation of legal texts permeates his writings. He does not subscribe to a literal interpretation of legal thought at all, rather he makes a staunch criticism of *Zāhirites* for three reasons a) For their strict adherence to the apparent and literary meaning of texts without any further explanation of them. b) Due to non-acceptance of a rational approach to the text c). Consequently, they completely rejected the use of *Qiyās* in legal matters, contrary to the general view, al- Shātibī makes a specific criticism of Ibn Hazm for his non- adherence to any legal school or scholars. (Ibid, p.67). Therefore, for al- Shātibī to give primacy to the text over reason had another important purpose argues Thurki that is to establish his own theory of *maqāsid* on the primacy of the texts. al- Shātibī argues that to attain the high position of *Mujtahid* one must have two specific intellectual qualities. The first one is to have a comprehensive understanding of the higher purposes of *Shari'ah.* The Second quality is to have an aptitude and ability to deduce the rules of *Shari'ah* based on his comprehension of *maqāsid.* This prerequisite for *Ijtihād* is introduced by al-Shātibī to establish the strong correlation between the dynamic functional natures of *Ijtihād* and the legal theory of *maqaisd.* To our knowledge, this is the first time in the history of Islamic legal thought that such

conditions were included to attain the rank of *Mujtahid.* None of the classical jurists before al-Shātibī establishes such a relationship and affinity between the theory of *maqāsid* and *ijtihād.* However, this relationship between the theory of *maqaisd* and *Ijtihād* is further elaborated by al-Shātibī in that he confines the comprehension of *maqāsid* and process of deducing rules of law with another clause. He firmly advocates, "that the interest and welfare are endorsed as sanctioned and instituted by the legislator not as conceived by human intellect. Otherwise, the nature of interest would be change dramatically. (*al-Muwāfaqāt*,,Vol.2,p.131). It apparently clear that al-Shātibī maintains the primacy of the texts to introduce a theory of *maqāsid* not as assumed to follow literal legal tradition.

Compared to *Mu'tazilite* and *'Ash'arite* views on the relationship between reason and revelation, al- Shātibī subscribes to neither view on this particular issue. Rather he follows a middle path between these two extreme trends. He constantly encourages us to exert our intellectual capability to understand the underlying inner purpose of rules of Islamic law. He strongly criticises Fakhr al-Dīn Al- Rāzi's stand on this issue. Rāzi consistently argued that neither the rulings of God nor his acts are subject to rationalisation at all. Rāzi and most 'Ash'arites contend that the legal cause embodied in the rulings of law are nothing but mere signs *('alamat*). These signs are just indicating the legal rules and do not influence them at all. Thus, the *hikma* behind the rules of law are incomprehensible to human intellect. Contrary to this perception, the *Mu'tazilite*s unanimously agreed that rulings of God could be rationalised in relation to the welfare of His servants. (Ibid, vol,11, p.4). For them good and evil are comprehensible to the human intellect. al-Shātibī agrees that one could comprehend good and bad with his intellect to some extent, but he does agree entirely with the *al-Mu'tazilites* in this issue. In between these contrasting trends; al- Shātibī argues that there was a compelling need to establish the rationale behind the rulings of *Sharī'ah* in the field of *Usūl al- fiqh.* Hence, al- Shātibī categorically argues that *Sharī'ah* is instituted for the very benefit of servants. He further asserts that collective textual examination of the texts profoundly supports his argument on this. Neither Razi nor others can question the validity of such method.

It is al-Shātibī's firm conviction that this issue is indisputable as far as he is concerned. He categorically emphasises that "it is a well-known fact that the institution of the *Sharī'ah* is founded to sustain the well-being of mankind. Hence, all obligations are laid down either to remove harm or to enhance the interests."(Ibid, vol, 11, p.7). Thus, al-Shātibī neither subscribes to al-*Mu'atazilite* theology nor contributes to *al-Asharite* legal thought, but rather he endeavours to relate the Islamic law to the reality of life. Therefore, the primary purpose of Islamic law according to Al-Shātibī's perception is to secure and maximise the *maslaha* public interests of mankind in this and the next world and eliminate all inimical things *mafāsid.* al-Shātibī further argues that it is the very nature of the Islamic revelation to identify Such *maslaha* and *mafsada* of human beings. Consequently al-Shātibī continues to argue that the nature of Islamic legal speculation is founded on realising those *masālih* and *mafāsid.* While much of *al Mu'tazilite* and *al-Asharite* legal and ethical speculation had been on the theological and philosophical issues, al-Shātibī's legal speculation is a pragmatic approach to the reality of life. For him the theological arguments between these two contrasting theological schools in identifying *maslaha* and *mafsada* were irrelevant. The special feature of al-Shātibī's legal speculation is that divine revelation is regarded as a main source of values. However, having received these values, he makes extensive use of reason in conceptualising and applying them to the reality of life. In this respect, one can argue that al-Shātibī's legal speculation is more influenced by Mālik's principles of *Ra'y* than that of *Mu'tazilite* and-*Ash'arite* theology.

However, it is strange that al-Shātibī does not bring the argument of Ibn Hazm in to this debate. Indeed, al-Shātibī makes a criticism of Ibn Hazm for his non- adherence to

any legal schools however, while he makes strong condemnation of Rāzi on the issue of *ta'līl,* al-Shātibī fails to make any comments on Ibn Hazm's stand on this issue. Those arguments of Ibn Hazm deserve more intellectual treatment than those of Rāzi for his strong adherence to literalism. It is Ibn Hazm who vehemently argues against the notion of the rationalization of rules of *Sharī'ah.* He devotes an entire chapter of his treatise (*Ihk*ām *fi Usūl al-ahkām)* to condemning any constructive attempt to rationalise the rules of *Sharī'ah.* Ibn Hazm's condemnation is very strong in that he notes "any attempt to make use of *Qiyās* and *Ta'lil* in religion is, indeed, a work of *Ibīs.* It is against the very foundation of religion and we are free form such endeavour" (*al-Ihkām*, vol. 8, P.113.) it is peculiar that al- Shātibī in his monumental treatise on maqāsid fails to elucidate the argument of Ibn Hazm to highlight the indisputable nature of his theory of *maqāsid.* It is more relevant to brief the argument of Ibn Hazm in this juncture of our discussion. Ibn Hazm outlines his contention in his *Ihkām.* The core of his argument is based on his understanding and interpretation of certain verses of the Qur'an. The verse 23: 21 reads, "He will not be questioned as to that which he does, but they will be questioned". Ibn Hazm argues that difference between God and man is that no one questions him for his actions. The wisdom and rationale behind the acts of God are not always understandable by the human intellect. The causal factors do not apply to his actions.

It is beyond human comprehension to penetrate God's wisdom unless He reveals it. Whoever asks such questioned regarding God's acts, indeed, he is gone astray (Ibid, Vol, 8.103-102). He further quotes from the Qur'an in support of his argument. For instance, He refers to the verse (16:85) that reads "Doer of what he will". In a theological sense such argument is unquestionable in relation to God's power and actions but to relate such argument to God's rulings (*Ahkam),* which, are already revealed in Qur'an for implementation is questionable. Abū Zahrā makes some conciliation between the arguments of Ibn Hazm. He notes that one must make a distinction between act of Allah and his *Ahkām*. It is in relation to his acts we are not allowed to question him about the cause and wisdom behind them. However, it does not mean that we are strictly barred from understanding the wisdom behind his rulings in the *Sharī'ah,* but such a task of understanding is much demanded. (Abū Zahra, 1977, p.437). However, one can argue that still his rulings are parts of his acts. Hence, Abū Zahrā's distinction does not entirely clear the ambiguity in these arguments. Raisūni somewhat clears this confusion. If someone questions God for any act or ruling as an objection, denial or to make mockery of his rulings or actions, it is indeed totally unacceptable as argued by Ibn Hazm. However, if the question is for the sake of clarification and seeking such a question is encouraged and acceptable. (Raisūni1981.P248-25).

Hence, Raisūni emphatically argues that seeking the wisdom and rationale of each rule of *Sharī'ah* is not only allowed but also strongly encouraged in order to expand our understanding (*Fiq*hof *Sharī'ah)* and its higher purposes. Without such a task of understanding, the realization of *maslaha* and its application will not be viable and there would not be any further development in the studies of *Sharī'ah.* (Ibid, pp,.253-4). Thus, Raisūni argues al- Shātibī laid the foundation for understanding the entire corpus of *Sharī'ah* on a rational ground. However, al-Shātibī on the issue of (*ta'līl)* divides the entire corpus of *Sharī'ah* into two spheres. The sphere of *Ibādāt* and *'Adāt.* Like all other Usūlists al-Shātibī agrees that the sphere of *Ibādāt* is not subject to the processes of rationalisation or causation (*ta'lil).* In this issue al-Shātibī establishes a concrete principle, which reads, "The basic principle in the sphere of *Ibādāt* is to maintain strict adherence to textual limitations, whereas rational inquiry is maintained in the sphere of *'Adāt*." (al-Shātibī, vol.2. p.228). He further elaborates that all rationales behind the rulings in the sphere of *Ibādāt* are incomprehensible for the human intellect. For instance, prayers are prescribed in certain forms and certain times we do not know why they are prescribed like that. Likewise, fasting and pilgrimage have been prescribed at a certain time of year with certain traditions. we do not know why they are

prescribed at these months? A certain form of supplication is demanded in a certain place and time, these and all other forms of worship are dictates of God. They are not subjected to rational investigation.

What is demanded in this sphere is mere submission and obedience to the dictates of the texts. Such compliance with the order of God is a primary purpose of Islamic law in this sphere. General textual examination or textual induction (*al-Istiqrā'*) supports such a conclusion. Secondly, there is no single textual evidence to support such rational inquiry beyond the limitation of legislator in the sphere of *Ibādāt.* Thus, human involvement in this sphere is not allowed at all. Such involvement in previous revelation paved the way for alterations." (Ibid, vol, 2. pp.228-31).Whereas, the sphere of *'Adāt* is open to rational examination. First and foremost is the textual examination al-*Istiqrā'* which shows the inherent nature of the interest and welfare of society in the sphere of *'Adāt.* The Islamic legislation in this sphere always exclusively maintains the public interests. Moreover, rules change with the change in public interest. The general meanings of the texts are maintained in this sphere of legislation, not strict adherence to the texts. Imām Mālik comprehensively encouraged the use of *maslaha* and *Istihsān* from this perspective. From another prospective, al-Shātibī distinguishes between the spheres of *Ibādāt* and *'Adāt* in that the former refers to "Rights of God" and the latter adduces "Rights of servants". While interpersonal affairs are subject to human rational enquiries the relationships between God and man are maintained by strict textual dictates. However, al- Kailāni questions the comprehensiveness of al-Shātibī's argument to not seek the rationale in the sphere of *Ibādāt.* Contrary to al-Shātibī's view on this issue al Kailāni argues that there are a large number of verses of Qur'an in the sphere of *Ibādāt,* which convey the rationale, and wisdom for legislation of such *Ibādāt* Therefore, he argues whether it is the sphere of *Ibādāt* or the sphere of '*Adāt,* the basic principle should be upheld to maintain the rationale behind each rule and to correlate them with public interest and welfare. Hence, he argues that strict adherence to the texts should be maintained in any aspects of *Ibādāt* in which wisdom and rationale is incomprehensible by human intellect. (al-Kailani, A. R. pp. 242-3). Consequently, the most probable conclusion according to al-Kailāni is that in most cases the wisdom in the spheres of *Ibādāt* are incomprehensible whereas in the sphere of *'Adāt* they are mostly comprehensible. I do not think that al-Shātibī*'s* view is different from this view he too would agree that some rational of devotional rituals are compensable.

As mentioned earlier according to al-Shātibī maintaining the interests of servants in this world and the hereafter is the primary purpose of *Sharī'ah*. al-Shātibīs methodology in establishing the general purpose of the *Sharī'ah* is not confined to identifying the rationales (*'ilal*) alone, rather he undertakes a collective and overall textual examination (*Istiqrâ*) that determines and identifies the general interests of servants. It is true that the primary purposes of *Sharī'ah* are more explicit in divine commands and prohibitions. An explicit textual command conveys an objective of the *Sharī'ah* in an affirmative sense and an explicit textual prohibition conveys an objective of the *Sharī'ah* in a negative sense in that such injunctions aim at averting the inimical things. This is a direct and simple methodology to comprehend the *Maqāsid al- Sharī'ah* with textual reading. However, al-Shātibī contends that one should not confine only to the texts in identifying *al-maqāsid* rather one should consider the texts and the underlying rationales behind them. For al-Shātibī *al-Istiqrā'* as a method of the induction, is the most effective methodology in identifying *al-maqāsid.* This methodology is sound in that a collective and general textual reference is made to one theme or subject to make a decisive conclusion. For instance, it is generally agreed that *al- Sharī'ah* is instituted for the benefits of Mankind. Such a notion has no direct textual evidence. Yet, such a notion is maintained from overall reading of various texts. Such inductive method in identifying *al maqāsid* is most effect method according to al Shātibi.The entire corpus of the *Sharī'ah* is instated for the

protection and promotion of five universal necessities (*darūrīyyāt al- khams)* precisely one's religion, life, offspring, wealth, and intellect. These general concepts are contrived from many evidences from the Qur'an and the Sunnah. Any specific decisive evidence does not prove these universals from the Qur'an or Sunnah, rather a quantity of evidences in support of these universals maintains the nature of absolute certainty leaving no room for conjecture (Ibid, vol. 3, P.4). Once five fundamental preliminaries are recognized law must be interpreted according to them. This holistic examination or inducting method of the texts reveals that the primary purpose of the *Sharī'ah* is for the protection and promotion of the interests of Mankind. This holistic inductive legal methodology acutely manifests the uniqueness of al-Shātibī's legal theories. It can be argued that al-Shātibī was greatly influenced by his predecessors in his legal theories. Indeed, a cursory examination of his works reveals frequent references to legal scholars such as al-Juwayni, al-Ghazālī, Abū Bakr Ibn al 'Arabi, al- Rāzi, Qarāfi, and Ibn abd Salām. However, most frequent reference is made to al-Ghazālī. W. Hallaq in his recent study on Islamic legal theories concludes that the structure of *maqāsid* as such (*darūrīyāt, hajiyāt,* and *tahsīnīyāt*) in al-Shātibī's thesis were taken from al-Ghazali's classification. However, al-Ghazālī discusses the category of religion separately.

The conceptual ideas of the theme of *maqāsid* apparently prevailed in the writings of predecessors of al-Ghazālī, and yet, it was al-Ghazālī who made a classification in order of priorities. al-Shātibī's thesis of *maqāsid* evidently shaped by the ideas of al-Ghāzalī. On one hand, he makes a strong criticism of Ibn Hazm for his literal legal interpretation, and Razi for his rigid legal interpretation, on the other, he praises the contribution of al-Ghāzalī and makes him as an authority in the legal matters. Recurrent reference to al-Ghāzalī's works in his writings supports such postulate. However, the originality of al-Shātibī's thesis is discernible in his holistic approach to the subject of *Maqāsid*. Rather than copying al-Ghāzalī's ideas he r renovates the fundamental ideas of *maqāsid.* His monumental work on legal theories testifies the originality of his legal theory. The similarities are found in thoughts of al-Juwaini and al-Shātibī in that both argued that commission and omission of legal norms of permissible (*Mubāh)* acts are legitimate. There is no reward or punishment for commission or omission of such acts. This is in relation to the individual's performance, however, permissible acts collectively become necessary acts or obligatory acts. For instance, business transaction is a permissible act as far as individuals are concerned. However, as a collective endeavour of trade and business enterprises become a necessity and reaches the rank of *darūrīyyāt.* This view was strongly expressed in the writings of al-Juwaini More comprehensive analysis of permissible acts was very acutely and extensively done by al-Shātibī in his *Muwāfaqāt,* which provides a new dimension for the understanding of legal norms of permissible acts. Moreover, it can be further argued that al-Shātibī's legal theories gained impetus from the process of rationalization, which began with the works of al- Bāji, Ibn 'Aqeel, Ibn Rushd and other jurists. The culmination of such a process of rationalization is more convincing when we consider al-Shātibī's inductive methodology. However, A. Raisūni consistently argues that al-Shātibī's legal thought was greatly influenced by the *Māliki* legal school. The evidence he provides for such a hypothesis is that the pioneer of this school upheld the use of *maslaha* as an independent source of Islamic law. Consideration for use of legal devices such as *maslaha, Istihsān,* and related issues are given more weight in this school. Moreover, thoughts of this school dominated Muslim Spain for centuries before al-Shātibī. The similarities between legal theories of this school and that of al-Shātibī are more convincing. (Raisūni, pp224-234). However, it can categorically be said that study of *maqāsid* as a comprehensive science or concept was developed by al-Shātibī. Although ideas of *maqāsid* were widespread in the writing of his predecessors, it was he who shaped these ideas into a fully-fledged concept in a more logical and systematic way.

The structure of *maqāsid*

al-Shātibī analyses the concept of *maqāsid* and its related argument in depth in the third part of the *Kitāb al-muwāfaqāt*.

1 ***)Qasd al-Shâri':*** The purpose of the legislator (the general philosophy of law). ***a)*** *Jalb al-masālih and dar al-mafāsid:* ***b)*** Making the general philosophy of law comprehensible to human intellect. (*Wadu'hā lil ifhām);the* primary purpose is protect man's interest in both life. ***c)*** His intention in instituting law is to ensure the obligatory nature of law i.e. to demand (*taklif)* in accordance with the human nature and capabilities ***d)*** His intention in instituting such law is to include all his subjects under its command so as man does not follow his own predilections, desires and wishes alone.	**2** **(*Qasd al-Mukallaf*):** the intention of His subjects

Diagram: 10 al-Shātibī's structure of *maqāsid.*

1. ***Qasd al- Sharī':*** **The intention of the legislator.**

This part of al-Shātibī's scheme of *maqāsid* deals with the certain fundamental questions in relation to the purpose of God in revealing His law such as why God revealed His *Sharī'ah.* Is it for the benefit of God or for the His subjects? What is the nature of His law? What are the prerequisites and qualifications to understand the divine law? This part of al-Shātibī's thesis on the scope and structure of *maqāsid* is divided into four categories dealing with these questions.

a) *Jalb al-masālih and dar al-mafāsid: the primary purpose of law is to protect man's interest in both lives.*

According to al-Shātibī the primary purpose of the legislator in instituting the *Sharī'ah* is to preserve certain goals in the life of man. Firstly, as already noted to protect the religious and worldly interest of man. Moreover al-Shātibī is more convinced that this original purpose of God in revealing law is coherently elucidated in the following basic principle of "Jalb *al-masālih and dar al-mafāsid"* which means promoting the interests of man and protecting from all inimical. According to al-Shātibī's theory of *maqāsid* this is the fundamental and primary purpose of God in revealing and instituting the *Sharī'ah.* Hence, promoting and protecting the interest of man has been the central theme of al-Shātibī's study of *maqāsid.* All obligations and duties are introduced for such purpose. Thus, according to al-Shātibī it is man's interests that gain a prominent place in the divine law. it is not intention of God in revealing his law to promote and protect His own interests. For the simple fact that God Al-Mighty is not in need of human favour. The logical conclusion of such argument is that by obeying to the divine commands it is the human interests are maintained not the divine interests. al-Shātibī upholds that it is very important to maintain the end goals prescribed in the divine law for the promotion and protection of the human interests. These goals are pertinent to this life and the hereafter.

1) ***Darūrīyāt*:** The theory of *Darūrīyāt* is created by the classical jurist through inductive reading into different texts of the Holy Quran and Hadith. Yet, many Muslim jurists have alluded into the following texts to point out into the collective components of these five elements of the general philosophy of Islamic law.

Say, 'Come! I will tell you what your Lord has really forbidden you. Do not ascribe anything as a partner to Him; be good to your parents; do not kill your children in fear of poverty'– We will provide for you and for them– 'stay well away from committing obscenities, whether openly or in secret; do not take the life God has made sacred, except by right. This is

what He commands you to do perhaps you will use your reason. Stay well away from the property of orphans, except with the best [intentions], until they come of age; give full measure and weight, according to justice'– We do not burden any soul with more than it can bear–'when you speak, be just, even if it concerns a relative; keep any promises you make in God's name. This is what He commands you to do, so that you may take heed' (Qur'an 9: 151-153) "Avoid the seven destroyers." They said: "O Allah's Messenger! And what are they?" He replied: "Committing Shirk with Allah, magic, to kill someone that Allah has prohibited – except for just cause – consuming Riba (Usury), consuming the wealth or property of an orphan, to flee on the day of the march (to battle), and to slander the chaste, unaware, believing women." (al-Bukhari 6857). Following the footsteps of his predecessors al-Shātibī provides the same classification to the different hierarchical orders of the general philosophy of Islamic law. Like all other classical jurists, al-Shātibī makes classification of these goals into three. Namely, *darūrīyāt,* (lit. necessities) that which are the essentials and fundamental necessities of life; *hājīyyāt,* (lit. needs) the complementary secondary needs of life; and *tahsīniyāt* that improve standard of living. Though I agree that this classification could be applied to all ages and all times, the implication and connotation of these terminologies may differ generations to generations. The necessities, basic needs and life facilities of our time may dramatically differ from that of his time. The social structure of our time is totally different from his time. This does not mean that the general structure of the general philosophy of Islamic law is totally meaningless today in this modern time, rather, the implication of these taxonomies should differ today. Of course, protection of necessities of the general philosophy at individual and collective level is a universal principle and yet, the necessities of modern days are different from medieval times. Today, economic growth, good governance, health and safety, good education, and national security of nations are fundamental necessities for any country in this modern world. Without these necessary components, life would be miserable for people in any country in this modern day. Of course, faith is an important element in the general philosophy of Islamic law and yet, today, to protect the faith we need these other necessary components of the general philosophy of Islamic law. likewise, the needs and facilities of modern day are different today than medieval time. so, merely copying the classical taxonomies of the general philosophy of Islamic law are not always viable today modern day needs of the Muslim communities.

The first element of this *maqāsid* is very important in that full success in this life and the next depends on maintaining this aspect. This presupposes the promotion and protection of certain categories: these are one's religion, life, offspring, wealth, and intellect. Failure to maintain and protect these categories will have far- reaching consequences in this life and the hereafter. All forms of worship such as *al-Salāt, al-Zakāt, al-Siyām,* and *al-Hajj* are laid down for the preservation of these *Darūrīyāt.* He further emphasises that these *maqāsid* are most important because they are a prerequisite to existence: life without these is not only inappropriate but also impossible. Every activity that enhances and improves this part of *maqāsid* is maintained and strengthened by law, and any inimical and detrimental act, which infringe upon these *maqāsid* are summarily challenged. It therefore follows that the rudimentary necessities of life such as eating, sheltering, and clothing clearly aim to preserve life and intellect. Moreover, this is the case about commercial transactions aimed at facilitating human life, preserving and safeguarding properties and, helping to enhance human development He further notes that criminal law (*Jināyāt*) and laws relating to punishment are introduced to safeguard these five universals. al-Shātibī had labelled these five Universals as the general principles of Islamic law (*Kulliyāt*). He further argues that these Universals are upheld within all faiths. However, such a statement is contentious, because it is obvious that there are aspects of Islamic law that have no precedents in the laws of other religions. (*al-shatibi,* Vol. 2, P 7-8). More interestingly, al-Shātibī expands the scope of *maqāsid* to incorporate all the affairs of the human beings in his

scheme of *maqāsid.* This includes the personal matters of the individuals whether religious or otherwise and the public duties of the communities and the political and administrative authorities at large. According to al-Shātibī all-so-called-*Far-Qifāyāt* such as public administrations: these include political, economic, financial, educational, judicial, military, social and religious administrations. According to al-Shātibī any branch and aspect of administration that administrates the affairs and dealings of human life's structure in this world constitutes an important place in his scheme of *maqāsid* if these are in the interest of man and in accordance with the general philosophy of Islamic law. It is his strong conviction that without such administrative systems the human life on earth would be in chaotic and disorganised conditions. Hence, he argues that administrating the affairs of human life on earth should be included in the scheme of *maqāsid* in the interest of man. In addition to this he argues that though, the service in the public administration is an optional duty on the part of Muslims individuals, collectively, such service become an obligatory duty on the part of the Muslim communities at large. If every capable people in the community ignored to provide such service, the entire community would be sinful according to al-Shātibī and the worldly affairs should be maintained with good planning and skilful management. As the entire edifice of Islamic law is instituted in the interests of man, it is one of the most important duties of capable people to administrate the worldly affairs of the people in the interest of people in the most efficient way. (Ibid, Vol. 2, pp.137-140). Here, al-Shātibī speaks not only about the theoretical aspect of *maqāsid* he also discusses about the practical implication of the doctrines of *maqāsid* not as a religious scholar but in his capacity as a skilful administrator. Thus, al-Shātibīs theory of *maqāsid* not only deals with theoretical aspects rather the practical dimensions of *maqāsid* gain a prominent place in his works.

In addition to this, an extraordinary aspect of his theory of *maqāsid* is that he endeavours to explore the inherent relationship between the Maccan and Madinan revelation pertaining to the essential elements of *maqāsid*. That the foundations of the five Universals of the *Sharī'ah* (*al-Usūl al-Kulliyyāt*) namely promotion and protection of one's religion, life, intellect, offspring, and wealth are laid down in Maccan revelation, but their details and further elaborations are given Madinan revelation and in the prophetic Sunnah. (Ibid, Vol. 3, p.33). For instance, al-Shātibī notes that all the fundamentals of faith such as belief in God, the day of judgement and unseen subject matters are revealed in the Maccan revelation and further elaborations are given in the Madinan revelation and in the prophetic Sunnah. Moreover, the divine directive to protect human life was initially revealed in Maccan revelation according to al-Shātibī. He quotes the following verses from the Maccan revelation in support of his argument. The Qur'an reads that "Slay not the life which Allah has made sacred" 6: 151, and "For what sin she was slain" 81:9 and many verses revealed in Macca, which protects human life and dignifies sacredness of life. Al-Shātibī further argues that the wealth and properties of people are protected by Maccan divine regulations. Exploiting the wealth of the weak and orphan, cheating in business deals and transactions, doing injustice to the weak are prohibited for the protection of the wealth. In addition to this the injunction for the prohibition of adultery was revealed in Maccan revelation to protect the off springs. Moreover, al-Shātibī argues that it is true that the divine injunction prohibiting the drinking of alcoholic beverage *shrub-al-khamr* was revealed in Madinan revelation. However, the original notion of protecting human intellect is incorporated in the protection of human life. (Ibid, Vol, 3, pp.33-35). What's more is that according to al-Shātibī the institution of the *Jihād* was prescribed in Madina. al-Shātibī argues that this obligation was an extended element of the doctrine of "Enjoying good and forbidding bad". An obligatory nature of this doctrine was prescribed in Maccan revelation. From this basic doctrine (al-*asl alkulli*), as an extended (*al-Juzī)* Jihād was prescribed under different circumstance step by step (Ibid, Vol, 3, p. 36). What is the significance of al-Shātibī's argument in which he advocates that all the essential

elements of *maqāsid* doctrines are revealed in Macca. The implications one gets from his argument is that the essential elements of *maqāsid* doctrines are the Universal principles of Islamic law. Safeguarding them is as important as the fundamentals of the faith. Moreover, another implication is that meeting basic needs of people in this world, protecting their basic human rights and promoting ideas of social justice are the central theme of *maqāsid* doctrines. Thus, the application of these doctrines according to al-Shātibī is in the interests of man not in the interest of God. In addition to this as far as I know al-Shātibī is the first scholar to address the doctrines of *maqāsid* in relation to the chronological order of revelation signifying the universal principles of *maqāsid*. Thus, he has broadened our understanding to the scope of *maqāsid* doctrines in that we understand the doctrines of *maqāsid* in a holistic approach based on a quantity of Qur'anic verses and the prophetic traditions rather than understanding them based on individual verses of the of the Qur'an and the Sunnah.

a) Preservation of faith: (حفظ الدين).

Traditionally, this term has been translated as preservation of faith. (حفظ الدين). Many classical and modern Islamic scholars use this term as preservation of faith. There is no harm in translating this term in this sense and yet, today, the meaning and implication of this term is wider than just preservation of faith. It could imply all activities that aim at spiritual development, religious education, religious experience and inter religious dialogues to protect and promote peace and harmony thorough religious teaching. It could include religious freedom and right to practice faith and rituals. al-Shātibī argues that the Qur'an and the Sunnah laid the foundation of the faith in Maccan revelation. This is the first and foremost element of the five universal principles of *Sharī'ah*. All obligations and fundamentals of faiths are laid down for the preservation of this element of *maqāsid*. al-Shātibī notes that the different forms of worship such as *al-Salāt, al-Zakāt, al-Siyām,* and *al-Hajj* and all other religious rituals are laid down to enhance religious life of Muslim communities in this world. Moreover, the fundamentals of faith in God, the day of judgement and all other aspects of faith are prescribed in Islam to enhance spiritual life of Muslim communities. Does this protection of faith include all faiths and diversity of faith? al-Shātibī speak about the revealed divine books of old and new testaments. The Qur'an speaks about God it speaks about God of the humanity.

When the Qur'an speaks the mission of all prophets it tells us all the prophets came with one divine message and therefore, the protection of faith is an inclusive term. Moreover, the Qur'an offers religious freedom to the humanity and man is free to express his own religious freedom. He is free either to believe or not to believe. So, Islam protects all faiths. It says that "You have your religion and I have mine (Qur'an: 109:6). Moreover, it demands to give protect for those who seek protection from Non-Muslims. (if any of one of the idolaters should seek your protection, grant it to him so that he may hear the word of God, then take him to a place of safe for him" (Quran; 9: 6). So, it can be argued that Islam clearly welcomes religious pluralism and protect all faith. So, it could be said when we talk about the protection of faith in the general philosophy of Islamic law. It is an inclusive term to include all different faith. The core argument of al-Shātibī is that the more Muslim communities perform religious duties with sincerity the more they enhance their spiritual development. God prescribed religious rites to promote the spirituality of Muslim communities in the world. In short, preservation of religion is enhanced by the principles of *Islām*, *Imān* and *Ihsān*. *(al-Shatibi,* Vol, 4. P.20.).

According to Ibn Tayymiah, man's need to the divine guidance is an indispensable element in life. It is a vital element in human life above every other necessity of life. Without the divine guidance it is most likely that man will not rightly understands the details of what is in the best interest and what is not. He cannot understand this through his reason alone. Without such a guidance man will lead a meaning less life as cattle does.

(Ibn Tayymiah,n.d Vol.14. P.38 and Vol. 19. P.93). al-Shātibī notes that the spiritual need is a basic human need. Man needs drink and food for his physical survival. Likewise, he needs to fulfil his spiritual needs to develop his spiritual development. Otherwise, he will follow his own desire and whims. Allah instituted his laws to protect man from becoming victims of his desires and whims. This is what we notice in human history. when man or woman fail to fulfil his or her spiritual needs, the empty heart is filled with his or her own human desires that take them into self-destruction. Most of the suicide cases we hear every day in the media are nothing but reflection of this emptiness of human hearts from divine guidance and spiritual fulfilment. Traditionally, it has been argued that the institution of jihad is prescribed to protect faith. Yet, one could argue that the religion of Islam gives religious freedom to believe or not and there is no need to wage war to protect religion. above all, there is no compulsion in religion. but this institution is prescribed in Islam as a just war to protect people from aggression and injustice. However, one could argue that the legality of *Jihād* at the expense of life and wealth is prescribed to protect religious freedom. Moreover, most Islamic jurists differ on the legitimacy of punishment for the convert from religion of Islam to any other faiths. The punishment differs from death penalty to discretionary punishment. However, recent studies reveal that the Islamic law applies the discretionary punishment to apostasy. The logic behind punishing the apostate is to protect the society as in case of treason in modern law. (El-Awa', M. p.64) Such a punishment is prescribed to protect the Muslim society from treachery acts Not because, someone converted from Islam into any other faith.

In addition to this, the religion of Islam wages war against all kinds of religious innovations and superstitions. That is to protect religion. Above all prohibition of all kinds of major sins and declaration of severe punishment is in one way or another to protect religion. All the rules and regulations sanctioned by Islamic law in relation to the above-mentioned issues are aimed at preserving religion from any inimical and harmful things. However, the question of religious freedom is debatable in this element of *Maqāsid.* According to al-Shātibī Islam fully maintains the freedom of thought and religious freedom. Hence, man should follow the rules of Islamic law willingly by his own choice as man obeys his God with the freedom of choice not by compulsion. al-Shātibī notes that man obeys to the natural laws of God in this universe willingly or unwillingly and there is no choice for man in obeying the natural laws of this universe. Nevertheless, this is not the case in the sphere of religion, therefore, one of the primary objectives of God in revealing His law is that man should obey and follow religion by his own choice willingly with freedom of thought not by compulsion (*al-Muwāfaqāt*, Vol, 2. Pp.128-129). Moreover, the Qur'an is more evidently argues that "there is no compulsion in religion" (2:256). If there is no compulsion in the religion of Islam, how could one justify the notion of *Jihād* in Islam?

According to most of the classical Islamic jurists the institution of *Jihād* is not prescribed in Islam to declare *Jihād* against the belief and faith of other religious for what they believed in. This is against the very fundamental principle of religious freedom in Islam as there is no compulsion in the religion of Islam. However, what Islamic law prescribes is the defensive fighting against injustice and the struggle in the path of the weak in the society. The classical jurists refer to many Qur'anic verses in support of their arguments (The Qur'ān 22: 39) Therefore, the primary reason for the sanction of fighting in Islam is to protect the feeble in the society and thus, it can be concluded that disbelief *(kufr*) and faith in other religions is not a main cause for the sanction of fighting. Otherwise, the defensive fighting against all sorts of injustice and aggression is allowed in Islam as it is sanctioned in the international law and in the law of any nation. This is a basic right of any human being in this world and Islam also gives such a right to the Muslims. However, the notion of *Jihād* has often been used subjectively due to the misinterpretation and misunderstanding of the certain verses of the Qur'an in an out

of context reading. Islam has set some dynamic systems to promote and enhance the spirituality of Muslim communities. No community has been given such an intensive spiritual training program as the Muslim community has been given. A Muslim man or Muslim woman must pray fives daily until they depart this world. All Muslims supposed to wake up early morning for morning prayer and they are supposed to remember God at least five times a day so that they do not forget their spiritual needs each day. Islamic faith connects man with his God in each action. Thus, the general philosophy of Islamic law provides the Muslim individuals and Muslim community with some dynamic mechanisms to protect and promote faith and spiritualism. People of different faith may visit their places of worship once a week or once a month and yet, Islam demands that a Muslim man or Muslim woman must be in touch with his or her Creator in each second in life. It may be true that the Muslim communities have failed to devise some good mechanisms to uplift the spiritualism among the Muslim communities today and yet, theoretically, Islam provides with so many religious practices to enhance spiritualism among Muslim community. In the hierarchical order of the general philosophy of Islamic law protecting faith and increasing the veracity of faith get preference over many other matters. al-Shātibī frequently points out this point in his book. After all, according to Islamic theology, faith a prerequisite condition to enter Paradise.

b) Protection of life (حفظ النفس)

Traditionally, this term has been translated into protection of human life. The traditional Muslim jurists expounded the meaning of this term to protect human life from murder, homicide and suicide. Yet, this term should have wider implication and meaning in this modern world. It could include issues such as health and safety. It could include the security and defence of individuals and nations. It could include all measures that government takes to protect its citizens from any form natural disasters, health disasters, fires, accidents and wars. It could include all measure government takes to protect people from suicidal attacks, terrorist attack and nuclear attack. So, the wider meaning and implication of this term should be redefined in this modern world. Mere classical interpretation and meanings alone are not enough today. Protecting life is one of the fundamental components of the general philosophy of Islamic law. This is known as *haqq al-nafs*. This means that everyone has got right to live with human dignity, freedom and justice. Another word is *haqq al hayat*, right to live individually or collectively with the sense of self-respect, freedom and dignity as the Qur'an proclaims that man is dignified significantly among God's creations. According to al-Shātibī, Islamic law makes unqualified affirmation to the dignity of man. The Qur'ān reads (We have dignified sons of Adam: (Qur'an, 17:70). Thus, all members of humanity are being dignified by endowing them with the faculty of reason regardless of colour, race, or religion. Hence, the dignity is a common right of every single person on this earth whether he or she is a Muslims or No-Muslims. Thus, Islamic law aims at preserving the sanctity and sacredness of human life in all circumstances. According to al-Shātibī one of the primary purposes of Islamic law to protect life from any harmful things and promote the quality of life for all. It is duty and responsibilities of government to provide the basic needs of life such food, cloth, drinking water, and shelter. These are basic universal needs and yet, today, the Muslim countries have failed on this duty.

The sanctity of life is protected with provisions of penalties for those who damage and destroy life without any real justification. Islamic law prescribes some severe capital punishment to protect the sanctity of life. some of these severe punishments are deterrent mechanism to protect human life. al- al-Shātibī notes the rules of law in relation to *'Adāt* and *Mu 'amalāt* are prescribed to facilitate and preserve life and intellect. Thus, Islam makes provisions for the rudimentary necessities of life such as food, shelter, and clothing for the needy and poor. Above all, it is a religious duty of the rich to provide for the basic

needs of life of the poor. Moreover, Islamic law provides some concessions and provisions for certain unlawful things to save life under certain difficult and dangerous circumstances. (*al-Muwāfaqāt*, Vol. 2, pp.7-10 and Vol. 4, p.20). The doctrine of necessity *(Darūra')* is instituted for the very purpose of preserving life under desperate circumstances such as facing death by starvation or thirst, Islamic law allows them to consume unlawful thing such as pork or alcohol to the extent of averting the danger. However, such rules of necessities are strictly qualified with certain conditions. Islam prohibits all kinds of homicide and killings of innocent lives and introduces very harsh punishments for such sins. (al-*Muwāfaqāt*, Vol. 3, p. 34). It strictly prohibits all methods of suicide and strictly forbids all kinds of abortions. The Qur'an reads that "kill not yourselves, for God is merciful to you" (4:29). Sometimes man may be subjected to hopelessness and despair under certain circumstances and may resort to suicide. Islamic law prohibits such act as life is a God given gift. Moreover, according to Islamic law it is a collective duty of the Muslim society to protect the abandoned infant *(al-lāqit)*. Those who can look after the abandoned children should do so otherwise, they are accountable for such a crime. Otherwise, it is the duty of government to look after them. Also exposing the children to any kind of danger is forbidden in Islamic law. (Kamali, H. P. 22.). yet, one could argue that today most suicides and terrorists' attacks are carried out by Muslim youths today. Moreover, most orphan and refugee children are in the Muslim countries today. This tells us how far the Muslim world is deviated from the ideals of the general philosophy of Islamic law.

Moreover, "mercy killing" has no legitimacy in Islamic law in all circumstances. Suppose this is done with the approval of the sick on the recommendation of health professionals and yet, Islamic law does not allow it. The life is a trust from God. No one has the right to obliterate it neither the doctor nor the sick. The classical and modern Islamic jurists unanimously argued that "Mercy Killing" has no justification in Islamic legal system. al-Qarāfi categorically noted that such killing is entirely unaccepted and totally forbidden. However, different opinions prevailed as to whether such killing is allowed in case of animals to free them from enduring pain". (Qarafi, .1991, pp. 319-20.) Some Muslim jurist argue that though, the "mercy killing" is done with recommendation of the doctors the treatment and cure may be discovered in future with advancement in medicine. Therefore, doctors cannot decide on the life of the patient. Hence, such a killing has no place in Islamic law. (Yusuf Al-A'lim, 1994 p.320). On the other hand, the modern legal system in some western countries approves such killings. Such killing is not a crime on the part of doctors in some western countries. However, According to Islamic law such killing is regarded as the second-degree murder. It is not an intentional homicide rather it is manslaughter. But any doctor who performs mercy killings intentionally and consistently will be responsible for deliberate killing and accordingly he or she will be subjecting to punishment prescribed for intentional killing (Kmali, 1991 H. P. 24). Homicide is regarded as one of the greatest sins in Islamic law. Therefore, the punishment prescribed for murder and injury is precisely equal to the murder or the injury the culprit inflicted on the innocent victim (El-Awa. M. 1978 p.69.) The greatness of crime determines the harshness and severity of punishments. Thus, the rules of *Qisās* (retaliation) are introduced in Islamic law to protect and safeguard the innocent lives. According to the Qur'an the wisdom and rational of retaliation is that "there is life for you in retaliation, O men of understanding". (Qur'an 2: 179). The prescription of *Qisās* in the Qur'an denotes its obligatory nature. It is a deterrent and preventive measure to secure the sanctity of life in all circumstances. The notion of retaliation in Islamic law has its own characteristic feature in that it defers from the modern penal laws. While Islamic law gives power to the court to punish the guilty in homicide, it also gives the individual the right to have retaliation or otherwise, to forgive the guilty or accept the payment of the blood money. Therefore, it is argued that the homicide is a civil wrong according to Islamic law rather than a crime in a

real sense. (Ibid. p. 69). The *Qisās* in Islamic law is divided into two categories. The retaliation for murder (*Qiyās fi 'nafs*) and the retaliation for physical damage such as wounds and injuries (*Qisās fima dunannafs*). Moreover, according to the Qur'an homicides are two kinds one is intentionally and purposely done. Other one is unintentionally and accidentally done. The second one is called as man slaughter. The punishment for deliberate murder is more severe in Islamic law. That is to kill the guilty or accepting the blood money if the relatives wish. (The Qur'ān 2.178-9) Thus, Islamic law safeguards the sanctity of life in such a way that secures the compensation for the innocent victims. Such a compensation is given with the consultation with the relatives of the victims. In dealing with murder cases, Islamic law go beyond legal formalities to consult, confirm the relatives of victims. Because, human feeling and emotion are attached into murder cases, so, Islamic law consider human sentiments in dealing with murder cases. Moreover, according to the Qur'an, the culprit escapes from the grip of the punishment in this world will not escape in the day of judgement. (The Qur'an: 4:93).

The punishment for unintentional murder or accidental homicide is also mentioned in the Qur'an. The Qur'ān: 4: 92. However, different opinions prevailed among the classical jurists about the rules of retaliation for some complicated cases. Suppose a group of people conspired to kill a man. what punishment to be given to this group? Or if a father kills his son what punishment should he get? According to Ibn Hazm, if someone is killed anonymously in a village or land, the collective responsibility lies upon all the inhabitants of that village. All should testify or take an oath certifying their innocence. Moreover, they all should share the blood money to compensate the relatives of the slain. (Hallaq, W. A 1991 P.6). Moreover, all physical injuries to any part of body should be also compensated accordingly. Although, there have been many controversial arguments around the notion of capital and corporal punishments in Islamic law, according to the Qur'an such punishments are prescribed in the interests of the human beings to protect the innocent victims from the grip of aggression and injustice. There is some significant dissimilarity between the penal systems of Islamic law and that of modern law in theory and practice. Firstly, the modern legal system does not maintain the rules of retaliation in the penal codes of law in most Non-Muslim countries. The capital punishment was in practice in many European countries for a long time and abolished it in recent time. For instance, England abolished capital punishment with Death Penalty Act of 1965. Instead of death penalty life imprisonment is introduced in many countries. Sometimes, life imprisonment is reduced by several years. Whereas, in Islamic law there is no escape route for the culprit under any circumstances.

In any the western legal system if a single person kills many people, the maximum penalty the culprit gets is a life sentence. However, according to Islamic law, the culprit will not only end up with death penalty. In addition to this, He must pay blood money for the relatives of all those who were killed by him. The punishment for murder is clearly stipulated in the divine texts and yet, the nature of the application of punishment law is questionable in many Muslim countries today. Islamic law prescribes some the strict rules to protect the sanctity of life, However, one can argue the ideals of the general philosophy of Islamic law in this respect of protecting human life, has been a theoretical utopia in contemporary Muslim countries from a human right viewpoint. Because, today most suicides, and mass killings take place in many Muslim countries. The practical application of this element of *maqāsid* is in utter chaos in many Muslim countries. The sanctity of life is mostly dishonoured and violated in many Muslim countries. In any case, protecting the human life is one of the most important elements in the scheme of the general philosophy of Islamic law at least at a theoretical level. Today, this aspect of the general philosophy of Islamic law has been more perfectly applied and implemented in many western countries. The sanctity and value of human life is highly respected in many western countries. All measures have been taken to protect human life. In this sense many western countries are more Islamic than many Muslim

countries in application of these social and ethical values. Good health service, social service, child protection measures, health and safety measures, and above all good security systems are placed in many western countries to protect human life. The murders and killers cannot get way with their crimes. Rather they will be caught and punished at some point in life. That is why police services in western countries keep murder cases open until the culprit is caught and punished. All modern technological equipment and forensic technologies have been used in many western countries to catch the killers and murders so that the culprit will not get way from his crime. The Islamic notion of protecting human life has been a theoretical, philosophical and legalistic principle in many Muslim countries. The Holy Qur'an demands sanctity human life should be preserved and yet, today Muslims kill for some petty reasons and human life is very cheap in many Muslim countries. So, it would be more convincing to say that Islamic ideals are theorical concepts in many Muslim countries without any practical manifestation and implication.

Protection of human life through asylum laws in Europe is a classic example for the application of this element of the general philosophy of Islamic law. The article 1 of UN refuges convention defines as "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".(PAUL WEIS: 1990: p.6, UNHRC).

One of the main principles of the general philosophy of Islamic law is constituted to protect human life. The human life must be protected irrespective of race, ethnicity, religion, and nationality. The Qur'an considers that humanity is one and protecting humanity from any danger is stipulated in Islamic law by many divine texts. The Qur'an tells that "We decreed to the children of Israel that if anyone kills a person-unless in retribution for murder or spreading corruption in the land-it is as if he kills all mankind. While if any saves a life, it is as if he saves the lives of all mankind" Quran: 5: 32. In addition to this verse there are so many other Qur'an verses and prophetic traditions that sanctity of human life. Yet, today, these divine instructions are mostly violated by Muslim countries. I would argue that these divine instructions are protected by 1951 UN convention on refuges. This UN convention clearly states that people who flees persecution must be protected by countries which signed the refugee conventions. Since 1951, many western countries have been protecting lives of millions of people through this convention. In a sense, these countries have been implementing one of primary principles of the general philosophy of Islamic law.

Recent political unrests in many Middle East countries have created a refuges crisis. It is reported that more than 70% of world refugees are Muslims today. Thousands of Syrian asylum seekers are on the move from one country to another for the last seven years since 2011. Some of them are risking their lives on the sea and land and yet, political leaders of Muslim countries more important oil rich countries do not have any remorse or sympathy on these people. They have not taken any meaningful measures to protect lives of millions of Muslim refugees. This is a clear-cut violation of the Quranic injunction that demands to protect human life. Today, millions of destitute people seek asylum in many western countries. Each year, thousands of people are seeking asylum in many western countries. Governments in western

countries are still honouring their agreement on this Geneva convention for refugees and asylum seekers and yet, 53 Muslim countries do not have any system in place to meet the needs of these destitute people. The Muslim world had in the past given shelter for millions of Jews. When Jews people were chased out of Spain many Jews sought asylum in Turkey and north African countries. Yet, today millions of Muslims die each day in Middle East and yet, Arab and Muslim political leaders have not nothing to protect these asylum seekers. More importantly, political leaders of oil rich countries will have to answer for this negligence in the day of judgement. This is, indeed, a grave political mistake. Political leaders in gulf countries must take more responsibility on this refugee crisis of Muslim countries. Indeed, it is true that none of Arab countries had singed to Geneva convention on refugees and yet, they have a moral duty to respond to this crisis on a humanitarian ground. Moreover, Islamic law is very much clear on this issue of protecting human life. In Saudi, they apply capital punishment in the name of protecting human life and yet, millions of human lives are at risk at these Muslim countries and yet, political leaders in Gulf countries do not have any remorse over this crisis. Children and families are dying on the sea and yet, they do not care about it.

Soon after world war II, some European nations constituted the Geneva convention to protect war victims and destitute people and yet, Muslim politicians, academics and scholars do not have any idea to meet the challenge of refugee crisis. Why not Muslim political leaders establish some sort of conventions to protect the lives of millions of Muslim refugees in Middle East countries. Why not Muslim countries give a temporary shelter in gulf countries for these destitute Muslims. At least they could have made some arrangements to protect children, ladies and elders. These so-called Muslim politicians have ignored hundreds of divine texts and prophetic traditions that demand them to protect vulnerable people. Except Tukey, Jordan, Qatar and some other countries, many Muslim counties have failed to make any meaningful arrangements on Muslim refugee crisis. It seems that Muslim politicians have forgotten the sacrifices of the pious first generation of Islam.

Muslim political leaders, civil servants and the policy makers must learn more about immigration and asylum laws in Europe. Immigration laws are designed in many western countries to protect the vulnerable people and asylum seekers. Once any asylum seeker steps into any European country for protection, the immigration department of that country is obliged to provide all facilities for such an asylum seeker without any discrimination or prejudice. The legal advice and guidance are provided for asylum seekers to get the right stay in these countries. Moreover, asylum seekers are protected all care and facilities. They are protected food, clothes, housing, health and facilities. Moreover, they are provided employment training and education facilities to develop their skills and talents. This is done to enhance human potential and skills of asylum seekers. In this digital world of globalization and modern technology, policy makers and civil servants do not have any clue about all these developments on immigration and asylum laws. In this case, western countries are protecting human rights. Yet, Muslim countries are intentionally ignoring plights of destitute people. I would argue many western countries are more Islamic in protecting basic rights of vulnerable people than many Muslim countries. It is argued that giving permanent residency for asylum seekers in Muslim countries will create a political disability in many Muslim countries. I do not agree with this kind of argument. There are more than 10 million migrants in Saudi Arabia alone and yet, migrants do not make any political revolt in Saudi Arabia. They would not do that at all. They know that will put their lives in dangers. I do not think that immigration is a threat to

Saudi political establishment. Rather they do not have any system to settle any asylum seekers. Policy makers and civil servants do not have deep knowledge to design immigration and asylum laws to help destitute. It is an Islamic obligation to help vulnerable people. It is reported that Saudi is funding many projects to help displaced Muslim communities. That is fine, but it is not good enough to throw away money rather they must help these people to resettle in their country if they come to their sail, after all what do we learn from migration of the prophet from Makka to Manida. People of Madina shared all necessities of life with migrant community of Makkans. It was historically recorded that some divorced their wives so that migrants could marry them instead. No human history has recorded such a noble sacrifice and yet, today, Gulf Muslims are not ready to help those desperate refugees. What a difference is between the attitudes of the first generation of Muslims and the attitudes of Muslim communities in Gulf countries. I do not generalise this statement and we cannot blame public for the faults of politicians and policy makers.

This problem of refugee crisis is not a new problem for Saudi political leaders and policy makers, but they know more about Islamic migration from the biography of the prophet and yet, they do not care to help immigrants today in this modern time for some political and selfish reasons. They are going against the basic teaching of the general philosophy of Islamic law by not planning to help destitute people in time of needs and emergency.

c) Promoting education.

Traditionally, many jurists have translated this term as protecting human intellect. al-Shātibī too used the same term in its traditional meaning. For him it means to protect human intellect from inimical ideas or thought that goes against Islamic teaching and promote human intellect by Islamic knowledge. I think that such a traditional meaning does not fit for the modern world. Education is the foundation of all human civilizations. The notion of preservation of '*aql* is maintained with the provision of education to enhance the healthy development of the intellect. According to al-Shātibī all inimical things and all kinds of alcohols, intoxicants, and drugs are forbidden for a healthy intellectual development. (al-Shātibī, Vol. 3, p.34). Such is the classical description given for the preservation of intellect by the classical Islamic scholarship. In sharp contrast to this narrow description, al-Shātibī devotes a large part of his writing to highlight the obligatory nature of enhancing knowledge in Islam. According to his concept of knowledge; the knowledge must have practical values, benefits and dimensions. Man should benefit by his knowledge in this world and the next. Thus, he discards all the philosophical, hypothetical, logical and theoretical branches of knowledge that has no practical values and dimensions. (*Al-Muwāfaqāt,*Vol.1.30-38) Thus, seeking knowledge for an intellectual pleasure is not acceptable. Unlike his predecessors al-Shātibī does not limit knowledge in mere religious education alone but, seeking any kind beneficial knowledge is encouraged in Islam. Seeking professional and vocational skill is part of parcel of Islamic education. so that human beings can benefit one another in this world. al-Shātibī argues although the foundation for this element of *maqāsid* was not laid down in Maccan revelation, preservation of intellect was included in the preservation of life in general. (Ibd, P.34) He agrees that the prohibition of alcohol was prescribed in Madinan revelation. However, according to al-Shātibī, the general principles to preserve the intellect were laid down in Meccan revelation through the preservation of life, as faculty of intellect is an important part of human body. So far, al-Shātibī maintained that the entire fundamental principles of *maqāsid* were revealed in Maccan revelation. But when it comes to preservation of intellect his theory is somewhat collapsing for the simple reason that the prohibition of alcohol is made in Maninan revelation. Thus, it seems that his view on this issue is not clear. Thus, the bedrock of his legal theory of

inherent relationship between the Maccan and Madinan revelation in laying down the fundamentals of *maqāsid* seems to be breaking up. However, he reconciles this deficiency by saying that preservation of the faculty of intellect was included in the preservation of life in general. Nonetheless, Drāz argues that the preservation of the intellect constitutes the foundation of *al-maqāsid* as the intellect determines the obligatory nature of the religious duties (Drāz's p. 34.). From another perspective, al-Shātibī draws our attention to the development of natural talent and skill in human beings. al-Shātibī argues that human beings are not at same level in terms of their intellectual skills and talents. They greatly differ one another in their aptitudes and abilities. Each human being excels in a field of interest. One may do well in the discipline of agriculture, another one may have more interest in the field of industry, and one more may do extremely well in administration and leadership. What is very important is to identify and recognise each one's talent and develop their instinct and skill accordingly. By developing people's talent in this way, it is hoped and expected that everyone will excel in their own field of optional religious duties *(Far Kifāyaht*). (A*l-Muwāfaqāt*, vol.1. p.129-30).

What is interesting here is that al-Shātibī expands our understanding to the notion of protecting and promoting the faculty of human intellect. This is precisely what modern scholar of human resource development say today about skill developments, human resource development and specialization in respected field of study. Thus, promoting the faculty of intellect not only serves the individual's interests but it should benefit all mankind. In addition to this, most modern Islamic scholars have identified the weakness of classical approach to the notion of preserving the faculty intellect. They argue that tremendous development has been taken place in the field of education since the time of al-Shātibī. They contend that promoting and protecting the faculty of human intellect should begin with more emphasis on the development of children's numeracy and literacy skills. (al-Qaradawi, Taiseer al-'Ilm,.p. 194).Jamāl 'Attiyyah argues that such a notion of promoting the faculty human intellect should mean that we re-examine the educational systems of our schools, institutes and universities in the light of modern curriculum developments. Moreover, we should train our children in fields where we suffer from a shortage of enough scholars, specialists and intellectuals. Thus, our teaching methodologies in vocational and technical fields must be revised with the phase of developments in these areas. (Attiyyah. J, *P*.86-87). Hence, from an Islamic point of view such meaningful and constructive knowledge gets religious connotation. The notion of enhancing education should cover all aspects of modern system of education in the contemporary world. However, the appalling status of education and intellectual achievement of entire Islamic world reveals a contrasting fact to this very fundamental of the general philosophy of Islamic law.

d) Protecting economic growth:

According to al-Shātibī, the preservation of wealth is maintained by encouraging the growth and development of wealth. He describes this as a capital investment (*tannmiyat al-māl)* in his terminology. This concept is more meaningful and explicable today more than what al-Shātibī perceived during his time. Moreover, according to him, the sphere of *Mu'amalāt* regulates economic development. One hand, it encourages people for the economic activities and work to earn a decent living, on the other; it introduces rule and regulation to prevent all sorts of injustice, deception, theft and fraud in business transactions. al-Shātibī argues that the foundation for these regulations were laid down in Maccan revelation and the details of elaboration were made in Madinan revelation. like all other aspects of the general doctrines of *maqāsid* the promotion and protection of wealth gets a prominent place in his scheme of *maqāsid.* This could be the wealth of individuals or the wealth of the Muslim nations. It could be the wealth of the humanity. Whilst the *Sharī'ah* encourages accumulating the wealth it also prescribes equal distribution of wealth. The verse 57:7 reads, "So that wealth does not circulate only among the wealthy". To ensure a fair market, *Sharī'ah* strictly forbids

all means of exploitation, such as usury, hording, gambling cheating in trade. Moreover, fraud, and injustice in trade are prohibited in Islamic law. Likewise. all forms of squander and lavish style of life are prohibited in Islam. The details of these are mentioned both in the Qur'an and the Sunnah to protect the wealth from misuse. (*al-Muwāfaqāt,* vol. 3, p.34. Vol. 4. p.2). yet, the life style of some Muslim politicians in Gulf region tells us different story about the protection of Muslim economy. They have wasted a huge amount of public wealth in these country by their mismanagement and luxurious life style. There is no way that their lavish life style could be justified from the perspective of the general philosophy of Islamic law. Unlike al-Shātibī, Ibn Tayymiah emphasises on the role of Islamic political authority in preserving the wealth of Muslims communities. It is a duty of Muslim individuals and political establishment to promote and protect the wealth of Muslims nations. Public money should be handled and maintained by the fiscal establishment with a sense of trust and loyalty. (Ibn Taimyyiah, Vol.28. pp.60-120). It can be said that such a notion of promoting and protecting wealth should have a broader implication than what Ibn Tayymiah and al-Shātibī perceived in their respected period, bearing in mind the amount of development in economic field. Unlike the classical period, today a strong economy is very much vital for the welfare and development of any nation. Therefore, in our understanding to the general philosophy of Islamic law, the meaning and connotation of preservation of wealth must get a broader implication with full consideration to the huge amount of changes that have been taken place in the sphere of modern economy. The Muslim world is blessed with natural and human resources and yet, many Muslim countries are poor, and people suffer from economic hardship. Gulf region is blessed with oil and gas. If only Gulf region could manage its wealth and natural resource well, the entire Middle East could enjoy economic growth. Yet, many Arab and Middle countries suffer today due to economic mismanagement and irresponsible political leadership. There is no cooperation, unity and mutual understanding between Arab and Muslim political leaders today in this modern digital world. They only look after their personal interest over national interest of their countries.

e) Protection of offspring:

According to al-Shātibī, the rules and regulations that *Shari'ah* introduces for the institution of the family are aimed at preserving interest of all family members in all circumstance. The *Sharī'ah* regulates the rules of marriage to strength the institution of the family. The institution of family gains a prominent place in the general philosophy of Islamic law. Therefore, *Sharī'ah* outlines a set of guidance for marriage and divorce. It defines the duties of the husband and wife to protect and preserve the dignity, integrity and the unity of the families. All the healthy measures and guidelines are outlined to promote and protect human development. All the harmful matters in this regard are prohibited. Hence, adultery, prostitution, homosexuality, and lesbianism are severely punishable social crimes. Islam introduces a harsh and severe punishment for such crimes(al-*Muwāfaqāt,*Vol.3,P,35). Such crimes go against one of the primary purposes of *Sharī'ah*. i.e. to promote and protect of human development. It can be said that al-Shātibī presents very basic ideas on this element of *maqāsid.* However, it can be argued that this element of the general philosophy of Islamic law must be given a priority in our modern world. According to the recent studies, the family breakdowns and divorce rates are very high in western countries. The single parenthood rate is very high in the western countries in recent times. It can be said that many socio- economic factors contribute to such pathetic conditions. From an Islamic perspective, Muslims are encouraged to follow the certain rules and regulations embodied in the theme of the general philosophy of Islamic law to preserve the institution of the families in the Muslims societies. Although, many tenets of the general philosophy of the Islamic law are violated individually and collectively in the Muslim countries it can be convincingly said that at least the family integrity and dignity are preserved by Muslims as prescribed and embodied in the Islamic

personal law. Although, human dignity is an important element in the study of the general philosophy of Islamic law al-Shātibī does not treat it exclusively rather he includes it in the preservation of human life. However, modern Islamic scholars say that the human dignity is one of the fundamental principles of the general philosophy of Islamic law. They argue that preserving the human dignity is one to preserve human rights and human liberties.

f) Comparative analysis of five *darūrīyāt of maqāsid*

These five elements of *darūrīyāt of maqāsid* are articulated and introduced into Islamic law by classical Muslim jurists in their historical setting in the medieval context. Although the essences of such *maqāsid* are derived from a collective examination of the texts, confining *darūrīyyāt* to these five elements will not be viable and feasible in the contemporary world. Massive intellectual output of last few decades particularly in the fields of technology, science, brought about a dramatic social change in the life style of people in all walks of life. Consequently, classical definitions and concepts of wealth, intellect and etc, should get a new reconsideration and interpretation. The classical Islamic legal theorists defined and confined the essential (*darūrīyāt)* elements of *maqāsid* into five. Such intellectual endeavour to limit *maqāsid* into five is not more than their personal *Ijtihād.* Neither Qur'an nor Sunnah limits them into five. They are nowhere listed in either of those sources of Islamic law in a strict sense. However, they have been derived from ample evidences from the sources of Islamic law. These elements of *maqāsid* are merely derived from juristic examination of the classical jurists in their historical contexts. It is generally argued that such limitation is no longer viable and appropriate in our context.

The modern Islamic jurists contend that every essential and necessary element of modern life should be included in the *darūrīyāt* structure of *maqāsid.* This not only opens the sphere of *Ijtihād* for the occurrences of daily life, such expansion of *maqāsid* paves the way to incorporate the social and legal change in the absence of direct evidence for any social issue. In this sense, essential issues of our modern life, such as human rights issue, freedom of speech, political freedom, social justice, equal opportunity for all should be included in the scope of *maqāsid.* Moreover, such expansion of *maqāsid* greatly demanded to accede to the requirements of modern life. Otherwise, the notion of the adaptability and flexibility of *Shari'ah* will be a historical myth rather than a reality. It is argued that a hierarchical order of priority is maintained in the taxonomy of these *maqāsid.* The order of priority goes as *Dīn* has precedence over life, life has precedence over progeny (*nasl), Nasl* has precedence over intellect (*aql)* and *aql* has precedence over wealth (*māl*). The classical Islamic jurists maintained such classification in order of priority. Such classification has no direct evidence from sources of Law. Yet they are derived from general and collective reading of texts. The structure of such taxonomy is made up based on priorities. However, one can question the very nature of such classification. According to al-Ghazālī interests (*masāliḥ*) are classified into two categories: *maslaha īinīīyyah* deal with the interests of man pertaining to hereafter and the *maslaha dunyawiyyah* deal with the interests of man pertaining to this world. For him the interest of man in relation to the hereafter gets more priority. Hence, he treated the element of *Dīn* exclusively as first and foremost element of all *maqāsid.* Thus, in order of hierarchy, *Dīn* gets precedence and priority over all other *maqāsid.* This very fact can be justified from the Qura'nic perspectives. The servants of God have been instructed to dedicate their lives in the way of Allah in defence of *Dīn.* The institution of *Jihād* is prescribed for this very purpose. In a hierarchical order, Dīn has precedence over life according to the classical taxonomy. However, one can argue that such classification lacks coherence in its self. That the *darūrīyāt* elements of *maqāsid* are interdependent one another. For instance, prerequisite for application of religion is existence of life. Without life there would not be any religious obligation. One can further contend that prominence of intellect cannot be degraded at all in

this hierarchical order. The sound intellect is a prerequisite for any legal obligation. All those who do not have sound reasoning capabilities are not legally obliged to perform religious duties. In some other circumstances, preservation of life will have more priority over *aql.* For instance, under exceptional circumstances, one may be compelled to drink wine to save his life. Likewise, under severe starvation one may steal other's food without fear of punishment to save his life. In these circumstances, priority of life is maintained over, *aql* and *māl* respectively.

However, the primacy of *Dīn* over other elements of *darūrīyāt* is unquestionable. Such postulate is strongly supported by the Qur'an, which persistently demands to dedicate one's life and wealth in defence of religion. Hence, it can be concluded that the faith get primacy over all other elements of *maqāsid.* However, all these elements of *darūrīyāt* are interdependent each other in one-way or another. For instance, in this modern world, financial stability and economic growth are vital to lead a decent life. A severe financial hardship could put individuals and nations into many difficulties. Moreover, in this modern world of science and technology, skill development and education are vital to lead a decent life. so, all these elements of the general philosophy of Islamic law are interrelated and interacted. To understand integrity and cohesiveness of the general philosophy of Islamic law we should them all collectively not in isolation. Yet, al-Ghazali's classification of the necessities of the general philosophy of Islamic law is more convincing. Islamic theology put more emphasis on the salvation of human souls on the Day of Judgement. According the Holy Qur'an, eternal success or eternal failure is determined on the Day of Judgement. One who fails in the Day of Judgment is the real loser according to the Holy Qur'an. Compared to short span of this worldly life, the next life is eternal and everlasting. Compared to the luxuries of this worldly life, the joys of next life are far greater and incomparable. Compared to difficulties of this worldly life, the difficulties of next world are severer and more difficult. Logically, it would be wise for any faithful person to give preference for the salvation of his soul in the next life. No wise person would sacrifice his eternal success for all short-lived success of this world.

11) *Hājiyyāt*:

According to al-Shātibī's scheme of the general philosophy of Islamic law, the Islamic law constitutes some complimentary purposes of law (*Hājiyyāt*) besides its higher objectives. The laws of this kind are needed to facilitate life and remove hardships and difficulties. These aspects of *maqāsid* are maintained in all aspects of life whether it is in the sphere of *Ibādāt* and *Mu'amalāt.* For instance, Islamic law grants some the provisions, concessions and religious licences for travellers and sick people in fasting and prayers. It is allowed for them to shorten their prayers and break the fasting until they recover from their sickness. Basically, this is required to alleviate difficulties and ease the hardship These kinds of benefits are complimentary benefits, which basically seek to eliminate severity and hardship to facilitate life. All *rukhas* concessions are introduced in Islamic law for this purpose. Likewise, under certain situations of necessity the divorce is permitted as a concession to ensure the wellbeing of family. These aspects of *Maqāsid* constitute a secondary nature of important as far as individuals are concerned. However, their eminency can be elevated to status of *darūrīyyāt* in relation to the needs of community at large. For instance, the business transactions may be of secondary importance as far as individuals are concerned. Collective involvements of society in business transaction get the primary importance of *darūrīyyāt.* al-Shātibī argues that Islamic law approves some business contracts and dealings, which are sometimes marked by some defects and risks. For instance, some contracts are not free of usury (*riba),* uncertainty and risking (*gharar*) such as selling what is on the ground. Although, these transactions do not meet a certain legal requirement of the law of contract, these have been approved in Islamic law to meet the needs of people. Today, we could say

all online business dealing are of this kind. Islamic law demands that goods or merchandises should be presented in the market for inspection before selling or buying. Islamic law dictates this rule to avoid any form of deception or cheating in business transaction. Yet, today, it could be said online business transaction facilitates business activities. Such a facilitation is needed today in this modern world of business. It could be said this is a typical example of the complimentary purpose of Islamic law.

al-Shātibī further notes that law prohibits looking at the private parts of others. However, it is validated for the doctor who is engaged in delivering babies and treating the patients (*al-Muwāfaqāt* vol. 2, 9-12). In establishing the inherent relationship between the primary and the complimentary purposes of law, al-Shātibī notes that the complimentary purposes of law alleviate hardship incurring in the primary purposes of law. For example, establishing the daily prayer is an essential element in promoting and protecting the religion. The complimentary purposes of law facilitate the performance of such obligation and grant concessions for all those who face difficulties in performing them. Therefore, for al-Shātibī, the primary purposes of law are the essence and basic of Islamic law, all the complimentary elements are supportive purposes of the basic universals of law.

III. *Tahsīnaāt*:

This aspect of *maqāsid* deals with those aspects of law that are aimed at the improving the quality of life. For instance, the encouragement of purification, cleanness and beautification are part and parcel of these aspects of *maqāsid*. In the sphere of '*adāt*, eating and drinking habits and manners, recommendation to free slaves, making voluntary donations for the needy and poor, these and all good manners and habits are from these aspects of *maqāsid*. These certainly improve the quality of life. Without them life is not impossible. Therefore, they are complimentary to the category of *maqāsid.* Moreover, according to al-Shātibī, the ethics of eating and drinking and modesty in food consumption are part and parcel of these elements of the general philosophy of Islamic law. *(Al-Muwāfaqāt,* vol. 2, p.10). Incredible development and progress have taken place in this aspect of the general philosophy of Islamic law. Mostly, due to technological, scientific and industrial revolutions, the humanity has witnessed dramatic change in their life styles. Today, people do not live as they lived before one hundred years ago. There have been a lot of change in food habits, dressing habits, transporting habits, housing, business methods, shopping habits, teaching methods, learning styles, and the quality of life has dramatically changed. For instance, people in old days used to eat by hands in a rudimentary way. Today, the cookery has been developed into a fully-fledged art. Hotel business and good industries have been developed into a business enterprise. Most art works and innovation in cookery and food industries today can be included in this category of the general philosophy of Islamic law. Likewise, gym facilities, sport facilities, swimming pool facilities, transport facilities, beautify therapies, food hygiene facilities, health facilities, holiday facilities, home making facilities, teaching facilities and health and safety facilities are part and parcel of this kind of general philosophy of Islamic law.

I think that most of scientific, industrial, agricultural, and technological innovations and inventions that facilitate human life are part and parcel of this category of the general philosophy of Islamic law. likewise, today, many facilities have been developed to perform Islamic rituals like hajj, umrah, prayers, to give charities and fasting. For instance, Saudi government has made so many facilities in Hajj to facilitate hajj pilgrims such as transport facilities, expansion of facilities around the sacred mosques in Makkah and Media. Travel and transport facilities for pilgrims and moreover, many facilities are made to facilitate the pilgrims to perform hajj rituals. All these are part of and parcel of this category of the general philosophy of Islamic law. likewise, you could compare many improvements in other areas of religious life of the Muslim communities. All these are not religious innovations

rather they facilitate religious performance and they facilitate human life. In this sense, all these have inherent connection with other categories of the general philosophy of Islamic law. (A. Raisuni. 1994, P. 87) For instance, someone wants to perform prayer. The five-time prayer is an obligatory act in Islam. It enhances faith and keeps away from all evil. so, prayers fulfil one of the higher objectives of Islamic law. But Allah gave some concessions for sick people and travellers to shorten prayers. This concession is a complimentary part of the general philosophy of Islamic law. Someone who wants to perform prayers do so with perfection. He takes extra care to dress up for prayers with his beautiful cloths and applies some aromatic scents. This beatification is appreciated in Islamic law. This is part and parcel of the framework of Islamic legal philosophy. All three levels of the general philosophy of Islamic law are interconnected. al-Shātibī establishes a rational interrelationship between these three categories of *maqāsid.* In hierarchical ranking of these *maqāsid*, protection of five universals come first. This hierarchical order is very important to preserve the integrity of law and its higher purpose. Negligence of *darūrīyyāt* category of *maqāsid* will have a far-reaching consequence. It will challenge normal order of life in society. It can badly affect other the two categories, which are complimentary to the former. In the same way, any damage inflicts upon *tahsīniyāt* will partly influence the *hajiyat.* However, the first category of *darūrīyyāt* constitutes a foundation of the other two categories. One can further argue on this classification of *maqāsid* into three categories, al-Shātibī repeats the same taxonomy as previously well acknowledged within the classical Islamic scholarship, more precisely the taxonomy of al-Juwaini and al-Ghāzalī.

The complicated nature of the hierarchical order of the *maqāsid* doctrines are somewhat simply described by Jamāl ʻAttiyyah. He argues that the basic provisions of life such as food, shelter and means of transport are important element in promoting the quality of life. However, the basic provisions of food items differ from one place to another. For a man living in a desert his provision of food may be some dates and some points of milk. For a man living in a village this may be a piece of cheese and a loaf of bread. For a man living in a modern city his provision of food will differ greatly from the food of the abovementioned people. However, with the development in biological science and food technology the quality and the quantity of the food intake of the individuals are defined. Hence, such intake is necessary measure to maintain a healthy physical development from the perspective of the essential element of *maqāsid* doctrines. The food industry is complimented with the special method of food production and cooking. Moreover, the method of eating in luxury tables using modern equipment is an improvement *(tahsīniyyāt*) (ʻAttiyyah. J,2000, pp.*81*-82). Likewise, he classifies the various types of accommodations in a hierarchical order: the basic housing necessities, complimentary housing needs and luxury housing with all facilities. same classification is applied to the means of transport facilities. He compares the structure of the general philosophy of Islamic law with modern day facilities. This is a modern approach to study the structure of the general philosophy of Islamic law considering all modern developments. More interestingly, al-Shātibī's

b) Making the general philosophy of law linguistically comprehensible to human intellect (*wadu'hā lil ifhām*).

al-Shātibī categorically argues that that no one can understand comprehensively and meticulously the general philosophy of *Sharī'ah* without mastering the Arabic language with its linguistic traditions of the Arabs for whom the Qur'an was revealed. He contends that the Qur'ānic language, its styles, syntax, idiom, sentence structure, rhythm and vocabulary all have been constructed according to the linguistic convention of the Arabs. Hence, al-Shātibī argues that both the Qur'an and the *Sharī'ah* can be rightly comprehended only with direct reference to the familiar linguistic traditions and conventions prevalent among those Arabs, to understand the true meanings of the Qur'an one must take into consideration how people

of the prophet would have known the Qur'anic texts. Unless, the same methods and ways are deployed true understanding of the Qur'an will be daunting task. He further notes that it is a natural and instinct disposition of Arab to speak with an explicit sentence to mean an inexplicit and with a general to mean a and etc (*Al-Muwāfaqāt,* vol. .*2*, pp.49-51*, I'tisām* vol2. Pp.293-99.). Unless we are familiar with all these aspects, it would be difficult to thoroughly understand the general philosophy of Islamic law. The more important aspect of al-Shātibī's argument in this issue is that he contrives a natural and a logical inherent relationship between the Arabic language and *Maqāsid al- Sharī'ah*. He strongly believes that the step to understand the original intentions of the lawgiver should begin with scrupulous comprehension of the Arabic language.

It is true that most of the classical Islamic jurists discussed the important relevance of the Arabic language to the understanding of the Islamic sciences. However, to my knowledge al-Shātibī is the first scholar to make such correlation between the *Maqāsid al- Sharī'ah* and the language of the Qur'an. Al-Shātibī claims that the more one is fluent in Arabic language, the more he can understand the original intentions of God. Therefore, he firmly argues that the researchers into matters of the *Sharī'ah* must be the masters of the language of the Qur'an. Thus, the importance of Arabic languages in al-Shātibī's legal thought is unquestionable. Moreover, according to al-Shātibī, *al- Sharī'ah,* like the prophet who conveyed the law of *al-Sharī'ah* is unlettered *(Ummiyyah)*. Al-Shātibī describes the nature and feature of the Islamic law as the *Sharī'ah Ummiyah*). Such a qualification of al-Shātibī to the Qur'ānic revelation has a greater implication that due to this nature of *Sharī'ah* the Arabs who were also unlettered readily understood its message. What does the unlettered nature of revelation mean? Although, many contentious arguments prevailed among the Islamic and western scholarship regarding the real meanings of this term, it is interesting to see al-Shātibī's point of view in this regard. According to al-Shātibī the unlettered nature of the revelation means that the there is no relationship between the Qur'an and foreign rational disciplines such as logic and physic etc. it follows that no one should endeavour to understand the divine commands or interpret the Qur'an in the light of these rational sciences and theories. (*al-Muwāfaqāt*, vol. 2. P.53 and p.60). Thus, God revealed this Qur'an in a simple and easy Arabic language so that the laws of the Qur'an are understandable even by laymen without an exception. After all, all men and women are equally subject to the laws of the Qur'an.

. God's intention in instituting law is to ensure the complete adherence of his servant to his decree.ie. to demand the (*taklif*) according to man's capabilities.

Under such a sub heading al-Shātibī describes that another primary intention of the legislator in revealing the *Sharī'ah* is to demand a complete submission of his servants to his laws. Such divine demands will be meaningless, unless these demands and obligations are prescribed in according to the human capabilities *(qudra')* a physical and mental abilities and capabilities to adhere to his commands. At the same time, he notes that none of the natural dispositions and attributes of human beings is subject to legal rulings. Al-Shātibī divines the obligatory nature of law into two categories. a). Divine demand to adhere to an obligation beyond human capabilities (*Taklīf bi mā lā yuthāq).* Such a command is impossible to be prescribed by the legislator under any circumstances. For instance, al-Shātibī asks if the law demands not to eat or drink how can a man adhere to such law? b). Divine demand to adhere to an obligation, in which man face some hardship. (*taklīf bi mā fīhi al-mashaqqa*). Nevertheless, he argues that it was not the intentions of the lawgiver to impose any hardship in his servants. All human activities entail some sorts of hardships and difficulties. For instance, carrying out daily religious duties or observing fasting or travelling during the month of fasting or even earning a living involve and incur such hardships and difficulties and the legal principles of religious licence (*rukhsa*) are sanctioned in the law to eliminate hardships and difficulties. Hence, *Sharī'ah* provides with *rukhsa* in those exceptional circumstances. Otherwise, the religious

obligation and duties will be unbearable. Other than that, it is not at all God's intentions to demand from his servant something beyond his ability. Moreover, al-Shātibī notes that human endeavours to earn a decent living involve some sort of difficulties in one or another in all kinds of business and employments. Still, al-Shātibī argues that such hardship is normal and bearable. Hence, God revealed his laws taking into consideration the weakness and the natural instincts of human beings. (Ibid, Vol. 2. pp. 82-128)

God's intention in instituting law is to include all His subjects under his command.

In addition to all the above –mentioned primary purposes of law, al-Shātibī identifies another important objective for revealing *al-Sharī'ah*. In revealing the laws of *al-Sharī'ah* God intended to provide man with certain moral guidance to overcome his own whims and desires. Hence, man cannot lead a life according to his own desires and pleasures rather according to God's wish and guidance. According to al-Shātibī's legal philosophy it is God who determines through His revelation what is best in the interests of man and human interests are not determined by whims and desires of man. al-Shātibī recognises that man has a reasoning power to choose what is good and what is bad for him. Such reasoning should not go against the intents of law. Thus, al-Shātibī limits human reasoning with intents of law.

Moreover, al-Shātibī asserts that the *al-Sharī'ah* is not instituted in vain and meaningless *('abathan*). Indeed, it is instituted with a divine wisdom. That is to promote and protect the human interest. Hence, the *al-Sharī'ah* is instituted to meet the needs of God's subjects. From this point of his argument al-Shātibī establishes a legal principle, which reads that each human act determined by man's own predilection without considering divine guidance is null and void. Hence, al-Shātibī asserts all human acts should be according to wishes and intention of God. For this very purpose He instituted His law to keep all His subjects under His divine commands. According to this primary purpose of law submission and obedience to the divine will is the bedrock of al-Shātibī's legal philosophy of Islamic law. (Ibid, Vol. 2, pp 128-32). So far, we have discussed God 's intentions in instituting law according to al-Shātibī's scheme of the general philosophy of Islamic law. Here we discuss the intentions of the individuals in implementing law.

***Qasd al-Mukallaf* (the intentions of the individuals in implementing law).**

al-Shātibī argues here that the intention of the individuals in implementing any legal command should be in accordance with the intention of God. What does it mean? It means the aims, inner objectives of individuals in following divine laws should be in accordance with divine wisdom and divine intention. It means that we should perform our religious duties sincerely for Allah in accordance with divine and prophetic guidance. The individual's intention in implementing law should be same as God's intention in promoting and protecting the three universals principles of law i.e. the *darūriyyāt, hājiyyāt,* and *tahsīnīyyāt*. The basic principle in these regards reads "human acts are judged in accordance to their intention". A good intention should be maintained in all activities of man whether it is in the sphere of *Ibādāt* or '*Adāt*. Thus, if someone uses the law against the intentions of the legislator according to al-Shātibī he violates *al-Sharī'ah.* (Ibid, Vol 2, 252). The important point here is that the *al-Sharī'ah* is instituted by God to promote and protect the interests of man, man with same intention should implement such intention of God, as man is his vicegerent on earth in that he should represent God in promoting and protecting social welfare and the human interests. (Ibid, vol.2. pp.251-2). The logical conclusion of this argument is that must not use legal trick and stratagems to get way from divine laws. We notice that in western legal system, people with shrewd intelligence get way with rules of law, sometime using loophole in law. In Islamic legal system, Muslim individuals cannot do this. why, they must act in accordance with divine intentions.al-Shātibī asserts that violating law intentionally is a punishable to the extent of the gravity of the violation. In this issue he divides man's action into four sub-categories. He measures human action in four levels.

1) A Muslim's act and intention are in conformity with the intention of legislator. For instance, performing prayers, fasting, alms giving, and etc with an intention of implementing the divine command.
2) A Muslim's act and intention are completely against to the intentions of the legislator. For instance, committing major sins or giving up religious rituals such as prayers, fasting etc.
3) A Muslim' s legal act is in conformity with the stipulation of law, but intention of the performer is to violate the law. In this situation the performer may know that he violates the law or may not know. For instance, a man drinks grape-juice thinking it is wine. In such case the act is in conformity to the law, but the intention violates the law. In such case he has done a sin insofar as the right of God but as far as his follow men are concerned, he has abided by the law. (*Al-Muwāfaqāt*, Vol. 2. pp.256-7). On the other hand, he may perform an act of worship with a realization of the conformity of his act with intention of God, but he intends to violate the law. For instance, praying to show off the piety or to gain respect and good will in the society.
4) A Muslim's act may be in violation of the law, but intention is not. In this case, he may or may not know that he constitutes a violation. If he does not know that he violates the law, he will not be sinful. However, if he knows that he violates the law he is sinful. For instance, performing religious innovations (*bid'a*) is an act of violating the law. Then al-Shātibī goes on to discuss the relationship between the legal stratagem *(Hiyal*) and the intention of the legislator. He asserts that generally *hiyal* are unlawful. (Ibid, vol. 2, p.288). However, he argues that if any legal stratagem or tricks (*hiyal*) does not breach an established legal principle or principle of public good, such legal trick is acceptable. (Ibid, Vol. 2. p.293).

According to al-Shātibī, the permissible nature of legal stratagem is unquestionable in certain cases, for instance, if a Muslim is under compelling threat and intimidation for his life, he could utter a word of disbelief under the desperate situations (Ibid, vol.2, p.293). Thus, al-Shātibī maintains that the legal stratagems are partially and conditionally acceptable if they are in perfect harmony with the intention of the legislator. He illustrates the validity of the *Hiyal* in case of *muhallil* marriage. He argues that this sort of marriage constitutes some degree of legal stratagem. when a man divorces his wife, such divorcee loses her right to marry him once again until she marries another man and get a divorce from him. (The Qur'ān, 2: 230) .al-Shātibī argues that in this case making a normal relationship between this woman and her first husband is in a perfect harmony with the letter and the intention of the legislator (*al-Muwafaqat*, vol.2. p.294).

Hallaq notes that al-Shātibī 's objective in defending these types of *hiyal* was to adopt a middle path in the application of law. al-Shātibī neither demands uncompromisingly a strict application of the law nor he supports an excessive lenient approach to the law. To follow a middle path in between these two trends he accommodates a certain type of *hiyal* doctrines in his legal thought. (Hallaq. W. 1994, p.187). However, it can be said that the *hiyal* doctrines dominated the Islamic legal thought long before al-Shātibī's time. It is peculiar to note that the development of legal stratagem in the Islamic legal history. One can convincingly argue that the failure to comprehend the general philosophy of Islamic law should have paved the way to the development of legal stratagem in Islamic law. It can be also noted that al-Shātibī with all his innovative ideas on the theme of *maqāsid* was not free from the grip and influence of legal stratagem. Al-Shātibī's scheme of *maqāsid* reveals inherent relationship between divine intention and human intention. According to al-Shātibi, man's intention should always be in conformity to divine intention as man is God's deputy on earth to implement God's will. This chapter confirms that al-Shātibi introduces new ideas to the legal doctrine of *maqāsid*. More importantly, this part of our study verifies that al-Shātibī's logical method of induction is a novel approach in the legal history of Islamic law. He pioneers the use of this technique to interpret Islamic law. This chapter also affirms that

al-Shātibi identifies two main areas of the doctrines of *maqāsid* namely purposes of God in revealing His laws and purposes or intentions of His servant in application of law. This study also confirms such classification is new as well in the study of *maqāsid.* This study further recognizes some similarities between al-Shātibī's studies on *maqāsid* and others in that al-Shātibi replicates that the classifications of his predecessors. His predecessors contrived the doctrines of *maqāsid* mainly from the texts of the Qur'an and Hadith that deal with Islamic punishment. Thus, this study identifies the influence of his predecessors on his legal thought

Chapter 5: special features of al-Shātibī's legal theories.

This part of our study examines certain underlying general principles upon which al-Shātibī elaborates his doctrines of *maqāsid*. It is generally argued that he proposed a radical renewal of juridical methodology in his doctrines of *maqāsid.* Instead of following the traditional method of abstracting laws from within the boundaries of the *madhhabs*, he introduced a new dexterity into the legal theories of Islamic law, elaborating what was subsequently designated the end goals of legislation (*Maqāsid al-Sharī'ah)* He somehow depicts these doctrines of *maqāsid* as fundamental principles and rules of Islamic law (*Kulliyāt al- Sharī'ah*). By examining some of the special features and underlying principles of his legal reasoning we can gauge how far he succeeded in his mission of renewal of Islamic legal methodology.

1) **C**onclusiveness of legal theories (*Usūl al-fiqh*) and induction
2) The internal relationship between the texts of the Qura'n
3 The relationship between the Qur'an and Sunnah
4) The method of legal interpretation
5) The significance of the knowledge of the general philosophy of law for *ijtihād*
6) The legal norms and language

(Diagram 11: **special features of al-Shātibī's legal theories**

1) Conclusiveness of legal theories (*Usūl al-fiqh*) and induction

The first and foremost element of renewal of juridical methodology of al-Shātibī is that he argues that the knowledge derived from the principles of Islamic Jurisprudence is positive and conclusive not speculative. He discusses the epistemological theories of Islamic jurisprudence in many places of his *Kitāb al- Muwāfaqāt* in which he argues that the epistemic foundation of the sources of Islamic Law is conclusive (*Qat'iyyāt*) not speculative (*Zannīyyāt*). *(Al-Muwāfaqāt,* Vol: 1. P.19). It is evidentially clear that al-Shātibī was following the inductive legal reasoning method. According to his argument that the knowledge derived from the principles of Islamic jurisprudence is conclusive and there is no doubt about the validity and reliability of this knowledge: In inductive arguments, the supportive evidence guarantees a definite conclusion. The epistemic foundation of the sources of Islamic Law is conclusive and therefore, it's premises should categorical. if the premises are correct, then it is impossible for the conclusion to be wrong. For example, all Quranic verses are divinely inspired and therefore, first verse of the Quran is divinely inspired: In any deductive argument, if the evidence is certainly true, the conclusion will be surely valid and true. On the other hand, if the evidence is false the conclusion will be invalid. However, al-Qaradāwi argues that the knowledge derived from the epistemological principles of Islamic Jurisprudence is not always categorical and conclusive. The reason for such differences of opinion is that all classical scholars did not unanimously agree upon all the fundamental principles, evidences and sources of Islamic law. An example is that classical Islamic scholars differed among themselves in considering some supplementary sources such as *maslaha, Istihsān, Qiyās, Ijmā'* and others as the sources and fundamental principles of law. Hence, with such differences of opinion in the supplementary sources of law, the knowledge derived from them cannot be conclusive. (al-Qaradāwi, Y, Vol. 2, p. 144). This disagreement

between the arguments of al-Shātibī and al--Qaradāwi, has been somehow reconciled Abdullah Drāz.

According to Abdullah Drāz the terminology of *Usūl* has more than one meaning in a technical sense, sometimes, this term refers to the general principles stipulated in the scriptural texts of the Qur'an and Hadith such as "Neither harming nor counter harming is permitted in Islamic Law", "He has not made any hardship in your religion" (Qura'an:22: 78) and " The deeds are judged and adjudicated by intentions and every person is judged according to his intentions". These general principles are sometimes considered as evidential proofs alongside the Qur'an and the Sunnah. The knowledge derived from these principles stipulated in the Qur'an and Hadith are undoubtedly conclusive and categorical. At the same time, the term *Usūl* alludes to the general principles derived from the sources of the Qur'an and Sunnah. These principles are instrumental when abstracting laws from supplementary sources. These general rules are the bedrock of the science of *Usūl*. (Abdullah Drāz Vol.1. p.19). Therefore, the knowledge derived from the epistemological principles of Islamic Jurisprudence can be conclusive and categorical if it is derived from these general principles stipulated in the texts of the Qur'an and the Hadith.

The epistemological foundation of al-Shātibī's legal theory is founded on the nature of multiple transmissions of the Qur'anic verse or the Hadith, and comprehensive inductive surveys of all evidence. He argues that through such inductive methods of survey, the obligatory nature of the five pillars of Islam such as prayer and fasting are known to us with certainty. What he contends here is that if ample evidence supports one concept, then the certain nature of such concept is unquestionable in the minds of people. Elaborating this point, he notes that the fundamental universals of protecting the five elements of the higher objectives of Islamic law, namely, protection and promotion of life, property, progeny, mind and religion- do not have verification in any specific piece of conclusive evidence either in the Qur'an or the Hadith: Neither the Qur'an nor the Sunnah specifically denotes that Islamic law is revealed in protection of the five elements.However, the general philosophy of Islamic law aims at preserving these fundamental universals, not by single attestation from the texts, rather by collective reading of the texts of the Qur'an and the Sunnah. gives such an impression in the minds with a strong certainty. Moreover, in a simplistic way, he makes clear that the obligatory nature of daily prayers is not attested by single piece of evidence, but rather many evidences converge in supporting the prescription of the daily prayers. A collective reading of these evidences in their totality strengthens our comprehensive understanding of the subject matter and marks the conclusiveness and categorical nature of such an obligation. (Al-Shatibi, Vol: 1. P.26). This method of collective reading of textual evidences is a hallmark of his legal theories in his work of *al-muwāfaqāt*. From this perspective, he is different from all other legal theorists and he seems to be innovative and proposing a radical methodological approach to the legal theories of Islamic law.

Muhammad Fadl one of brilliant Islamic legal scholars of modern time in one of lectures at the Islamic Institute of Toronto explains how and why al-Shātibī's legal reasoning method differs from other traditional Muslim legal theorists. A clear difference between legal theories of al-Shātibī and other's is that al-Shātibī demands a collective reading to divine texts to derive rules from them. No jurist in the legal history of Islamic law introduced such a collective reading to texts before him. He was the first legal scholar to invent this legal methodology to deduce rules from divine texts. He finds the legal theorists before him adopted Aristoteles- dialectical logical reasoning methods to deduce rules. Muhammad Fadl claims that al-Shātibī was not happy with this epistemological method of legal reasoning by traditional legal theorists before him. He did not disagree with the method they used to deduce the rule of law. This deductive legal reasoning method is used to determine how "do we know what we know? How do we determine the rules of law are from Almighty Allah"? He finds them using

deductive logical reasoning to derive rules of law. This logical method is taken from Aristotle logical reasoning method to prove the deduced rules are divine laws. For instance, they use some universal logical promises such as all men are mortal. This is a major promise. So, Mr john is a man. This is a minor promise. Therefore. He is a mortal. We come into such logical conclusion by means of deductive reasoning. Likewise, all Qur'anic commands and prohibitions are divine orders. This is a major promise. Using the same logical reasoning, the legal theorists argue all minor rules of Islamic law should be from Allah. Therefore, it must be a divine order. The legal theorists use this epistemological method to determine that deduced rules from the primary sources of Islam are divine rules. But this logical method has its setbacks.

The Qur'an is authentic, and Its authenticity is categorical. Yet, the divine texts are subjected to different interpretation. Some texts give different connotations and different meanings. Moreover, Hadiths literature is not like that. The authenticity of some Hadiths is disputable. Unlike the Holy Qur'an, hadiths are narrated by individuals. Although they are honest, but the authenticity of each individual hadith is not certain. But the authenticity is probable. Because some hadiths are narrated by some individual narrators. Qur'an was transmitted by thousands of people generations by generations, but Hadith were narrated by individuals. Therefore, the certainty of some hadith is probable. So, if the major promises or minor promises are uncertain the result will be uncertain. for instance, some men are tall, Mr Ahamed is a man. So, he might be tall or may not be. al-Shātibī finds that the traditional legal theorists used the Aristotle legal reasoning method to deduce rules from the primary sources of Islam. He finds it was not an appropriate method. Rather he came up with some new method. He calls its inductive legal resisting method. That is a collective reading of all texts in any given subject to deduce rules from the primary source of Islam. He argues that his theory of the general philosophy of Islamic law is created based on inductive reading into the divine texts. For instance, protecting faith, intellect, wealth, life and progeny are is the central theme of the traditional reading of the general philosophy of Islamic law. He argues that if you read the Holy Qur'an and Hadith, you can accumulate several texts from the Qur'an and Hadith that deal with these five universal principles of general philosophy of Islamic law. It is not single text or single Hadith, but several texts speak about importance of preserving faith. So, the categorical nature of preserving faith is unquestionable.

In his recent study of the work of al-Shātibī, Hallaq appreciates al-Shātibī's method of inductive corroboration and collective reading. He notes that the entire edifice of Islamic epistemology of legal theories is revitalised and refashioned by al-Shātibī's methodology. (Hallaq, W. *A.* pp.164-167.) Unlike conventional methods of classical scholarship in abstracting substantive rules from individual texts, al-Shātibī proposed a collective inductive reading into the texts to abstract laws. Hallaq notes that al-Shātibī draws the line between the legal theory i.e. "the roots of the law" and the substantive branches of Law (*furū'*). The difference between the substantive rules and the legal theory is that the former is based on pieces of evidence, such as a prophetic tradition or a specific verse of the Qur'an and most of these do not constitute certainty. On the other hand, the theory of roots is constituted in such a broad body of evidence that the nature of certainty is unquestionable. An example is that al-Shātibī argues that the authoritativeness (*Hujjiyya*) of Consensus is justified by this method of mutual collaboration of the texts, although infallibility of the Muslim community is not explicitly and clearly attested by either a single Qur'an ic verse or highly reliable prophetic reports, yet the authoritativeness of consensus can be justified on the ground of many verses of the Qur'an and the prophetic reports which imply the theme of inerrancy and unity of Muslim community (Ibid, p.166). Thus, consensus, juristic preferences and public interest are main parts of this method of collaboration and these major parts of legal theory are made up of universal principles *(Kulliyyāt*).

According to al-Shātibī these universals are the foundation of the *Shar'iah*. Each of these universals is formed by the ground of multiplicity of particulars *(juz'iyyat*). All these are attesting one meaning or theme embodying that universal. (*Al-Muwāfaqāt,* vol: 1, p.25), al-Shātibī further illustrates that once the fundamental universals of protecting and promoting life, property, progeny, intellect and religion are well established by this method of inductive reading and collaboration, law must be interpreted accordingly. Thus, the entire edifice of the Qur'anic texts and prophetic traditions are in one way or another aimed at protecting these universals. Otherwise, any, which does not relate to these universals, should be left alone. Thus, he contrives the doctrines of *Maqāsid al-sharī'ah* from this method of collective reading of the texts. From this perspective, his logical and rational methodological approach to the general philosophy of Islamic law is undoubtedly a radical and a new approach. Although all other classical Islamic scholars extensively researched into the general philosophy of Islamic law, no one preceded him in this sharp and acute methodological construction of the doctrines of *maqāsid*. Hence, it can be said from this point of view that he was the architect of the doctrines of *maqāsid* in a comprehensive and coherent sense. However, succeeding generations did not further develop his method of induction.

2) The internal relationship between the texts of the Qura'n

In his methodological understanding of *maqāsid,* al-Shātibī argues that one needs to understand the scriptural texts in context and understand the internal relationship between them to comprehend the general philosophy of law in any comprehensive sense. He argues that it is a mistake to attempt to understand the subject matters of Islamic law in isolation or in a decontextualized way. One must approach the contents of Islamic law as one constituent body with reference to the universals of law. He compares the edifices of the laws of *Sharī'ah* with that of the human body. Like different parts of the body are interconnected, the corpus of *Shar'iah* is interrelated. Therefore, any approach to understand the corpus of the *Sharī'ah* , should be holistic one.(*al-I'tisām,* p.245). al-Shātibī constructs an inseparable relationship between the revelation of both Meccan and Medinan periods. All the fundamental pillars of religion were laid down in the Meccan period and all the details of these fundamentals were further elaborated in Median revelation. Thus, al-Shātibī demands an integral approach to the Qur'an. No parts of the Qur'an can be comprehensively understandable without reference to other parts of the Qur'an (*Al-Muwāfaqāt,* Vol.3.304.).

He demands a moderate legal interpretation; which is, neither an extreme nor a traditional one. This moderate interpretation demands a thematic understanding of the Qur'an. It is generally acknowledged in the field of Qur'anic commentary that Qur'an deals with an issue in more than one place. An illustration is when it narrates the story of the prophet Moses, it does not narrate the entire story in one place, rather the story is mentioned in various places in various chapters. It is the Qur'anic way of dealing with any issue. He contends that one needs to collect and evaluate all relevant verses to deduce laws from the texts. If an interpretation of one part of Qur'an depends on another part, it should be done in an integrated way. Without such referential approach, the real meanings and God's intentions would not be rightly comprehensible by humans. (*Muwāfaqāt,* Vol, 3, P.258). In addition to this, he argues that the latter parts of the texts should be explained in relation to its earlier parts. Further, the entire Meccan revelation must be understood in chronological order of revelation. He explains the nature of the relationship referring to the Meccan Sura' of the Cattle and Medinese Sura of the Cow. Comparing the themes of these two chapters of the Qur'an, al-Shātibī argues that the Sura Cattle was revealed in Mecca. The foundations of faith are laid down in this Sura'. Likewise, this Sura' further illustrates the general foundations *(kulliyyāt*) of the law. When the Prophet migrated to Medina, the Sura Cow was revealed laying down their details. Thus, the Sura of the Cow entails the details of rituals, diet, crime, business transactions and marriage, etc. On the other hand, the Sura' of the Cattle establishes the universal principles i.e. preservation of

one's religion, life, mind, offspring a property while the Sura Cow gives more in-depth details of these. The entire edifice of revelation must be examined in chronological order to derive a conclusive understanding on any subject matter of the Qur'an. (Ibid, Vol. 3, p.305)

Further, al-Shātibī argues that the comprehensive understanding of the text of the Qur'an demands us to know two important elements. The first one is its contextual understanding. He argues that it must be understood in its context, the circumstances under which it was revealed and the reason for which it was revealed (*asbāb al-Nuzūl*). This contextual understanding (*qarāi'n al-ahwāl*) holds an important place in his legal interpretation. Secondly, to understand the intentions of God in His legislation one needs to know the prevalent linguistic traditions and conventions of the Arabs during the time of revelation. God spoke to Arabs through his prophets in a language they rightly understood. God revealed the text in their social realities. al--Shātibī argues that the language usages and realities differ from time to time. Therefore, unless one is fully equipped with the linguistic traditions of the prophetic period along with the knowledge of their social life, it would be difficult to fully understand the intentions of God. Thus, understanding linguistic conventions such as the general, the, ambiguous, univocal language, abrogated, non-abrogated, explicit and implicit verses of the texts is another important element in his legal thinking (Ibid, Vol 2, pp.49-52). The knowledge of all this, is needed for the comprehensive understanding of the general philosophy of Islamic law. That is why Hallaq notes that al-Shātibī "came closer to the doctrines of the exegetes than to that of following legal scholars" (Hallaq, W. 1991 P.71). Hallaq differentiates between the approach of al-Shātibī' and other legal theorists in their legal interpretation to the texts of the Qur'an.

Many legal theorists maintain that the Qur'ān is a corpus of legal document to be interpreted as a set of divine commands and prohibitions, with ambiguous and unambiguous verses. Hallaq notes that most of the legal theorists such as al-Ghāzalī, ''Amidi, Ibn al-Hajib and others followed a conventional and traditional method in their interpretations of the texts of the Qur'ān. They enumerated the four well- known sources of the law, elaborating the meanings of basic terms and establishing the authenticity of the text of the Qur'ān and the Sunnah. The Qur'ān and the Sunnah seen as a body of legal document and positive laws are derived and abstracted from these sources based on each text with little reference to significance of the chronological order of the text. On the other hand, al-Shātibī exceeds these limitations and boundaries of these conventional method of legal interpretation. He reads the texts of the Qur'ān and the Sunnah c differs dramatically and sharply from the other legal theorists in his legal theory and approach placing such a huge emphasis on the issue of internal relationships of the Qur'ān ic text and on the chronological order of revelation. The commentators of the Qur'ān in their approach generally applied this method of understanding. al-Shātibī pioneered this method for the first time in the history of Islamic legal thought. In this sense, his contribution to Islamic legal thought is radical and innovative and the significance of his theory is highly acclaimed and well recognised by modern Islamic scholarship for this reason.

In his methodological understanding of the general philosophy of Islamic law, al-Shātibī designates a significant place to the primacy of the Qur'ān in the hierarchical order of the sources of law like all other theorists. He claims that the Qur'ān included all the fundamentals of religion and faith and nothing is outside its scope. He supports such arguments from the Qur'ān itself which reads "Today, I have perfected your religion for you" 5: 3, and "We revealed the scripture unto you as an exposition of all things" (16: 89), and "We have neglected nothing in the Book" (Qur'an 6: 38.) Thus, the Qur'an is all-inclusive of the fundamentals of religion whether spiritual or otherwise and the Sunnah elaborates, explains and clarifies the details of these fundamentals of religion. (Ibid, vol.3 pp 276-78). Interestingly, al-Shātibī succinctly elaborates the essential relationship between the Qur'an

and the Sunnah. Although the Qur'an consists of the fundamentals of religion and law, no ruling or law ought to be derived from it without consulting the Sunnah because the Sunnah constitutes the practical explanation of the teaching of the Qur'an. After all, it is the main duty of the Prophet to explain to people what was revealed to him through his actions, silent approvals and statements. Therefore, it is not desirable to abstract rules from the Qur'an alone without consulting the explanations and elaborations of the prophetic traditions. He further argues that based on the Qur'an, the Sunnah regulates the rules of daily prayers, fasting, alms-tax, ablution pilgrimage and other mundane affaires. Thus, he relegates the status of the Sunnah to a secondary level arguing that the Qur'an enjoys a high degree of certitude about its authenticity whereas; the Sunnah does not enjoy such a level of authenticity. However, he neither questions the authentic nature of the Sunnah nor does he deny the status of the Sunnah as the source of law. What he argues is that like Medina revelation, the Sunnah offers explanations and details to the Qur'an. He comes to such a conclusion based on his firm conviction that the fundamentals of religion and law are laid down by the Qur'an. (Ibid, 3, 278)

3). The relationship between the Qur'an and Sunnah.

These fundamentals of religion are aiming at preserving human interests in this world and the next for the realisation of which the edifice of the *Sharī'ah* is instituted. al-Shātibī firmly argues that these fundamentals of the law are primarily stipulated by the Qur'an and elaborated by the *Sunnah*. He argues that all five elements of essential aspects of the general philosophy of law are articulated primarily by the Qur'an and clearly expounded and elaborated by the Sunnah as well. An illustration is that the Qur'an aims at preserving the articles of faith and guides people to accept the call of Islam and for the defence of faith; it prescribes the institution of *Jihād.* al-Shātibī argues that in the same vein, the Sunnah provides complete details and elaborations to preserve the elements of faith. In such a way, the Qur'an and the Sunnah collaborate each other in articulating the essential elements of *maqāsid*. In the same manner, rules and regulations regarding marriage, procreation, means of subsistence, and all other matters related to preservation of life and its continuity are stipulated by the Qur'an and explained in more detail by the Sunnah. Similarly, laws of adultery and fornication, and divorce and other material related matters are articulated by the Qur'ān and elaborated by the Sunnah to maintain the continuity of life.

Likewise, the Qur'ān and the Sunnah regulate laws in relation to crimes, and punishments, retribution, hunting and diets to maintain ordinarily life. Similarly, laws relating to the preservation of property are regulated by the Qur'ān with certain general legal principles and explained by the Sunnah in more details. On the preservation of the human mind and intellect, al-Shātibī notes that the Qur'ān deals with this element very vaguely, but this area is left to the *mujtahid* to regulate laws with general guidance from the Qur'ān and the Sunnah. All in all, he argues that the Qur'ān lays down the fundamentals of religion and laws and more details are derived from the Sunnah. Similarly, the Qur'ān provides the general principles in relation to the other elements of *Maqāsid*, namely, *hājjiyyat* and *tahsīniyyāt* and the detailed elaboration of these elements of *Maqāsid* are given in the Sunnah. By relegating the Sunnah of the Prophet to a secondary level, al-Shātibī argues that the Qur'an alone provides the *kulliyyāt* of the *Sharī'ah* *and* the Sunnah provides the interpretation of the Qur'an and offers additional details that are not already found in the Qur'an. (Ibid, Vol.4, p.20).

al-Shātibī's methodology in contriving the doctrines of *maqāsid* is that he deliberately relegates the status of the Sunnah to a secondary status and he constructs his doctrines of *maqāsid* mainly based on Meccan revelations arguing that Meccan revelation contains the fundamentals of religion and law. Such an intellectual attempt to contrive the doctrines of *maqāsid* in this way is a departure from already established legal theory (*Usūl al-fiqh*) as al-Shāfī's evidentially established that the Sunnah had an authority to regulate rulings

on its own even through a single report as long as it is a reliable one. While the inherent relationship between the Qur'an and the Sunnah is unquestionable, relegating the status of the Sunnah this way to a secondary level begs many questions. al-Shāfī refutes categorically the arguments of people who claimed that the Sunnah couldn't add any legislation outside the scope of the Qur'an. He quotes many Qur'anic verses to argue that the prophet along with the Qur'an had the legislative power to regulate laws outside the sphere of the Qur'an. He argues that the Sunnah adds rulings by divine inspiration and conveys the rulings that are not in the Qur'an. He refers to fundamental rituals of Islam such as *praye*r, *Zakāt* and *hajj* of which the minimum level of obligation is mentioned in the Qur'an and the Sunnah adds and furnishes the full scope of these rituals maintaining the legislative authority of the Sunnah. Hence, he argues that the authority of the prophetic Sunnah is unquestionable and as a source of law equal to that of the Qur'an. Therefore, according to al-Shāfī's legal theory relegating the status of the Sunnah to a secondary position is not acceptable at all. al- Shāfī 'refers to many Qur'anic verses in support of his arguments: (The Qur'ān : 4: 59) He argues that Allah has obliged the believers to obey and follow the prophet. Thus, the Sunnah of the prophet constitutes an authority in the *Sharī'ah* on its own merits.

Moreover, God instructs his Prophet to judge between the people, as his judgement is the final verdict in disputes of the people. Thus, such a judgment is part of Prophetic authority and submitting to the will of the Prophet is part of submitting to the will of God. On the other hand, al-Shātibī himself refers to the positive rules derived exclusively from the Sunnah of the prophet. For instance, the prohibition to marry the paternal and maternal aunt, and the prohibition to eat the meat of donkeys and certain kinds of predatory animals are exclusively regulated by the Sunnah of the prophet. Moreover, the prophet used his own intellectual reflection by way of analogy to derive many laws as in the case of marrying the maternal and paternal aunt. (Ibid, Vol 3. P.278). However, al-Shātibī's method of relegating the status of the Sunnah is not to undermine the authority of the Sunnah as a source of law. al-Shātibī convincingly agrees with the legislative power of the prophet outside the sphere of the Qur'an. However, the specific rulings derived exclusively from the Sunnah by means of Qiyās or otherwise, should have their root in the Qur'an. Thus, al-Shātibī forges a link between the Qur'an and the Sunnah. In this way, he justifies his overall scheme of the general philosophy of Islamic law as a comprehensive one. He sees the edifice of Islamic *Sharī'ah* as one set of laws interrelated with each other in one way or another. This claim is made throughout his writings both in his legal compendium of *al-muwāfaqāt* and in his theological treatise of *I'tisham.* He interrelates the thematic and contextual understanding of Islamic law in its primary sources of the Qur'ān and the Sunnah. al-Shātibī's primary objective in writing these works is to highlight the inherent nature of Islamic law rather than discussing the authority of the Sunnah. In this way, al-Shātibī establishes the authority and authenticity of the Sunnah and connects it to the general philosophy of Islamic law.

4) The methods of legal interpretation in al-Shātibī's writings:

al-Shātibī continuously argues that neither traditional nor literal legal interpretation is appropriate with the phase of changing circumstances and conditions of the social structure of Muslim communities. Moreover, considering the socio-religious conditions of his time, he makes a staunch criticism of two groups of people. On the one hand, he strongly criticises the mystics of his time for their mystical legal interpretation of the scriptural texts. On the other hand, he makes a similar criticism of literalists of his time for their apparent literalistic approach to the Qur'ān. It is one of the characteristics of the *Sharī'ah* that it encompasses all human beings under its command. No one is exempt from the divine obligations. All Muslims are equally obliged to obey to divine ordinances and exemption is given only for children and mentally retarded people or unsound people or those who are sick. (Ibid, vol.2, pp. 186-88). Thus, divine laws are revealed in the benefits of all human beings and the exemption is given

only to the Prophet with instructions from God. From this very standpoint, al-Shātibī totally rejects mystical interpretations of Sufi's of divine texts. He asserts that only those who do not rightly comprehend the general philosophy of Islamic law (intentions of law) can claim that Sufis are at liberty to follow a superior and different set of laws from those applicable to ordinary people. The followers of mystical thought claim such superiority in law for their mystical leaders. Thus, many prohibited things become permitted to the mystical leaders as they follow a superior set of laws different from those followed by ordinary people. al-Shātibī reports that once a Sufi leader was asked about the obligatory nature of *Zakāt.* This mystical leader gave two different answers about the obligation of *Zakāt*. One answer was based on his mystical interpretation saying that everything in this world belongs to Allah, implying that he was not obliged to pay a specific amount of money as *Zakāt*. The other answer was given according to a legal school implying a certain amount of money should be paid accordingly. Chanting a certain type of religious rhyme is common practice in the circles of Sufi. The Sufi's regarded this practice as a permissible act while al-Shātibī considers this practice is to be prohibited (Ibid, Vol.2. 189). Thus, the legal interpretation between the *Sufis* and *Fuqaha* differed widely in many religious issues. al-Shātibī contends that this type of duality in law is not acceptable in the Islamic law at all. He further contends that even the prophet was not exempt from following the laws of *Sharī'ah,* so how could these so-called Sufi have claimed such immunity from the legal decrees of Islamic law. He argues that no human act whether it is religious or worldly affairs, or otherwise mystical or super-natural acts cannot be legitimate unless it has its own original basis *(asl*) (precedential basis) in the prophetic Sunnah. Thus, according to al-Shātibī the body *of Sharī'ah* is the decisive factor, which evaluates the legality and legitimacy of all human acts including all the so-called miraculous acts of Sufi saints and mystics. (Ibid. Vol. 2. 209-14). Therefore, everyone is equal in the eyes of law and no one is above the law at all. Hence, mystical interpretation should be re-evaluated according to the general philosophy of Islamic law. Thus, failure to understand the general philosophy of Islamic law paved the way to interpret the *Sharī'ah* against the original intentions of God.

He also criticizes the methods of literalists in interpreting texts of the *Sharī'ah.* Blindly following of the apparent meaning of the Qur'an without proper understanding of the general philosophy of law and the general principles of the Qur'an is not the right way of reaching the true of the meaning of the Qur'an. Expressing a legal opinion based on an apparent outward meaning of the Qur'an is again not a right way to approach the texts. al-Shātibī argues that Qur'anic verses and chapters are uniquely interrelated, and this unique structure of the Qur'an disintegrates if one were to approach it out of context with its apparent meanings. That is why al-Shātibī reports that some scholars regarded the literalist approach of Ibn Hazm as a religious innovation of the second century of Islam. (al-*Muwāfaqāt*, Vol, 4, p.129). Furthermore, he argues that the school of literalism partially evaluates the general philosophy of Islamic law with a literalistic perception. They argued that God revealed the laws of *Sharī'ah* in order to test the good and bad deeds of legally obliged people in this world. Therefore, the human interests should go along with intention of God. What God determines is always good for human beings and human interest are not determined by human perceptions alone. They further contended: we follow the apparent meaning of the texts with perfect conviction that we are on the right path and are commanded to follow this. (Ibid, vol.4, 168). This is the argument of literalists in support of following the outward meanings of the texts. However, al-Shātibī argues that this approach to the texts of the Qur'an is not appropriate and suitable. He says that the literalists freed the texts from the circumstantial evidence and rationale of the texts and looked at the obvious meanings of the texts. On the other hand, the rationalists looked at the wisdom and rationale behind the texts alone and ignored the characteristic of the words of the texts. However, al-Shātibī argues that one

should give due consideration for both: to the apparent meanings of the texts and rationale behind the text. For the fact that reading the apparent meaning of the texts without looking into the rationale, logic and wisdom of the texts is not a comprehensive way of understanding the Qur'an. (Ibid, Vol. 4, pp.167-9).

At the same time, al-Shātibī does not fail to make a staunch criticism of some of his contemporary jurists for their lenient approach to the texts. He claims that some of these jurists gave their legal opinions not in accordance with the general philosophy of law but rather according to their own personal ambitions and interests, sometimes using unlawful stratagems to arrive at convincing juridical results which are otherwise, prohibited by law. Interpreting the texts according to their own worldly benefits and desires is against the very purpose for which the law is revealed. (Ibid, vol.4, pp. 189- 190.) That is why al-Shātibī again and again emphasises that the personal life of jurists should be in accordance with what they teach, and their deeds and legal utterances should be in conformity. While teaching the ideals of law they should serve as an exemplar to the people as they are indeed inheritors of the legacy of the Prophet. It is clear from al-Shātibī's staunch criticism of various methods of legal interpretation that al-Shātibī was advocating a comprehensive approach to legal interpretation. This method of legal interpretation is not confined and limited to the conformity with the apparent meaning of the texts but rather an inductive method of understanding the texts reveals that the universals of law are epistemologically conclusive elements of law. This way of interpreting the text is described by him as a middle way of legal interpretation between two extreme positions. Neither following the extreme way of interpreting laws nor the lenient way of interpreting the text is what the general philosophy of law intended. It is not the Prophetic way to follow either an extreme or a very lenient way but rather the prophet followed the middle path in all his affairs. (Ibid, Vol. 4, p.191).

5) The significance of the knowledge of the general philosophy of law for *ijtihād.*

To follow the middle path in the interpretation of law, al-Shātibī lays down certain conditions for the scholars of law. The classical scholarship demands certain prerequisites and qualifications to attain the rank of doctors of interpretation (*mujtahid).* It is a prerequisite that a legal scholar in Islamic law must be an intelligent, mature, and just person of good character. Moreover, he should be well versed in the sources of Islamic law. He must understand the techniques of interpreting these sources of law. Some of these qualifications include a meticulous knowledge of the Arabic language, rules of disagreement, a comprehensive understanding of abrogating and abrogated verses, circumstances of revelation, methods of legal reasoning along with good knowledge of the prophetic Sunnah, consensus and *Qiyās* and other legal sources. More importantly, al-Shātibī proposes one more prerequisite to attain the rank of *mujtahid*. According to al-Shātibī the interpreters of Islamic law should possess the knowledge of the general philosophy of Islamic law: a comprehensive understanding of the intents, aims and higher objectives of law. In addition to this, the interpreters of law should have skills and capabilities to deduce and abstract rules of law in conformity to the higher objectives of law. al-Shātibī categorically argues that unless someone understands the intention of the law properly in each issue of Islamic law, knowledge of Arabic alone would not be enough to understand Islamic law. The knowledge of Arabic language is an instrumental mean to understand the general philosophy of Islamic law. If one were able to adequately grasp the knowledge of the intentions of the law in depth, surely, he would gain a higher status in one's teaching and legal opinions. Thus, knowledge of the higher objectives of the law adequately constitutes an important element to derive laws from the divine texts. Because rules of law should be deduced in accordance with the higher of objectives of Islamic law.

According to Dirāz who provides a concise commentary to the legal treatise of *al-muwāfaqāt*, al-Shātibī is the first scholar to underline the importance of knowledge of the

general philosophy of Islamic law to legal interpreters (*mujtahid*). However, it is interesting to read that al-Shātibī argues that when the jurists are encountering new cases, it is not necessary to have all the prerequisites that are normally needed by full-fledged doctors of interpretation (*mujhahids).* All they need to know is those essential aspects of knowledge to answer the case. In elaborating this point, al-Shātibī contends that, Abū Hanifa and Al-Shafi were not experts in the science of *hadith.* Yet, they are regarded fully-fledged doctors of interpretation (*mujtahid muttalaq*) and leading scholars of the legal schools who are regarded as founders of legal schools. (Ibid, Vol 4, pp.76-79). According to al-Shātibī doctors of interpretation can be classified into three categories; namely fully-fledged interpreters of *Shari'ah* such as the founders of the four leading schools, the interpreters of a school such as students of these four leaders of schools, and interpreters of particular cases. Thus, interpretation is a religious duty of every person who possesses the qualifications, and qualities to exert his intellectual capabilities. Blind imitation is condemned by al-Shātibī, yet he recognises variations in human intellect, and hence, he argues that laymen should follow the opinions of *mujtahid* in religious matters and not follow his own desires. Naturally, al-Shātibī argues that the intellectual exercise of *Ijtihād* continues every age. The occurrence, events, incidents and issues faced by humanity are myriad and countless; therefore, it is impossible to incorporate all of them within the limits of law. That is why a method of intellectual reflection is needed as an instrumental way of *Qiyās* or otherwise. If there is no textual evidence or legal precedents for new cases or occurrences, one should resort to the use of *Ijtihād,* otherwise people would be left alone to follow their own way of life leading to widespread corruption and distortion in law. Hence, the process of continuity of *Ijtihād* is imperative and inevitable until the Day of Judgment. However, such an endeavour of rational enquiry into new cases of Islamic law should go hand in hand with a comprehensive understanding of the general philosophy of Islamic law. al-Shātibī is forging a strong link and affirmation between the process of *Ijtihād* and the general philosophy of law. It is generally argued that al-Shātibī was the first scholar to make such conformity between *Ijtihād* and the higher objectives of law. al-Shātibī categorically argues that unless one masters these elements, he would not comprehensively understand fully the nature of Islamic law. Without such knowledge, any scholar can make grave mistakes in regulating and abstracting laws. It can be said that this was the first time in the history of Islamic legal theory that such emphasis was put on this. None of the classical scholars put these preconditions to attain ranking of *mujtahid*. al-Shātibī not only revolutionises the methodological understanding of the legal theories of Islamic law, he also expands the catalogues of prerequisites and qualifications of the legal scholars. In this way, once again al-Shātibī puts a vigorous emphasis on the quality of our understanding of the legal texts.

6) The significance of the understanding the legal norms and language:

In his methodological understanding of Islamic law, al-Shātibī like all other legal theorists argues that understanding the legal language and its norms significant to understand of the legal philosophy of Islamic laws. Unless we understand the technicalities of legal language we may distort or proffer misinterpretation of the legal texts. Therefore, understanding the legal ranking of divine commands, prohibitions, the rules of abrogation, the verses of generals, the ambiguous, unambiguous verses, the other technical and legal languages in the *Sharī'ah* are very vital elements in understanding the general philosophy of Islamic law. Moreover, understanding the literal, metaphorical, explicit, implicit meanings, restricted and absolute speech and the contexts of sentence are also very important to legal interpretation. (al-*Muwāfaqāt,* Vol, 3, pp. 194 –229). More importantly, understanding of the legal norm of *Mubāh* gains a significant place in al-Shātibī's legal theory for the obvious reason that a certain permissible act may become obligatory when applied to a group of people. For instance, trading may be a permissible act as far as individuals are concerned. However,

business transactions in their totality become obligatory acts. Hence, collective involvements in these acts are a necessary obligation (*al-Muwāfaqāt* Vol: 1.P.93). Although, al-Shātibī is more speculative in these issues, the crux of his argument is that optional religious duties of individuals get obligatory dimensions when they are done collectively.

Likewise, al-Shātibī further maintains neither the notion of abrogation nor the notion of ambiguity occurs in the universal category of law. In his legal treatise of *al-Muwāfaqāt* al-Shātibī devotes a large part of his writing to explore the relationship between the legal norms and the general philosophy of Islamic law. He contends that without understanding of the legal language and norms, we would not be able to grasp comprehensive meanings of the general philosophy of Islamic law. A large part of his writing is devoted to explaining the meanings the generals *('amm*) and particulars (*Khās*) in the Qur'an.Thus, al-Shātibī contrives his doctrines of *māqasid* based on these underlying general principles and differs from other classical legal theorists in his approach to the general philosophy of Islamic law. This part reveals that al-Shātibi elaborates his ideas of *maqāsid* upon these general principles. Moreover, we find that al-Shātibi has differed from other conventional legal theorists in arguing that the knowledge derived from the principles of Islamic jurisprudence is positive and conclusive not speculative. However, most legal theorists maintained that the knowledge derived from those principles is speculative as there is no unanimity among scholars in considering some supplementary sources of law. However, this study finds that the method of induction is a novel approach introduced by al-Shātibi to legal interpretation. Furthermore, this chapter reveals the importance of the knowledge of internal relationships of the Qur'anic texts in legal interpretation. This study also confirms that al-Shātibi has established inherent relationships between Qur'an and Sunnah in elaborating the general philosophy of Islamic law. More importantly, this chapter shows that al-Shātibī has placed more emphasis on legal norms and legal language to know the higher objectives of law.

Chapter 4: The significance of *maslaha* in the writing of al-Shātibī:

Here we discuss the role of *maslaha* in al-Shātibī's legal interpretation. We examine some of his *fatāwā* to see to what extent he considers *maslaha* as an independent source of law. Moreover, we evaluate the way he distinguishes between the notion of *bid'a* and *maslaha.* In his introduction to his legal theory of *maqāsid* he argues that divine laws are nothing but divine mercy and clemency for His subjects. He refers to the following verse in support of his argument, which reads "We sent you not save a mercy to the people" (21:107) (Ibid, Vol: 2; p.4) Thus, he argues that the divine message and divine commands are but a mercy from God to His subjects. This is for the obvious reason that God is not in need of anything from his subjects but rather they need His guidance. He further notes that law is not revealed in vain (*'abathan*) but rather for a logical and rational reason noted by divine wisdom *(hikma')*. This wisdom is the preservation of human interest not the interests of God for He is supreme, omnipotent and self-sufficient. Hence, it is logical that He does not need any one's favour. al-Shātibī argued that what is *maslaha* is prescribed by God alone and man cannot decide what is good and what is bad for him through his intellect alone. Because man is created with human weakness, whims and desires. Moreover, God knows what is best for His subjects. al-Shātibī further argues that God instituted this noble *Shari'ah* to free man from his own whims, desires and the predilections and guide him according His legal decree. (Ibid, Vol.2. p.131). God knows what is in the best interest of man. It is true that Man has instinct to know what is good and what is bad. Moreover, he knows his personal interest well. However, his knowledge of his own interest is limited and incomplete. Human evaluation of man's interest may vary people to people, place to place and subject to many human weakness and shortcomings. Sometimes, what man thinks beneficial to him may afflict harm in one way or

another. Therefore, al-Shātibī argues divine message is revealed in the best interest of man in a way determined by God, not as man wishes.

The divine law is revealed in a comprehensive way to meet interest of man eternally. Moreover, al-Shātibī argues that God sent the prophets time to time to protect and promote the interests of humanity not His own interests. The divine message of the prophets is not confined in their invitation to oneness of God, but the prophets fought against the social injustice, economic exploitation, political oppression and tyranny to protect human welfare and interest. Hence, the entire divine messages are revealed in the interest of humanity. Interestingly, al-Shātibī argues that divine guidance is revealed to protect the welfare and social justice. The evidence he deduces for such an argument is that from the very first verses of the revelation, the Qur'an speaks directly to mankind dealing with his socio economic, religious, and political aspect of life. The terms such as *Insān, Insūn, Basārūn, and Nāsūn* occur in many places in the Qur'an. al-Shātibī notes such frequent occurrence denotes the extent of Qur'anic attention to human problem. The problem of humanity gets prominent place in the Quran. Therefore, protection and promotion of man's interest get prominent place the main characteristic of Qur'anic legislations. Since divine commands and prohibitions are revealed in the interests of man, those divine commands and prohibitions are not beyond human capabilities to understand. God will not demand an application of law beyond human nature, and God has considered all forms of human weakness when he stipulated the law (Ibid, Vo1: 2, p.82.93). al-Shātibī argues that it is not a characteristic of divine legislation to impose on human beings an intolerable and unbearable legal obligation. (*Taklif Mālā Yuthāq*) (Ibid, Vol:2, p231).

al-Shātibī, argues Islam aims at preserving human interests in aspects of human life. Whether it is the domain of faith or the religious rituals or otherwise, the ethical and moral codes are instituted to serve human interests. How does the sphere of belief and religious rituals serve the human interest? The faith matters, and religious rituals are not mentioned in the Qur'an as mere set of philosophical arguments rather they are mentioned in the Qur'an in relation to socio-economic and political life. Many socio-economic problems are addressed in the Qur'an in correlation with faith. Hence, the socio-economic benefits of these rituals and beliefs are immense. So, all Islamic laws are revealed for the benefits of Mankind. al-Shātibī categorically argues that the human reason has its own limitation in understanding the belief and worship. If man were left to understand the faith and worship without divine guidance, he would not agree in the matters of faith and worship. What al-Shātibī says here is that God prescribed the matters of faiths and worship in the best interest of man. Because, man is incapable of knowing them on his own (Ibid, Vol 2. p. 231). Moreover, faith is not subjected to human experimentation. From another perception, al-Shātibī argues that the human interest is maintained in divine legislation. He argues that among God's creatures God has dignified man. He says, "indeed, we have dignified sons of Adam". God has made man as His vicegerent on the earth and has given him the knowledge and capability to win the nature (*Taskhir al-Samāwāt wal-ardhi*). The universe is created for the benefits of man so that he enjoys its natural resources. The natural resources of the universes are adornments as the Qur'an describes. Therefore, renouncing the mundane affairs of this world is not in the interest of man. It is not what is intended by Islamic law. However, al-Shātibī further notes that while man is God's vicegerent on the earth, he is also God's servant on it. Therefore, man should utilise this universe for his own benefits with a sense of trust (*Amānah*) in a way demanded by God not in way man desires and wishes.

al-Shātibī argues that the prophet Mohamed protected the human interest through is sayings and actions. al-Shātibī argues he understood the needs, demands, suffering and human feelings of people. The prophet was not a superhuman being or someone with extraordinary power in any way except he received divine revelation. For that reason, al-

Shātibī notes that the Qur'an depicts the prophet as a *Busharun* i.e. literally meaning that a normal human being sharing all human qualities and feelings. A logical conclusion of such meaning is that the prophet rightly understood human needs and feelings of people. Therefore, he would not have legislated or demanded from people beyond their human nature and needs. al-Shātibī argues that the characteristic of human nature (*Basharīyyat al-rusūl*) of all prophets is very clearly documented in the Qur'an as ordinary people having all physical and social needs. The last prophet was not an exceptional one from this. (Ibid, vol.3, pp. 311-313). al-Shātibī refers to many verses of the Qur'an and prophetic traditions to establish this fact. The Qur'an: (23: 33). The main point al-Shātibī draws our attention here is that divine revelation and legislation revealed to mankind through the prophets are not aimed at preserving God's interest rather they are aimed at preserving human interests as God is not in need of anything from his servants. All the prophets were sent down as mortal being to secure human interest in a comprehensive and pragmatic ways. al-Shātibī draws our attention to many prophetic traditions, which maintain the human interest in the sphere of worship and rituals. al-Shātibī categorically argues that all forms of rituals are instituted in Islam in a way to secure the human interests. Therefore, an excessive involvement in religious rites should not be at expense of human interest of any mundane affairs of this world. Otherwise, violating the human rights of any other human beings.

For instance, al-Shātibī refers to the following tradition in support of his argument. "you have a right upon yourself and your family has a right upon you". Therefore, al-Shātibī argues that an excessive involvement in personal worship should not be at the expenses of other's rights. al-Shātibī further alludes to the tradition which reads "I have shortened the prayer hearing the cry of a child" Moreover, he condemned one of his companion (*Mu'adh*) for prolonging his prayer while old, weak and needy were praying behind him. al-Shātibī argues that the prophet had considered the needs, suffering and feelings of people in his actions and approvals. Thus, the human interest and welfare have been maintained in the prophetic reports without marginalizing either divine duties or human duties and rights. (Ibid, Vol 2, pp. 109-111). al-Shātibī argues that when God legislated laws for man, He considered the human weakness and human capabilities in his legislations. It is impossible that God legislates something against to human instincts and nature. al-Shātibī argues that God prescribes religious obligations in an undemanding way, incorporating nature of man, woman, old, younger, and all kinds of people. An exemption (*rukhsa)* from the legal rulings of the religious duties (*'azima')* are given to certain kinds of people considering their weakness, sickness and incapability. God never imposes hardship and difficulties upon His subjects. He notes alleviating hardship *(raf 'al- haraj*) is a legal principle in Islamic law. It was supported by a larger number of Qur'anic verses. This legal principle is created to secure human interest and welfare. (Ibid, Vol. 2. pp. 91-95.). al-Shātibī argues God revealed his law to make it to apply and to protect his interest. al-Shātibī, on the other hand, argues that the legal mechanism of *Ijtihād* in Islam Law has been given to man to regulate his mundane affairs of this world. If God commands man to do something or prohibits him doing something, it is not because He wants to deprive him of his own freedom. God has got some wisdom (*hikma'*) behind His prohibitions and permissions. Hence, His commands and prohibitions are prescribed to promote human interests and protect them from all kinds of inimical and harmful things. *(Khallāf.* p.40-42).

K. Masud in his study of the legal philosophy of al-Shātibī examines nearly forty *fatāwā* of *al*-Shātibī in various matters of religion. Here our concern is to examine some aspects of his *fatawa* pertaining to the legal device of *maslaha.* In addition to al-Shātibī's works one can read al-Shātibī's *fatāwā* in al-Wansharishi's al-*mi'yār,* which preserved most of al-Shātibī's *fatāwā.* Abū Ajfān in his *fatāwā* al-Shātibī has collected many al-Shātibī's *fatwās* from various

books. These are very useful materials for the examination of al-Shātibī's legal edicts. An exclusive study of al-Shātibī's collection of *fatāwā* was done by the Moroccan scholar Abū Ajfān. In his pioneering study he concludes that al-Shātibī's *fatāwā* manifest socio-economic developments of his time. Some time, his fatwās address about the economic and agricultural development of his time, sometimes, they address about social issues, on other occasions, they deal with trade relationships about Muslims and Non-Muslims in time of war. Of course, many of al-Shātibī's *fatāwā* deal with purely religious issues but the underlying theme has been the demand for legal change in accordance with rapidly changing social change. al-Shātibī outlines his methodology in his *fatāwā.* He follows the moderate and lenient approaches in his legal verdicts on the advice of his teacher. He relies in his legal edicts on authentic reports and on the statements of eminent scholars among *Māliki* jurists. If he does not find therein any clues for his understanding of a given issue, he applies his personal reason. For instance, once he was asked about decorating sacrificed meats of animals and hanging them up. al-Shātibī says, "I cannot refer to any text in this peculiar issue. But I can say based on the general philosophy of law that if such acts are done to show off and boast one's sacrifice. Sacrifice is a form of worship and such bad intention is not permitted in religious rites at all" (Abū Ajfān p.46.)

In his concluding remarks to the study of al-Shātibī's *fatāwa,* K. Masud finds that the underlying themes in the legal verdicts of al-Shātibī are the questions of religious morality and human welfare as embodied in the general philosophy of law. (Masud, K. 1988, P.140). Ahmed Bābā mentions some of al-Shātibī's *fatāwa,* which were issued purely on basis of public interest. al-Shātibī's maintained that imposing an additional levy is valid in some special circumstances. This is addition to the tax of *Zakat* in deteriorating conditions of treasury, especially when there is an urgent need for public expenditure under special circumstances of emergency. In his time due to constant the fighting, the public treasury needed extra fund. Therefore, he issued a legal edict to levy a tax on people, as it was a responsibility of the community to protect the public interest of national security from enemies. On some other occasions, some taxes were levied on the building of walls in Granada as an income-generating method to cope with the deteriorating financial conditions of the public treasury. The Mūfti of Granada opposed such an edict; as such the legal ruling was not sanctioned by any text. (Ahmed Bābā, Nayl, p.49-50). However, al-Shātibī' argues the legal validity of such taxes were introduced to protect public interest. There are many legal edicts of al-Shātibī; which aim at securing the public interest. In a sense, al-Shātibī's *fatāwa* were not merely religious edicts but rather they were instrumental guidelines for the socio economic and fiscal development of Muslim society. In many ways, his legal edicts from an Islamic economic perspective can be a legal model for further study of Islamic economics. Economic policies of the Muslim countries should aim at protecting public interest of the communities.

al-Shātibī's legal verdict on the production of wax statues for business purposes is an ideal example in which he applies the notion of *maslaha*. A certain group of Spanish Muslims produced wax candles and statues for sell them to Christian people. It is clear from prophetic reports the prohibition of any image of human figure in any material. al-Shātibī argues the prohibition prescribed in the prophet's reports are to do with a complete figure of any form of statues. But making any parts of wax statues does not come under such prohibition. The logic behind this argument, he wants to safeguard the interest and welfare of the business community because of public interest. Another interesting legal edict of al-Shātibī was dealing with issues of trade contract between Muslims and Non-Muslims. al-Shātibī was asked about the permissibility of arms trade with Christians for basic needs such as food and clothing. Most *Māliki* scholars prohibited such dealing. The question is whether the Muslims of Andalus could be exempt from such general prohibition under the doctrine of necessity due to their special conditions. In this issue al-Shātibī categorically refuses to apply any legal licence to situations. Hence, he denies any legal validity for such sale for the

simple fact that protection of religion comes first and foremost in his classification of *maqāsid.* He argues any dealing with arms that ultimately may be used against Muslims is an invalid contract of business. It is peculiar to note that al-Shātibī has not given any legal verdict on Muslims living under non-Muslim political hegemony; although this has been a subject of legal discussion of his contemporary scholars during his time. The most of these examples are in one or another taken from Māliki schools of legal thought. He makes frequent reference to Imām Mālik in support of his argument. For instance, it is reported by al-Shātibī that Mālik has approved the oath of allegiance *(bay'ah)* to the lesser-qualified one (*mafdul*) between the two qualified candidates for the leadership of Muslim community. However, this legal reasoning applies only in exceptional circumstance to prevent disorder and chaos affecting the community due to unbending leadership completion. The argument here is that the harm of leaving Muslims without leadership is greater than the harm that may result due to the selection of lesser-qualified one. al-Shātibī note that "we are faced with a choice: either people are left in chaos, the consequence of that will create more confusion and corruption in the society or we accept less qualified to avoid the chaos and harm. Such logical and rational reasoning is made based on maslaha although there is no explicit text to support." *(al-I'tisām*, P.126-128).

al-Shātibī refers to another interesting legal reasoning which was very strongly advocated by Mālik. Mālik was of the view that if several people collaborated in killing a person those who committed such a crime should be executed. According to al-Shātibī the legal reasoning for such *fatwā* lies in the textually unregulated benefits. There is no textual evidence for such incident. Hence, al-Shātibī argues that it is permitted to execute several collaborators for killing one person. Moreover, He argues that life is sacred unless we maintain such legal ruling on this issue people may collaborate to kill many people. Unless we uphold such a legal ruling, the application of retribution would be meaningless. He further notes that one can argue that killing a person other than murderer is not logical since collaborator is not a murderer. However, al-Shātibī contends that the killer in this case is not a single person rather a group of collaborators. The murder is attributed to all those who collaborated, as it is attributed to a single killer. It is a question of responsibility. All should take responsibility for such murder. Preserving life is one of the higher objectives of the *Sharī'ah*. *Maslaha* demands the maintenance of this legal ruling to protect interest of public. One can observe similar rulings in Mālik's legal rulings such as severing off several hands in retribution for the cutting of one. Or cutting off several hands for a mandatory theft punishment (Ibid, 125).

Moreover, Mālik legitimised the imprisonment of a person charged with theft. His disciples even sanctioned beating such man in order find the stolen items. This was to set an example to the thief and others. Nevertheless, they note that confession by means of torture is unacceptable and void. (Ibid, pp.120-121).al-Shātibī notes an important remark about the legal principle of *Istihsān* in the *Māliki* School of legal thought. *Istihsān* is an exception to the general rule under certain circumstances to avert hardship that will be met if the general rules were applied. An example noted by al-Shātibī for this exceptional rule is that the general rule demands the object of a contract to be present at the time of sale to avoid risk factors in its absence. However, an exception is made in '*Arayā'* contract by mean of *Istihsān* based on a prophetic tradition. In an '*Arayā*' contract some unripe dates on palm trees are exchanged for dried dates, although this involves some sort of speculation (*gharar*) or some form of *riba*. However, this type of contract is made lawful by the principle of *Istihsān* merely to avert hardship. In this issue as in the case, *Istihsān* is a relaxation of the general rule, which, if followed would lead to harm. One can compare this sale contract with modern online business transaction. Based on this legal principle, it can be argued on line sale is permitted in Islamic law to ease hardship and difficulties.

Hence, the functional nature of *Istihsān* is to avert any form of hardship. Moreover, Mālik refined the principle of *Istihsān* under the heading of *maslaha* and sometime gave fatwā based on it for instance; al-Shātibī notes it is forbidden to look at the private parts of the human body. But such an act is permitted in the medical treatment, based on *maslaha (al-Muwāfaqāt,Vol.4,p.149-50.)* Interestingly, Mālik argued that *Istihsān* was "nine-tenths of knowledge" (Ibid, P.151). I would argue this legal concept of *Istihsān* is equal to the modern legal concept of equity in western law. Under some circumstances, judges deviate from the general rulings to pass judgment on some exceptional cases, using this legal device of equity. Recently, British judge passed his judgement using this legal device.

A British driver was found guilty of breaking transport traffic law in England in 2016. It is reported he lost all his points in his driving licence. The general rule is that if someone loses his 12 points in his driving licence he no longer allowed to drive. This is a general rule in law applicable to all British drivers. So, in accordance with this general rule this driver should be banned from driving at least for another 6 months ban until he gets his 3 points. Yet, "magistrates may decide to not ban an offender if it would cause bankruptcy". This is done when the concept of hardship is proved at exceptional level. So, I think that this is comparable with Islamic legal device of Istihsān al-Shātibī further argued according to Mālik school of thought, *Istihsān* is to proffer priority to a *maslaha* over a general evidence of sources of law with unrestricted reasoning *(al-istidlāl al-mursal*). The primary objective of *maslaha,* pursued by such *Istihsān,* is to avert and prevent all forms of hardship (*raf al- haraj*). al-Shātibī constantly, argued that averting hardships and unnecessary difficulties is an important Qur'anic principle and one of the fundamental objectives of general philosophy of Islamic law. He makes a staunch criticism of those who claimed an indulgence in the pursuit of *Istihsān* is an act of pleasure seeking. He strongly contends that there is no room for personal interest and self-desire in the pursuit of *Istihsān*. He further notes that anyone who indulges in the matters of Islamic law according his own personal preference and interest would be fallen in great mistakes. Hence, one who indulges in matters of Islamic law more specifically in the pursuit of *Istihsān* should have comprehensive understanding of higher purposes of Islamic law for such pursuit is an endeavour to secure these objectives in cases where an application of *Qiyās* fails to secure the *maslaha* or prevent the *mafsada* as in the example of fresh dates exchange with dry dates. (Ibid, p.149).

al-Shātibī notes that following the general rules of law may entail hardship and difficulties for human beings in some cases. Under such circumstances some legal concessions (*Al-Ruhkshāt*) are needed to attain the benefits and avert hardship. The legal instrument of *Istihsān* serves such a purpose. To further clarify his readers' understanding, al-Shātibī proffers some more examples. The permission to join two prayers i.e. *maghrib* and *Isah'* together at one time in difficult conditions like travelling and rainfall, permission to shorten prayers, breaking the fasting in travel and in sickness are concessions given on the ground of leniency and averting hardship.(Ibid, 149).Kamāli notes that the principle of *Istihsān* is generic and it covers all aspects of the *Ahkām* in its scope, it seeks to harmonise the detailed rules of *Sharī'ah* in accordance with the general philosophy of Islamic law. He further notes that *Istihsān* can serve as a methodological instrument that harmonises between the letter and purpose of *Sharī'ah* if conflict arises between them. (Kamāli, *Istihsān,* pp.138-139). Moreover, his study to *maslaha,* al-Shātibī outlines the differences between the aspects of religious innovation and aspects of public welfare (the difference between *maslaha* and *bid'a*). al-Shātibī very logically and comprehensively defines the notion of *bid'a*. He says, "religious innovation is a newly invented way in religion that resembles the religious rite of the *Sharī'ah* and by following this particular way of innovation someone intends to achieve what can be achieved by following the rules of *Sharī'ah*" *(al-I'tisām,* vol I, p.37). According to al-Shātibī's definition of *bid'a,* a human deed should have the following characteristics.

1) A human deed should be newly invented in religion after the time of the prophet.
2) A human act should have a religious dimension and it should be done to gain a religious reward.
3) There should be continuity in the practicing of such act.

This definition further reveals that notion of *bid'a* is confined to the sphere of religion and belief. As far as the sphere of human relationships (*'adāt*) are concerned the notion of *bid'a* does not apply. Hence, worldly affairs, economic activities, human relationship and all other mundane or customary affairs are not subject to the notion of *bid'a*. However, one can argue that since Islam regulates all aspects of human life such distinction is illogical and hence, even in the sphere of *'adāt* the notion of *bida*' can be noted in particular cases when certain *'adāt* have religious dimensions. For instance, celebrating the birth of the prophet can be a mere custom and tradition of the people. But when such celebration acquires a religious dimension such an act will be a religious innovation in the sphere of (*'adāt.*) (al-'Adawi, M. A.1970. pp.26-8,), Therefore, all developments in the sphere of *mu'amalat* without such religious dimensions cannot be categorised as any form of *bid'a* but they constitute a form of *masālīh al-mursaha*. Both of these concepts are founded on the notion of *al-I'tibar* al-*munāsib* i.e. circumstances demand the validity of certain acts for which no specific evidence can be found in the *Sharī'ah*. But, in a real sense, the religious dimensions of *bid'a* is totally different from any form of *maslaha al-mursala*.The notion of *maslaha* is in conformity with the general philosophy of law and it aims to alleviate hardship in religion whereas, the very notion of *bid'a* goes contrary to the general philosophy of law.

Moreover, the role of human reason is apparent in the identification of *maslaha* there is no such role for human reason to identify forms of '*ibādāt*. It is an exclusively divine right to define all forms of '*ibādāt* Thus, any addition or omission in the sphere of '*ibādāt* constitutes a form of innovation whereas, *mashala* as a form of legal mechanism aims at facilitating human life exclusively in the sphere of *mu'amalāt.(Ibid,vol,II, p.135).* Hence, there is no inherent correlation between these two contrasting concepts. While al-Shātibī strongly rejects the acceptance of religious innovations in religion, he fully supports the application of the concept of *maslaha* to promote the human interests. He differs from many *Salafis* who altogether disapprove the legal device of *maslaha* as an independent source of Islamic law. In the debate on the issue of *maslaha* some argued that the permanent nature of Islamic law does not allow evolving any legal methodology to meet the changing social needs. Schacht contends that legal devices such as '*urf, istihsān, istislāh'* are not used as a medium of flexibility and adaptability but rather to interpret and justify existing rules of Islamic law. The vagueness of this argument can be noted with reference to the historical precedence of frequent use of the legal device of *maslaha* in Islamic law. In contrast Tyan notes that *istihsān, istislāh and siyāsa shar'īyya* (administration of justice according to the spirit of Islamic law) and other subsidiary sources of law are legal methods, which aim to incorporate and include social change in to Islamic law.

However, the very natures of Islamic law do not allow this according to immutability view. On the other hand, Kerr recognises these legal devices as the principle of change in Islamic law. Nevertheless, he questions the nature of these legal devices. He argues that although the legal device of *maslaha* is considered as a dynamic principle of adaptability the theological and idealistic limitations imposed upon it restrict its application. (Masud, K. p 176). However, throughout Islamic history the legal devices *malaha, Istihsān and 'urf* have been recognised by most schools of thought as a medium of flexibility and adaptability. Although use of *maslaha* is justified by the notion of need and necessity, this legal device has been the focus of intensive intellectual debate throughout Islamic legal history. The question is, can extensive uses of these legal theories as sources of Islamic law devalue the status of divine law to that of man-made law? In fact, controversies arise around this point between the

traditionalists and reformists. Even among the reformists some question the arbitrary nature of *maslaha* and its methodology. (Hallaq, W. *A* P.261). Interestingly, Khallāf argues that *al-Siyāsah al-Shar'īyah* is tantamount to acting on the legal principle of *maslaha* or public interest, which the lawgiver has neither upheld nor invalidated. In other words, according to Khallāf *al-Siyāsah al-Shar'īyah* is maintenance of administration of public affairs in an Islamic polity. This is done with the objective of realizing the public interest and averting harm. This should be done in harmony with the general principles of the *Sharī'ah*. In this sense, *siyāsah* may entail adopting policies and enacting laws in all spheres of government, be it in the areas of domestic or foreign affairs, constitutional, financial, administrative or judicial (Ibid. p.14-) Thus, all measures taken to ensure good management of public affairs fall within the scope of *siyasah*. On the authority of Ibn Qayyim he advocates that *siyasah* does not necessarily mean conformity to the explicit rules of the *Sharī'ah*. According to Ibn Qayyim "any act or measure that brings the people to closest to beneficence and furthest away from corruption is an involvement in administration of *Siyāsah*, although one cannot find reference to such acts in divine revelation or prophetic traditions" (Ibid. p.16)

Khallāf further notes that it is on this ground that some amendments were made in personal law in Egypt. The Egyptian legislature made an amendment in personal law in 1923, which denied registration of a marriage unless the bride and groom had reached the age of sixteen and eighteen years respectively. In another legislation in Egypt the law denied admission of testimony in some cases unless legal proofs were provided in the form of documentary evidence. (Ibid, PP. 14-15). The aim of such legislation according to Khallāf is to prevent corruption and to facilitate benefits, which were in accordance with the principles of *Sharī'ah* even if goes against the views of Islamic jurists of the past. The essence of Khallāf's argument is that taking any measures in any area of government to facilitate public interest and to eliminate corruption is not against to divine law but rather such endeavours are in accordance with the spirit of the law. (Ibid, P.15) The functional nature of *siyāsah* is characterised in maintaining the five universal principles namely the protection of life, religion, reason, lineage, and property. (Tāj, Abd al-Rahman,1953, P.10). Kamāli argues that the Qur'anic verse that reads "Obey God, obey the Messenger, and those who are in authority from among you" 4: 58 gives the necessary authority and discretionary power to rulers to take measures to protect and promote public interest. Thus, those who in power should have powers to maintain the higher objectives of the *Sharī'ah* and be able to order punishment for any conduct that violates the sanctity of the higher objectives of the *Sharī'ah*.(Kamāli, H. 1989 P.144). Kamāli justifies the discretionary power vested in the hands of rulers in an Islamic state saying that the need for such power is more profound in an Islamic state since the *Sharī'ah* is founded in the divine sources and a set of eternally valid principles enshrined in these divine texts cannot be changed beyond certain limits. Unless there are some discretionary principles such as *siyasha, maslaha,* and *ta'zi*r, the ruler would have been faced with an authority –oriented all-inclusive law system of law that was permanently fixed and inflexible. (Ibid, p.162-163).

Qaradāwi argues that the sources of law if rightly comprehended are more flexible to needs, interests and developing conditions. The flexibility of sources can be understood from many perspectives. He argues that the most of Qur'anic texts are general and universal in their rulings, and implication. '*ibādāt* and personal laws fixed in the Qur'anic texts. One example for such general text of the Qur'an is the doctrine of *Shūra*'. Qur'an generally speaks on this issue, which reads "consult them in their affairs". He argues methods and ways of consultation is left for people to decide. The Qur'ān did not give details of such consultation. Likewise, there are many more general principles details of which are left to people to decide. Moreover, all the supplementary sources of law such as *Qiyās, maslaha, Istihsān* and likewise are indeed, manifesting flexible nature of Islamic law. Furthermore, he

argues legal opinion changes from place to place, time to time and person to person. Above all, there are many texts from the Qur'an and Hadith, which are subjected to deferent understanding and interpretations and there are numbers of legal maxims, which apparently illustrate the flexible nature of Islamic law (al- Qaradāwi, Y.PP.149-129).

Contrary to immutable nature of Islamic law, the view maintained by most of traditionalists, al-Qaradāwi argues that the sources of Islamic law are more flexible the demands of changes and times. Thus, for him the legal device of *maslaha* has been a dynamic legal mechanism of Islamic legal thought and still constitutes the bedrock of Islamic legal theories. More recently A. Raisuni draws our attention to a comprehensive analysis of *maslaha* taking into consideration all aspects and dimensions of *maslaha*. He argues that definition and scope of *maslaha* need to be expanded from rudimentary understanding into all-encompassing theme. Whiles he agrees with the definitions of classical scholars to the theme of *maslaha* and its scope; he classifies the theme of *maslaha* with some modern technical terms. He classifies the theme of *maslaha* as *maslaha ma'ddiyah* namely material interest and *maslaha ma'navi'yah* namely figurative interest. The sphere of material interest covers all the aspects of physical needs and materials interests of man and the other covers his ethical, moral, intellectual and spiritual interests. He further notes that *maslaha* can vary from time to time, place-to-place and person-to-person. What is *maslaha* for a certain period may not be *maslaha* in another spell of time. The example cited for justification of such broader meaning of *maslaha* is that once Umar decided to divide the conquered land among some worriers in their interest. However, this decision was deferred in the interest of the future generations. Falling these lands in the hands of a few worriers may have served a short-term and confined interest of this group of worriers. However, reserving them for generations would have served greater and long-term interests of future generations. Thus, Raisūni argues our understanding to the scope of *maslaha* need tobe expanded in comparing both interest and harms in any issue. (Raisūni, 1998, vol. iv, no.13, pp 53-55) The notion of *maslaha* is the central theme of al-Shātibī's legal interpretation. Moreover, our study also affirms that al-Shātibī is greatly influenced by the *Mālikite* legal school which considers the concept of *maslaha* as an independent source of law. Yet, al-Shātibī upholds the notion of *maslaha* if it is in conformity to the texts of the Qur'an and Hadith. More importantly our study further confirms that al-Shātibī's views on *maslaha* is different from those of Najmu Dīn al-Tūfi's who gave preference to *maslaha* over the texts when the texts go against it.

Chapter 6: al-Shātibī's influence on modern scholarship.

The thesis of al-Shātibī on *maqāsid* is highly acclaimed by modern Islamic scholars. al-Shātibī re-structures the definition and scopes of *maqāsid* in response to social needs of his time. (eighth/ fourteenth century Andalusia). Some claim that al-Shātibī revitalised the science of conventional *Usūl* by inventing the science *of Maqāsid al-Sharī'ah.* He created this science based on textual evidence from sources *of al-Sharī'ah,* using his own legal reasoning. Undoubtedly, his novel scholastic approach to the doctrine *of maqāsid* is a magnificent contribution to the study of the theme of *maqāsid.* He has enhanced the methodological study of conventional *Usūl* with a refinement of this new science in Islamic law. However, how far is it convincing to argue that his theories are novel? To claim that he replaced the traditional types of *usūl-al-fiqh* with a new science of "*Maqāsid al-Sharī'ah"* is debatable.On this issue there are two groups of Islamic scholars. One group argues that al-Shātibī is refiner of the science of *maqāsid.* They contend al-Shātibī revolutionised the legal philosophy of Islamic law with a new methodological approach. Scholars such 'Abduh, Rida, Dirāz, Abū Zahra'and most reformists hold this view. On the other hand, another group of scholars maintain that al-Shātibī's thesis on the study of *maqāsid* is incomplete. Hence, further extensive study is required. Both groups try to justify their arguments. The former argues that although the theme of *Maqāsid* was discussed by many scholars in the classical *Usūl* works, it was not given due scholastic attention

until al-Shātibī furnished the structure of *maqāsid*. Indeed, some classical Islamic scholars discussed the subject of *Maqāsid al-Shari'ah* not exclusively but while treating other legal doctrines such as *maslaha* and *ta'līl*. His methodology and integrated nature of his argument certify the novelty of his work. Another exceptional feature of his thesis is that he demands a collective reading into divine texts. These and many more special aspects of his work, certainly draw the attention of modern scholars. M.Zarqā considers him as an exceptional authority on Islamic law and its *maqāsid.* (Abū al-Ajfān, "Fatāwā *al -Shātibī*", p.8).

His treatise of *al-Muwāfaqāt* has been divided into five main parts. He examines the sources of Islamic law in order of precedence (*Qur'ān, Sunnah*, Ijmā 'and etc) as all the other classical jurists did. Moreover, in the footstep of traditional *Usūlists* he deals with legal terminologies, such as the generals, *(-Kulliyyāt and juz'iyyāt),* commands, prohibitions, ambiguous, univocal language, and abrogated, non-abrogated verses, restricted and unrestricted verses. However, when he treats the themes of *maqāsid* in the second part of his book his analytical approach changes from traditional to novel. His work departs from traditional presentation into a different approach to create some brilliant legal theories in Islamic law. Ibn 'Ashur acknowledges his great contribution saying that he was the first scholar to create the theory of *maqāsid* as an "independent science" (al- Misāwi. M, 1998. pp.112-113.) al-Shātibī's thesis on *maqāsid* is a constructive step in the history of Islamic legal thought. However, one wonders why this monumental work was not duly scrutinised until modern times. One assumption is that it is his popularity faded away because of the fame of his pupils. Drāz identifies two factors for the lack of interest in his work. The first one is that the study on *maqāsid* had been ignored for many centuries. Hence, the concentration has been mainly on the study of conventional *Usūl*. Secondly, his style of writing in classical Arabic is of a very high standard that not everyone can easily understand. (Drāz. n.d p. 9). However, K. Masud notes that the difficulty in comprehending the legal ideas of al-Shātibī depends not only on his style of writing but on the subject matter al-Shātibī deals with it. For the proper understanding of al-Shātibī's legal thought one must have a good knowledge of the of the principles of *fiqh,* theology, philosophy and mysticism. Above all, one needs to have knowledge of social, economic and political developments of his time. Without such an overall background knowledge, al-Shātibī's legal thought will be more difficult to understand (Masud, K, (1977) *P*.193).

Yet, Drāz wrote a short introduction to *al- Muwāfaqāt* with a precise commentary. It is very strange to see that reformists who focussed their attention on al-Shātibī work did not carry out any exclusive research until Khalid Masud produced his thesis in the 1970s. M. Abduh drew the attention of his students to al-Shātibī's work, but he did not carry out any research on either of al-Shātibī's works. His oral advice was never considered. But Rida wrote an introduction to the theological treatise (*Kitāb al-I'tisām*) of al-Shātibī. Abū Zahrā, who has produced numerous works on the contributions of great Islamic jurists, highly admired al-Shātibī's contribution to Islamic law but he did not write any thesis on the works of al-Shātibī. However, Abū Zahrā in his book on *Ibn Hazm's* legal thought distinguishes between two schools of legal thought; between the methodologies of *Zahirites* who reject the causation of *Ahkām* and that of non- *Zāhirites* who uphold the causation of *Ahkām.* Abū Zahrā notes that *Zāhirites* not only reject the causation, as a matter of fact, they rejected the extensive use of *Qiyās, istihasan, maslaha* and restricted methods of deducing rules of law. (Abū Zahrā, (1954) Ibn *Hazm,* p.409) Abu Zahra's rejection of the *Zāhirite's* legal approach implies his recognition of al-Shātibī's rational legal thought.

Although he wrote lengthily on the legal thoughts of many Classical Islamic jurists, he never attempted to investigate al-Shātibī's thesis on the *al Muwāfaqāt.* Rida in his introduction to *al-I'tisām*, which is another brilliant treatise of al-Shātibī on theology, did draw the focus of reader into the theme of *maqāsid*, but, he did not deal with al-Shātibī s ideas of *maqāsid*. It is worth highlighting that al-Shātibī's works have drawn the attention

of modern Islamic scholars to expand the theme of *maqāsid* further from the foundation he laid down. An example is that Shāh Wali Allah Dihlawi who proposed to include the time-space factors in the development of the *Sharī'ah* . The core argument of his thesis is that the *Sharī'ah* is changeable in accordance with the changing public interests (*maslaha*) of Muslim community. He further elaborates that the prophet founded a model of a society considering his own contemporary Arabian society and its social conditions. What we need now is to adapt to the spirit of such model considering the realities of our time and introducing the necessary change in the rules of the *Sharī'ah*. Had the prophet been alive, he would have approved the nature of such change. (Mi'rāj,1979, pp335-43). Ibn 'Ashūr and 'Allal Fāsi both have written about *maqāsid.* Although they have not exclusively discussed Shātibī's ideas about maqāsid, they have made frequent reference to the work of al-Shātibī; indeed, they have been immensely influenced by al-Shātibī's thought and methodology. They argue that al-Shātibī's ideas on *maqāsid* require more intellectual examination. On the one hand, Ibn 'Ashur argues that al-Shātibī failed to proffer a concrete and solid definition to the science of *maqāsid,* but he himself fails to do any analytical study of al-Shātibī's work. It can be argued that Ibn 'Ashur own work on the theme of *maqāsid* is written to justify his stand. It can be said that Ibn 'Ashur is the first scholar who made a scholastic attempt to define the concept of *maqāsid* in a technical sense. He disagrees with al-Shātibī on several issues. al-Shātibī maintains the certainty or categorical nature (*qat*i') of al-*Usūl al-Fiqh*, whereas Ibn 'Ashur does not ('Ibn 'Āshūr,1981 *pp.*110-111). Because, some aspects of *Usūl of Fiqh* have been a subject of dispute among some jurists. But Ibn 'Ashur contends such a categorical nature of legal thought can be maintained in the science of *maqāsid* not in the science of *Usūl al-fiqh.* The higher objectives of Islamic law are constant, and they do not subject to change at any time or any place.

Ibn 'Āshūr in his study of *maqāsid* has expanded the scope of *maqāsid* in that he claims freedom of speech, political freedom to have one's own political party, frredom to choose one's own leadership, equality and all other elements of human rights should be part of the higher objectives of the *Shar'īah.* He does not entirely agree with the traditional explanation to the essential elements of *maqāsid.* He argues that the preservation of wealth includes all modern economic development. The preservation of life should incorporate all health issues. All preventive measures of epidemic disease are included in the preservation of life. In preservation of lineage, Ibn 'Āshūr argues that all measures should be taken to prevent women from using birth controls or having an abortion. What is interesting in Ibn 'Āshūr's interpretation of the tenets of *maqāsid* is to say that it was the responsibility and the duty of the political authority to maintain and implements the principles of *maqāsid* in the society. In deed, the individuals have an important role to play in maintaining the principles of *maqāsid*, however, the success of applying the ideals of the general philosophy of Islamic law rests in the hands of political authorities. This is really an innovative idea in application of the ideasl of the general philosophy of Islamic law. However, there appears some inconsistencies in his arguments. He argues that one way of preserving the wealth of Muslim nations is that the wealth of Muslim nations should not go into the hands of its enemies without any recompense. (Ibid, PP. 212-3). In many ways, such arguments are an outdated. It may have been an appropriate in his time, but in this digital world of globalization such a contention is illogical. Economic and financial co-operations between countries are inevitable elements of the modern economy in the age of globalisation. From another perspective, it can be argued that most of the Muslim nations are economically dependent on non- Muslim nations for their economic and financial survival. Henceforth, such an argument of Ibn 'Ashur is not rational in our time. But I agree with him on the responsibilities of the political leadership. To apply the sublime ideals of the general philosophy of Islamic law we need honest, capable and skilful political leaders. Singapore, South Korea and Japan do not

have much natural resources as many Muslim countries have and yet, they have good political leaders to guide the country into right direction. More importantly, he categorically contends that promotion and protection of the *darūrīyyāt* element of *maqāsid* is the responsibility of political authorities of Islamic states. (Al-Husni,1995I, PP.294-299,).

Historically speaking, the theoretical study of *maqāsid* has been the domain of Islamic jurists; now Ibn 'Āshūr argues that the implementation of the concepts of *maqāsid* rests in the hands of the political leadership. Thus, from purely theoretical and religious connotation, the concept of *maqāsid* gets a political dimension and interpretation in the perception of Ibn 'Āshūr. In this sense it can be said that Ibn 'Āshūr revolutionises entire theories of *maqāsid* in a new dimension in more pragmatic and viable way. Thus, he encourages incorporating doctrines of *maqāsid* into the decision-making processes of Muslim states. The mission of M Abduh of Egypt and Ibn 'Āshūr of Tunisia had been the same in that both struggled for socio-religious, educational and economic development of Muslim societies. Abduh wrote his treatise on theology aiming to review the Muslims' perception on reason and revelation. This was done to reform the educational systems of Muslims in phase with modern development. While Abduh's reformation task begins from the theology, Ibn 'Āshūr begins with his legal thought arguing that real understanding of *Maqāsid al- Sharī'ah* will help to rebuild Muslim countries.

Another interesting thought of 'Āshūr is his understanding of Sunnah in relation to *maqāsid*. He distinguishes between the dicta-facta of the prophet in his position as religious authority and a normal human being as does Abduh. The significance of such distinction to the general philosophy of Islamic law is that whatever emerged from the prophet as a normal human being, his personal characteristics cannot be sanctioned as religious legislation for the *Ummah*. Ibn 'Āshūr's contribution to the theme of *maqāsid* can be regarded as a milestone in the search for a comprehensive analysis of *maqāsid*. Hence, some modern Islamic writers acclaim him as the second architect of *maqāsid* doctrines. (Al-Maisawi, M, 1999,p70). On the other hand, it is argued that 'Allal al- Fāsi's ideas on the development of *Sharī'ah* with changing social conditions originated in light of al-Shātibī's concept of *maqāsid.* Allal al- Fāsi makes a comparison between the modern concept of human rights and *maqāsid* as expounded in the work of al-Shātibī. However, al-Misāwi argues that Allal al- Fāsi has been greatly influenced by his contemporary scholar Ibn 'Āshūr on the study of *maqāsid*. To justify his argument, he notes the similarities in the writings of both on the theme of *maqāsid (Ibid, pp.73-76)* However, Allal al-Fāsi's clarity of thought is more apparent in his argument to reconstruct pure Islamic thought. He notes "if Muslims want to recreate a pure Islamic thought, it can be done only through right understanding of Islamic jurisprudence (*al-fiqh al-Islāmi)* and implementing it in our jurisdiction"(*Muwāfaqāt,*Vol,III,P.305).Thus, he argues that reconstruction of Islamic thought should begin from the Islamic *Fiqh.* The reason for this argument is that according to al-Fāsi most of the other Islamic sciences have been influenced by alien thought. These foreign influences are noticeable in fields of *Tafsi*r, Sufism, *Usūl al-Fiqh* and theology. Apparently, this is a very convincing argument for the reconstruction of Islamic thought, but such ideas must be correlated with the theme of *maqāsid* if they are to be more viable and meaningful.

Hallaq argues that it was al-Shātibī who maximised the use of inductive legal reasoning in Islamic legal history by a sophisticated method. While most legal theorists limited themselves to a specific textual statement in extracting the rules of law and the end goal of the *Sharī'ah,* al-Shātibī introduced this logical method for the task of interpreting and extracting laws. Ever since al- Shātibi's death, this logical inductive method has been neglected and never got grounding in the mainstream of Islamic legal thinking. In recent time Islamic legal theorists pay attention to this method to free Islamic legal thought from stagnation in Islamic legal thinking. However, Hallaq does not examine the influence of al-Shātibī's writing in

contemporary legal thought but he maintains that the "holistic and contextual approach to legal language and legal interpretation was uphold only by Shahrūr and F. Rahmān. (Ibid, p.261 It is true that F. Rahman was influenced by al-Shātibī's legal thought he demands a contextual and holistic approach to legal thinking. This is what al-Shātibī proposed 6 hundred years ago. The holistic and inductive methods of al-Shātibī were rightly recognised by legal scholars such as Ibn 'Āshūr, Drāz, Abdul Majeed al-Thurki, Raisūni and so on. All these scholars have done exclusive researches on al-Shātibī's legal philosophy exploring his holistic and inductive methods. There are many researches, which have been produced, in recent years on the theme of *maqāsid* in Arabic languages with reference to the study of al-Shātibī's works.

Raisūni i's research is the first exclusive study of *al-Muwāfaqāt* in a real sense. He argues that although the term *maqāsid* appeared in the writing of classical scholarly works, none of them offered a concrete definition to the theory of *maqāsid* in a technical sense including the architect of *maqāsid* al-Imām al-Shātibī until Imām Ibn 'Āshūr and Allal al -Fasi provided a meaningful definition of *maqāsid* .Hence, Raisūni relies on their writing to defice *maqāsid* in a technical sense. (Raisūni,1991 A. pp 18-37.) In a historical perspective Raisūni argues that the notion of *maslaha* and *maqāsid* originated chiefly from the *Māliki* School of legal thought. He further argues that among all other legal schools *Mālikis* upheld the notion o*f maslaha* in understanding the texts of the *Sharī'ah.* Raisūni's study fails to place al-Shātibī's legal thought in a historical perspective. In his study he fails to analyse the political, social, religious and historical background of al-Shātibī's life and thought. The legal thought of al-Shātibī cannot emerge from a vacuum. In his study Hallaq by contrast concludes that al-Shātibī's theological and legal thoughts were outcomes of his intellectual reaction at certain malpractice and misinterpretation of law that prevailed at his time.

Many jurists of his time misused laws of the *Sharī'ah* through their rigid approach in application of law. Yet, Sufis of his time created many religious innovations, which had no origin in authentic sources of the Shari'ah (Hallaq, W 1994 P.163). al-Shātibī's works were written to manifest the true nature of religion. In a similar way, K. Masud finds that al-Shātibī's legal theories were the outcome of his intellectual reaction to the failure of the law to meet the demands of his time. al-Shātibī realized that due to an unduly harsh approach to the application of law by the jurists of his time, socio economic needs of his society were not rightly fulfilled. In response to this challenge, al-Shātibī argues that if laws were rightly understood, they could be adapted to the needs and social conditions of the society. (Masud, K. pp 35, 101.) The social environment of al-Shātibī would have moulded and shaped the legal thoughts of al-Shātibī in many ways. Failure to highlight and explore such influence can be a defect in this scholastic study. Raisūni elaborates al-Shātibī's main scheme of *maqāsid* explaining the contents of his taxonomy of *maqāsid.* Raisūni argues that although the idea of *maqāsid* was generally recognised by all classical jurists it was al-Shātibī who constructed the very foundation of *maqāsid* in a real sense with a rational based on *Istiqrá* and *maslaha*. Furthermore, Raisūni's study reveals that al-Shātibī expanded the entire theory of *maqāsid* in the light of the sources of law. Although Raisūni admires al-Shātibī's legal thought, Raisūni has not failed to make a staunch criticism of al-Shātibī s failure to denounce Ibn Hazm's stand on causation (*ta'līl).* Al-Shātibī criticises al-Rāzi for his denouncing of (*ta'līl).* While ignoring Ibn Hazm whose stand against (*ta'līl* demands more intellectual scrutiny. Raisūni notes that although al-Rāzi denounced the (*ta'līl)* it is in the matters of theology not in the matters of law.(Raisūni, 1994 pp.232 –252.) It is true that Raisūni provides a good analysis to al-Shātibīs scheme of *maqāsid*; most interestingly Raisūni abstracts 44 legal principles (*Qawa'īd*) from (*Al-Muwāfaqāt*). Undoubtedly Raisūni's research on al-Shātibī's legal thought enhances our understanding of al-Shātibī of legal thought. Hammadi has carried out another piece of research on *maqāsid*

. al-Kailāni (2000) has done a comprehensive research into the works of al-Shātibī. Unlike all other works on al-Shātibī the focus of this research has been merely to extract a

numbers of legal principles (*Qawa'īd*) related to *maqāsid* from al-Shātibī's books. The core theme of this research is to identify certain "(*Qawa'īd*) *al Maqāsidīyyiah*" in the writing of al-Shātibī and compare them with those of previous legal scholars. Sometimes, the writer offers his analysis into certain legal principles. He further points out that these *Qawa'īd al Maqāsidīyyiah* apparently manifest the objectives of law. This work is a new approach to the study the general philosophy of Islamic law. In a precise way, the writer has made an attempt to distinguish between the legal doctrines of *Usūls* and this kind of *Qawa'īd al Maqāsidīyyiah*. , (al-Kailāni 2000, PP 32-42). Moreover, he finds that al-Shātibī had been greatly influenced by legal works al- Juwaini, al- Ghazālī, al- Qarāfi, Ibn 'Abdul Salām, Ibn Taimiyyah And Ibn Al Qayyim on his legal thought. (Ibid, pp 467). In identifying one of the main reasons for the failure of al-Shātibī's thought to become prominent since his death, Abdul Majid claims that al-Shātibī was victimised by his own theory. According to Ahmed Bābā, (1036) al-Shātibī did not like gaining the knowledge of jurisprudence form the works of later generations. It was his strong conviction that the knowledge of jurisprudence should be gained from works of earlier generation of classical scholars. He categorically established this postulate in the introduction of his *al-Muwāfaqāt*. It is true that ever since his death six hundred years ago until Mohammed Abduh realised the importance of *al-Muwāfaqāt* in 1884, this monumental work has been neglected by almost all-Islamic scholars. *al-Muwāfaqāt* was first published in Tunisia in 1884. However, Abduh used to advise his students to study al-Shātibī's works for a deeper understanding of the nature of Islamic law. (Drāz. A.n.d vo1, 1, p. 10.)

In the Indian Sub-continent, Mawdudi in his project to incorporate Islamic law in the law-making process, proposed to translate al-Shātibī legal treatise into Urdu language to understand the nature of social change in Islamic law. He says that "Our law-expert may acquire a deeper insight into and gain a correct understanding of the spirit of Islamic fiqh." (Mawdudi.1971 A., pp. 113-114). It would not be an exaggeration to say that in legal matters especially with reference to the nature of legal change, al-Shātibī is considered as an authority. In her recent study of social justice in Islam Dina Abdelkader reveals how far the doctrines of *Maqāsid al Sharī'ah* are neglected by the political leadership in Muslim countries. She argues that the failure of Muslim countries to implement the doctrines of *maqāsid* in a comprehensive way has resulted in extremist Islamic activism in Muslim countries. In other word, the failure of Muslim states to fulfil the basic needs and necessities of life, forgetting essential issues of social justice and social development has resulted in the growth of Muslim extremism. The failure of Muslim political leaders to address people's basic grievances as embodied in the tenets of *Maqāsid al Sharī'ah* has contributed immensely to aggressive Islamic activism. (Diena, K.2000, p.xvii). She concludes in her that "Islamic activism is a function of the extent to which the state in the Islamic society falls short of the principles of Islamic social justice as embodied in the end goals of the *Sharī'ah* (*al- maqāsid*). (Ibid, p143).

Thus, ignoring the basic principles of *maqāsid* has not only increased Islamic activism, it has intensified social injustice, discrimination, violence, conflicts, extremism and deprivation in Muslim countries. However, in contrast to Diena's perception of Islamic activism, it can be contended that many other factors contribute to Islamic activism such as religious ideology, and sectarianism. It must be responsibilities and priorities of Muslim states to give due attention to implement tenets of *maqāsid* to protect them from such deteriorating conditions. It is very regrettable to note most of so-called *Islamic Ulama* in Muslim countries do not relate the social phenomenon of Muslim societies to tenets of *maqāsid.* One reason for this may be that Ulama are marginalized in Muslim societies from decision- making process in the governments of Muslim countries and another being 'Ulamas' inabilities to relate the principles of *maqāsid* to the social realities of Muslim societies. Deina's research is the first work that analyses socio-religious realties of contemporary Muslim societies in relation to

maqāsid and Islamic activism. In many ways it could be working model for further research in this field. So far, studies on *maqāsid* have been theoretical, Deina draws our attention to pragmatic application of *maqāsid*. In this sense, this study is a combination of theoretical and pragmatic analysis of the theme of *maqāsid* in the context of modern time.

It can be said most reformists and modernists have been greatly influenced by al-Shātibī's legal thought. His legal thought has been considered as a working model for resolving modern social problems of the Muslim countries. yet, the prevailing socio-religious and political conditions of many Muslim countries did not allow this type of legal reform to take place in the Muslim world. There is no doubt the intellectual renaissance that take place in the field of the general philosophy of Islamic law, was ignited by the works of al-Shātibī. Today, thousands of books have been written in the field of the general philosophy of Islamic law. Thousands of study centres have been created special for the study of the general philosophy of Islamic law. It has been one of the fascinating areas of legal studies. It can be said the studies on the general philosophy of Islamic law have been an irrelevant subject for many decades, and yet, the studies on the general philosophy of Islamic law have indeed, galvanised and Muslim jurists have begun to relate Islamic law to all socio-religious, economic and political affairs of the modern world. Yet, a lot of studies must be done to relate many asepcts of Islamic law to modern social changes. The science of the general philosophy of Islamic law has become an overriding legal mechanism to understand the modern problems, challenges, and modern human sciences. Muslim jurists must read the modern geopolitical, socio-economic, technological, scientific and educational development considering the general philosophy of Islamic law. Since the time of al-Shātibī, this world has seen dramatic socio-economic changes. More importantly in recent time, we have witnessed a rapid change in science and technology. To relate Islamic teaching to this rapidly changing world, Muslim jurists must have deeper knowledge not only Islamic sciences but also in modern sciences. The general philosophy of Islamic law is created to bridge the gap between social and legal changes in Islam.

PART 3:

Chapter 1: The themes of *maqāsid* and their modern implication:

Recent time, humanity has witnessed dramatic social changes in all fields of education and social life. Classical scholars defined the general philosophy of Islamic law with their social context. Since then, numerous social changes have occurred in all walks of life. Therefore, the doctrines of *maqāsid* need to be re-interpreted in the light of modern development. Such modern interpretations are given by several modern scholars. Some modern scholars have added some extra general Quranic principles into the central theme of the general philosophy of Islamic law. The notion of human dignity, justice, freedom, equality, peace and security are some of the general ideals that the Qur'an promotes. They argue that all this, should be included in the framework of the general philosophy of Islamic law. We understand the general purposes of Islamic law are aimed at preserving the interests of humanity individually and collectively. Historically speaking this idea is explicitly manifested in the works of almost all Islamic scholars from al-Juwaini to Ibn 'Ashur. However, the relevance of *maqāsid* to the modern social conditions and developments of contemporary Muslim societies is yet to be explored in full. Much of the writing on *maqāsid* has been by medieval Islamic scholars in their historical and social setting. Their ideas are very valuable and useful to understand the theme of *maqāsid* in an historical perspective; however, their ideas and perceptions are confined by their time and place. Hence, their thought will not always be viable for the present-day issues and challenges. Since classical scholars' contribution to the theme of *maqāsid*, tremendous social changes have occurred in all aspects of life.

Therefore, any constructive attempt to understand the theme of *maqāsid* comprehensively should consider all these social changes. In this part of our book, an attempt is made to elaborate and analyse the re-interpretation of the tenets of *maqāsid* in a modern paradigm incorporating social changes occurring in the sphere industrialization, modernisation, globalisation and the information revolution. It is generally accepted that the laws of *Sharī'ah* are instituted to safeguard the interests of one's religion, life, offspring, intellect and wealth individually and collectively. This traditional and classical method of identifying and pinpointing the essential elements of *maqāsid* is questionable and arguable in modern times. Such classification of confining the tenets of *maqāsid* under five headings is not always enough to modern times; it is imperative to reconsider them. Ever since these taxonomies were introduced into Islamic legal thought in medieval times, social structures, and lifestyles have dramatically changed. Naturally, meanings, connotations and implications of the technical meanings of these legal taxonomies should change in the context of modern times. Modern industrial and technological revolutions have brought dramatic changes in the modern way of life and modern way of thinking. Intellectual, scientific and technological outputs of the last four/five decades are astounding all human beings in very sense.

I.B. Ghanem argues "what is wrong if the term "development is used instead of "preservation". What is wrong we say Economic development, educational development, religious development, population enrichment or human resource development or health and safety instead of using the term preservation of religion, intellect, life, wealth and progeny. (I. BGhanem. pp140-144). It must be said here that modern terms such as development and economic growth are new terminology. These terms were not used in medieval or classical human civilizations. Yet, these terms are cohesively fitting to illustrate the concepts and ideals of the general philosophy of Islamic law. They imply the broader meanings and inner dimensions of the general philosophy of Islamic law. For any modern student, if we copy or use the classical terms and terminology or if they are written in classical Islamic books, it would not make sense and it would not convey the real meaning. It would be like using classical language in modern time. It would be like using the use language of William Shakespare in modern time. Technological, scientific, political and economic dimensions of

social change in the modern world are enormous. Such social changes have made an enormous impact in the very structure of the Muslim world. These intellectual achievements give a new and modern connotation for our perceptions of things around us. A modern man lives in an entirely different world from mediaeval social structures.

In the light of all these social changes it can be argued the tenets of *maqāsid* namely the meaning of religion, life; offspring, intellect and wealth should get a new dimension in our contexts. In this sense, the classical definitions of *maqāsid* demand modern interpretations and definitions in every sense. Otherwise, concepts of *maqāsid* would remain as a theoretical subject with medieval connotations. Sadly, much of the writing on the themes of *maqāsid* have been on a traditional analysis without accounting for all these the changes. It is high time for Muslim intellectuals and Islamic legal theorists to modify and proffer a fresh theoretical analysis of *maqāsid* taxonomy considering all social changes around us in the world. It can be noted that only a few modern Islamic scholars have endeavoured to explore the inherent relationship between the tenets of *maqāsid* and modern concepts of human development. It is true that classical Islamic scholars did not envisage enormous social changes occurring in the sphere of science, technology, economy and all other aspects of life. Yet, the fundamental principle of social change in Islam should incorporate all aspects of these developments as embodied in the tenets of *maqāsid.* However, the meaning and notion of development in the contemporary world cannot be understood from classical writings. From a historical perspective, Mahdi Shamshud Dīn argues that most periods of Islamic history were dominated one way or another by some sort of individual dictatorship or authoritarian rule. Hence, the leadership was not usually based on mutual consultation and discussion. Consequently, Islamic jurisprudence developed in the hands of jurists in isolation treating and dealing with personal issues of individual life, and avoiding treating major social, political, economic issues of society at large. He argues what we have today from hundreds of years of intellectual heritage of Islamic jurisprudence is the jurisprudence that mostly deals with personal matters of life. Mere adherence the literal and traditional meaning of the texts would not be always enough and appropriate in our understanding to the laws of *Sharī'ah.* Thus, we examine his and some other modern scholars' approach and methodology to the general philosophy of Islamic law to see how far is convincing their methods and approaches in modern time.

On the other hand, Kamāli strongly argues that the scope of *maqāsid* should be extended to incorporate economic, scientific and technological developments, as these developments are crucial to uplift the living standards of Muslims in the world. Because of dramatic changes taking place in this world, several Islamic scholars call for a review of the scope and structure of *maqāsid*. The rationale for such review is that the classical concepts of *maqāsid* are the outcomes of rational enquiries of certain individual scholars of medieval times such as al-Ghazali (d.505H), al-Rāzi (d.606H) and al-A'midi (d. 627H) hence, they do not meet the demands of modern society. It is surprising to note that the architect of *maqāsid* al-Imām al-Shātibī confined its scope to five elements, though he enlightened with his rational approach to *maqāsid*. Moreover, the confined nature of *maqāsid* is because the classical concepts of *maqāsid*. are drawn from laws of punishment and retaliations. Hence, modern Islamic scholars insists that a comprehensive review of *maqāsid* must be done bearing in mind all human right elements such as political economical, and social right and incorporating freedom, social security, equality, justice and human developments. Ibn Taymiyyah questioned limiting the scope of the general philosophy of Islamic law into a specific number. According to him, the basic values of Islamic law are numerous, and all the priorities of Muslims should be incorporated into the higher objectives of Islamic law. Al-Qaradāwi, Kamāli, 'Attiyah and many more modern scholars demand reviews of the scope of the general philosophy of Islamic law in accordance with the priorities of Muslim societies.

They argue that fundamental human rights elements, social welfare system, human resource developments and development in science and technology and all the priorities of the *Ummah* should be part and parcel of the general philosophy of Islamic law.(Kamāli. H.1999 p.91.) Ameer Ali in one of his research articles discusses the issue of human resources deve1opment in the Muslims countries from the *maqāsid* perspective. Although he does not discuss the tenets of *maqāsid* in his research, it is obvious for discerning scholars of Islam that the core issue of his discussion deals with the very foundation of *maqāsid*. The UN's reports on human resources development of Muslim countries depicts a clear negligence of socio-economic developments embodied in the tenets of *maqāsid.* Using these reports and many researches Ameer Ali argues that the scientific and technological advancement should be the priority of the Muslim nations today to narrow the development gap. For this, he argues that we need a huge capital investment and the political will on the part of Muslim leadership. (Ali, A. 1995 pp.331-346.).

In a recent study Sanu investigates the purpose of law in relation to capital investments. He argues that many methods of capital investment were introduced in the formative period of Islamic thought such as *mudhāraba, murābaha, muza'ra'* and other forms of investments. The underlying wisdom behind these economic investments deserves a thorough examination in our time. He further identifies that the main purpose of law pertaining to investment and the constant circulation of money among the people is to enhance economic growth and for this very purpose, all economic and business activities are encouraged and regulated by the law. Moreover, ways of spending and dealing are sanctioned in Islamic law to regulate such constant movement of money and economic developments. (Sanu, Q. 2002, pp.153-72. Vo 103.) Sanu contends that modern methods of capital investment should go along with the intents and purposes of law.

In an Islamic economic system, Islamic economic principles, ethics and Islamic rationales can be maintained, However, modern world is dominated by global economic systems such as capital markets, foreign exchanges and multilateral agreements on trade and service between countries. In this financial market, the Islamic economic ideas are almost marginalized. Sanu encourages the Muslim nations to maintain the general philosophy of Islamic law in economic activities and financial investments. Practical application of such demand is questionable in the modern world. However, his intellectual attempt to highlight the relationship between capital investment and the general philosophy of law must be appreciated. More recently, some studies are carried out comparing the similarities and differences between the human right concepts and the ideals of the general philosophy of Islamic law. Many elements of modern human right concepts are comparable with Islamic human right concepts. The Universal Declaration of Human Rights (UDHR) has often been criticised for many reasons. It is argued that the Western values and culture are deeply rooted in those human right declarations. They do not fully reflect concerns of Non-Western peoples. Moreover, they neglect community rights. (Kamali, H.p, ix). It has been argued that the concept of "universal human rights" are deeply rooted in the individual rights according to Western concept of liberty, whereas in Islam, rights and duties are intertwined between the rights and duties to God and the communities. (Ali.S, 1995. p.25). Some articles of UDHR contradict with the fundamental principles of Islamic law. An example is Article 18 of the UDHR, which declares the freedom of choosing and changing one's religion. Despite these dissimilarities between the western and Islamic concept of human rights, there are similarities between the notions of basic values embodied in the general philosophy of Islamic law and the international treaties on human rights. An example is the article 1 of UDHR which declares the respect to human dignity without any discrimination. This article is identical to the Qur'ānic concept of human dignity demanded by many verses of the Qur'an and the Sunnah. Moreover, one can see much common ground between the universal Islamic declaration of

human rights (UIDHR) arranged by the Muslim jurists at UNESCO in 1981 and the universal declaration of human right of UN.

According to these scholars who prepared this document on the universal Islamic declaration of human rights. "Islam gave humanity an ideal code of human rights 1400 years ago. The purpose of these rights is to confer honour on humanity and to eliminate exploitation, oppression, and injustice. Human rights in Islam are deeply rooted in the conviction that God, and God alone is the author of Law and the source of all human rights. Given this divine origin, no leader, government, assembly or any other authority can restrict, abrogate or violate in any manner the rights conferred by God" Thus, although the human right concepts are western conceptual products, some are identical with Islamic concepts of human rights. Hence, Attiyyah argues that the Muslim world should create universal human rights concepts incorporating varieties of culture and traditions" (Attiyyah.J.2000, *pp.*169-70) Some Modern Islamic scholars argue that preservation of life; intellect and wealth have greater implication and meaning today than the classical time and the priorities of Muslim societies today are different from the priorities of Muslim *Ummah* in the classical period. Thus, they justify the argument to re-examine and re-interpret the scope of *maqāsid* in accordance with modern social change. They are some modern human values and broader humanistic concepts should be included in the general philosophy of Islamic law. Some of those are human values are.

a) Human dignity.
b) Justice and social justice
c) Freedom
d) Equality.
e) peace and security.

Diagram: 12: some additional *Maqāsid.*

a) Human dignity:

Many modern Muslim jurists argue that human dignity is one of the major themes of the general philosophy of Islamic law. (I.B ghanem, 2014, P79). Though, many classical Islamic jurists did not include human dignity as an identical element of the general philosophy of Islamic law, some contemporary scholars have argued it should include into the scope and structure of the general philosophy of Islamic law. It is said that human dignity is a divine gift that God has given to all human beings beyond all racial, ethnic, religious or gender limitations. God dignified man among all His creation. God blessed him with human faculties and knowledge. God favoured man over all His creation. So, human dignity should be protected. Today, UN's universal human right declaration documents, and European human commissions speak about the human dignity. All these documents are designed to protect human dignity, and yet, Islam protected human dignity 1400 ago with divine revelation and prophetic precedents. No doctrine prescribes rules of law to protect human dignity as Islam does, no ideology protects human dignity as Islam does, no philosophy protects human dignity as Islam does and yet, today, human dignity is grossly violated in the Muslim countries than anywhere else and the political leaders in the western countries are proud about their democratic values and human right protection. They argue that they have protected human dignity and human values than any other civilization in modern time. No doubt this is true to some extent,

yet, a cursory examination of history of human right records in the western countries reveals that these democratic values are new social phenomenon in many western countries. When did Europeans realise the importance of protecting human dignity? Two world wars inflicted a huge amount of suffering, torture and mass murders unpreceded in human civilization. The political and military leaders learnt a good lesson from these two world wars. They learnt that they must protect human dignity and human values. They

realised it is very important to protect basic human dignity from harassment, genocides, slavery, torture, beating, bodily harms, physical attacks, suffering and agony. They realised right to live with human dignity is a basic human right of every person. They realised human dignity must be protected. They realised that people must not be discriminated based on their faith, colour, ethnicity, language, gender, race and culture. As result of human experience in these two world wars, the political leaders and policy makers brought some legislation and rules of law to protect human dignity and human rights. UN's convention on refugees and Asylum seekers was introduced to protect people from ethnic cleanings and genocides. In 1948, UN's universal declaration of human right was introduced to protect the human dignity.

Yet, 1400 years ago Islam introduced some sets of law to protect human dignity and human rights. There are so many scriptural texts in the Holy Qur'an and prophetic traditions that signify the importance of protecting human dignity. Consider these divine texts. Almighty Allah says… "We have honoured the children of Adam……. and we favoured them specially above many of those we have created" (The Qur'an 17: 70).and a part of farewell speech reads. "All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab, also a white has no superiority over a black, nor a black has any superiority over a white-except by piety and good action". (Sahih Muslim book15: 159, & Tirmidhi, volume 1, book 7, Hadith, 1163). Money, wealth, family status, posts and positions are not yardsticks in Islam to measure human dignity. Neither colour, race, caste, language, nationalism, religion and culture are measurement tools to gauge the human dignity. Rather good manners, humanism, God consciousness, kindness and a sense of humour are yardsticks to gauge the human status. In Islam a poor person with piety and good manner will gain more respect and more dignity than a rich person without God consciousness and good manners. Yet, Arabs and Muslim communities do not practice these teaching in their life.

Until recent time, humanity in Europe and many parts of the world, suffered from many social evils such as slavery, tribalism, feudalism, racism, and from many forms of discrimination. Nonetheless, Islam protected the humanity from all these social evils 1400 years ago. Yet, what happened was the Muslim communities utterly failed to apply these moral values in their daily life. Consequently, humanity did not see these values in the practical life of the Muslim communities throughout Islamic history except in the life of the early generations of Islam. Despite the fact the Qur'an commands to respect human dignity, the history of Islam is full of torture, persecution and discrimination. In his encyclopaedia of torture (Abbood. al-Saliji (1999) records the history of torture in Islam. Of course, nations and empires inflicted suffering, persecution and torture in the human history. yet, European nations managed to come out of the inhuman human behaviours since the second world war. Nevertheless, it has been recorded that the US military in Afghanistan. Iraq and in different US detention centres have used many forms of torture and persecutions on detainees. However, the western countries have managed to wipe out all forms of physical torture, punishment, bodily harm, corporal punishment and any other forms of physical harassment. Yet, today all forms of torture, persecution and punishment are widespread in many Muslim countries. Military and police forces in many Muslim countries use all forms of physical abuses on detainees and prisoners. These inhuman practices are unlawful in Islamic law.

One could argue that the western countries are more Islamic than many Muslim countries in protecting human dignity and human values. Law against discrimination, equality acts to protect rights of disable, weak and poor in the communities some of them good example how the human dignity is protected in many western countries. In western countries people are treated equally by law. it does not matter where do you come from? Which country or which race you come from? By law, your rights and human dignity are protected in the western countries. In many so-called Muslim countries, we not see human rights and human dignity are protected by law. For instance, consider how migrants are treated in many gulf countries today.

Many Arabs in Gulf countries treat African and Asian migrant workers inhumanly. Migrants are discriminated badly in gulf countries. sometimes, they are not given basic human rights at work places. Sometimes they are beaten and tortured. Human right communions and Amnesty International have recorded a large numbers of human right violations and physical abuses in these countries. So, one could argue that many people in these countries do not follow Islamic moral values in their social interaction with migrant communities. we can say that the human dignity is protected more in many western countries through many legislations than many Muslim countries today.

b) Freedom

Some contemporary scholars have argued freedom should be included into the scope and structure of the general philosophy of Islamic law. Ibn Ashur argued that freedom is fundamental human right and it should be an integral part of the general philosophy of Islamic law. Freedom to think freely, freedom to express freely, freedom to write freely, freedom to work freely and freedom to practice faith freely are fundamental element of modern civilization. It is a common human value for all, beyond racial, cultural, religious, and gender barriers. All people should enjoy freedom. People should enjoy freedom to invent, innovate, and discover. People must enjoy freedom to develop their country in all fields of modern sciences. In short, freedom is an integral part of modern civilization and culture. Islam encourages freedom of thought, freedom of faith, and freedom of expression yet, today, the rulers in the Muslim countries suppress people's freedom. When Qur'an was revealing, salve trade was widespread in Arabian Peninsula. Islam introduced different measures to ban slave trades in Arabia. Moreover, the Qur'an gives religious freedom to accept or deny any faith. Nevertheless, since the formative period of Islam until modern, the Muslim communities have been denied this basic human value. The Muslim scholars and public have been denied their birth right of freedom in many parts of the Muslim world. As result of lack of freedom in the Muslim countries, the political dictatorship, nepotism, tyrannical rule spread in the Muslim world. A handful of people have been dominating political power, enjoying wealth of the Muslim countries at the expense of the majority of public. As result of this, people do not share national wealth equality, they do not have equal rights, they cannot demand their rights. Moreover, they do not have power to bring the ruling elites into accountability. Despite of the fact, the Qur'an speaks about aggression and human right violation in many places in the Qur'an today, basic human rights of the Muslim communities are violated by their rulers in many Muslim countries because they do not have freedom to speak out and act. The freedom is the spirit and fundamental principle of Islam. Freedom to choose one's faith is fundamental principle of Islam. "There is no compulsion in Islam" This is basic concept of religious freedom in Islam: Moreover, once who believe in Oneness of God, you free yourself from all material pressures and human desires. No country suffers from political dictatorship as the Muslim countries suffer today. No community suffers from political hegemony as the Muslim community does today. This is despite of the fact; the religion of Islam frees people from all chuckles.

c) Justice and equality

Many classical and contemporary scholars argued that justice is foundation of Islamic law and it an integral part of the general philosophy of Islamic law. So**,** they contend that Almighty Allah revealed this final divine message to establish justice on earth. Islam prescribes unconditional justice for all humanity. Islamic justice is unconditional to all. Several divine texts and prophetic traditions point out the significance of applying justice at all level in the society. Not merely in the court of law, but, maintaining justice at individuals and community levels. Moreover, applying justice in our interaction with wider community. Moreover, Islamic demands social justice in sharing wealth and caring for humanity. Distributing national wealth equally, looking

after poor, elderly and needy is part and parcel of Islamic social system and yet, today, we do not see any social justice system in the Muslim countries. The stronger ones take the lion share of national wealth and many Muslim countries still have feudalism. In Pakistan, a few landlords and military personals own the 80% of national wealth and land. In gulf countries a handful of royal families own the 80% national resources.so, there is no social justice in many Muslim countries as we see in many western countries. People in many western countries enjoy the benefits of open economy policies. People in many western countries share national wealth, and yet, people in many Muslim countries do not share national wealth but wealth is accumulated in the hands of few people in many Muslim countries. Poor gets poorest and rich get richer in many Muslim countries. Moreover, the judicial system in many countries is corrupt ad dishonest. The judicial system is controlled by political leaders in all Muslim countries. There is no any serration between judiciary, executive power and law enforcement in many Muslim countries. Dictators in the Muslim countries control all legal, political, social, religious and economic life of people. Recent Arab spring took place to free people from the grip of these dictatorial political leaders and yet, it did not work out due to some internal and external factors. I think that there should not be any dispute in considering the justice as one of the fundamental principles of Islamic legal philosophy. After all, Islamic law is revealed protect justice for all.

d) Peace and international security

What is the connection between peace, global security and the general philosophy of Islam law? The central theme of Islamic religion is to promote peace and security in the world. No divine text encourages or incite violence and terrorism. Sometime, Islamic texts are quoted in support of violence and fighting by some radical out of context. In fact, Islam stands for peace and Islamic message promotes world peace. The general philosophy of Islamic law is designed to protect human life and protecting human life is one of the core themes of the general philosophy of Islamic law. Islam means peace and submission to the will of God. Salam is one of the beautiful names of Allah. Moreover, Qur'an says that God sent his last prophet as a mercy to humanity. Qur'an depicts one of the heavens as abode of Salam. Moreover, each Muslim greet follow human beings with salutation of peace. If the essential message of Islam is peace how could any Muslim blew up innocent people on the streets. Any act of violence is against basic teaching of Islam. Islam does not encourage or endorse violent act at all. Yet, today because of a few radical Muslims and their violent activities Islam and Muslims have been portrayed as terrorists and radicals. Sometimes, Muslim dress codes and way of life are display of extremism for some non-Muslims. Prejudice, hatred, Islamophobia attacks have dramatically increased because of this misperception about Islam and Muslims. So, the true peaceful message of Islam has bene hijacked by Muslim radicals and some groups of Non-Muslims. Ironically it is not Muslim countries which possess the most dangerous weapons of mass destruction rather it is Non-Muslim countries.

Today, many Non-Muslim countries have developed most sophisticated atomic and hydrogen bombs. Except Pakistan no any other Muslim countries have developed atomic bombs or any other weapons of mass destruction. Yet, it is religion of Islam and Muslims have been portrayed as agents of terrorism in the world. Today, super -powers have done immense damage and destruction in the Muslim lands in the name of war on terror. How many million people have been displaced and how many thousand people have been killed in the name of war on terror. Consider for instance, ww1 and ww2, how many people had been killed in those wars? Who engaged in all these wars? Are they Muslims or Non-Muslims? Yet, today,

Muslims alone have been portrayed as one and only terrorist group. Why is this discrimination? Some Non-Muslim countries have developed some more weapons that could be used to wipe out a large part of this world and yet, today, Muslims have been portrayed as a threat to the world peace. There are many conflicts that are inflaming in the world day by day without any ending. Some of these conflicts are local and some are regional ones. These conflicts are threatening world peace for instance, Israel-Palestine conflict. Today, we have so many human right commissions, regional, and international organization to promote peace in the world and yet, today, we notice more people are being killed than any time in human history. Today, more people die out of conflict and wars than any time in human history. it can be argued that it is neither Islam nor Muslims who pose thereat for the world peace rather it is the countries who have developed weapons of mass destruction which pose a real threat for the world peace in long run. If these weapons were to be used in any world war, they could wipe out humanity. So, it would not make any sense to argue that Muslims are posing any threat to peace in the world. Moreover, the general philosophy of Islamic law encourages the Muslim communities to cooperate all peace initiatives and to honour all peace agreements. Islam encourage peace and yet, the Muslim community failed to promote peace in the world. Today, many Muslim countries engage in regional conflicts. This is despite of the fact, Islam promotes peace in the world.

Chapter 2: Some leading scholars of *maqāsid* in modern time:

1) Mohamed al Tahir Ibn 'Āshūr. (1879-1973)

It is generally believed that Ibn 'Āshūr revitalised the doctrine of the general philosophy of Islamic law in the modern time. He reconstructed the ideals of the general philosophy of Islamic law with modernity. Almost 600 hundred years after al- al-Shātibī, Ibn 'Ashur, reinvigorated the ideas of the general philosophy of Islamic law but this time in a modern context, addressing the modern problem. He hails from a religious family from Tunis. He was educated at Zaytuna university. He belongs to reformist camp of Islamic scholars in modern time. He was one of highly respected Islamic scholar of modern time. He served as a grand Mufti of Tunis and judge of Tunisia. He produced some brilliant Islamic books on Islamic law, Qur'anic exergies and wrote hundreds of research articles. He was an Islamic reformist who aimed at reforming Muslim communities through his legal and intellectual reformation programs. During his time, Tunisian President Habit Bourguibs asked publics to give up fasting. He believed that fasting decreased productivity. The Tunisian president requesting a religious edict supporting him in his claim and yet, Sheikh rejected his appeal and said that fasting is one of the pillars of Islam. No one could change the obligatory nature of fasting. Sheikh was dismissed from his post and yet, Sheikh declared "God has spoken the truth and Bourguiba has spoken falsehood" (Brown. Jonathan. 2014. P280). His book on the general philosophy of Islamic law aims at reforming the Muslim community holistically in all aspects of life He aims at reforming Muslim education, Islamic politics, and legal methodology. Moreover, he aims at addressing the challenge of his time through the general philosophy of Islamic law. Ibn 'Ashur argues that the economies of the Muslim world and political authority need to be scrutinised from a *maqāsid* perspective. For him the political authority is a part and parcel of the *maqāsid* scheme. Unlike the classical scholars whose analyses of the *maqāsid* were confined to the welfare of individuals in the Muslim societies, Ibn 'Āshūr argues that the theme of *maqāsid* should be elaborated in relation to individuals and societies at large. He further argues that doctrines of *maqāsid* aim at preserving the interests of societies. The interests and welfare of any society cannot be maintained without the political will and commitment. Without such a political authority, preservation of other tenets of *maqāsid* will be difficult if not impossible. Hence, the political

authorities become the most responsible element in the application and implementation of the tenets of *maqāsid.* (al-Mysawi, 1998 p.188-191.)

The impression one gets from Ibn 'Āshūr's perception of *maqāsid* is that confining them within the interests and welfare of individuals is no longer adequate. However, the meaning of *maqāsid* should be expanded according to the priorities and needs of societies with the changing circumstances and places. From this perspective, the political freedom, freedom of speech, freedom of expression, and all other elements of basic human rights should be part and parcel of *maqāsid.* (Husni, I.p.299.). Thus, understanding the doctrines of *maqāsid* is not merely confined to the scriptural texts. But the consideration of necessities, needs and priorities of societies become its fundamental elements. Thus, Ibn 'Āshūr departs from the traditional understanding of *maqāsid* and interprets it in a pragmatic way to meet needs of time and age. Moreover, the equity and justice are important elements his perception. One of best characteristics of his legal thought is that he makes distinction between the different behaviours of the prophet in his capacity as a divine messenger, political and judge. Accordingly, the legal verdicts and statements of the prophet get different meanings and connotations. Moreover, he argues the Qur'an demands to establish justice and do consultation on affairs of the Muslim community and yet, Qur'an did not provide us with any mechanism to establish justice or to do consultation. It is entirely left for Muslim communities to come up with any suitable mechanism to apply and implement these Islamic institutions. For instance. Problem solving mechanisms, resolving disputes, and issuing judgment had been in the hands of learned individuals in the past. Prophet of Islam had been a judge, religious and political leader during his time but today, the entire judiciary system has been changed into different court systems. So, Qur'an left it for the Muslim communities to come up with any institutional mechanism to establish justice and consultation process in the political affairs of the Muslim communities. Yet, the Muslim communities have not yet, come up with best political system in the Muslim communities. Rather the Muslim politics is in a chaotic situation in many Muslim countries.

One of the main promises of his legal thought is he argues that Islam is a religion of natural instincts: A religion of *Fitra.* Islam does not go against instinct of man. So, whatever it a is instinct of man, Islamic law regulates it and guides man into it. For instance, or desire to have wealth or marry someone is an instinct of man. Islamic law does not go against this basic human instinct rather it regulates this natural feeling. So, Islamic law prescribes all sets of law for marriage and divorce. Likewise, Islamic law prescribes all sets of law to regulate business transaction and wealth. Moreover, Ibn 'Ashur argues that moderation is one of best characteristic of divine legislation. He argues that Islamic law is a moderate set of law. It does not encourage extremism nor too much leniency in any affairs. Allah demands moderation in all affairs and Allah made the Muslim community a community of moderation to follow a moderate path. He argues that this moderation is reflected in divine legislation. Moreover, Islamic legal though aim at reforming man, his action and his intellectual faculties. He argues that the general philosophy of Islamic law aims at putting the Muslim community in a social order and man is a centre of Islamic reformation. He argues that the primary concern of Islamic legal philosophy is protect man's interest. He argues that the humanity needs both divine revelation and human reasoning faculties. Both are some forms of divine guidance. They are interdependent one another. It is through human reason we understand the divine laws so, both divine revelation and human reasons are source of guidance in Islam. Freedom and equality are fundamental ideals of the general philosophy of Islamic law according to Ibn 'Ashur. He argues Islamic concept of oneness of God provide Muslim communities a complete freedom from all materialistic constraints and chuckles. He argues that man is constrained by some desire or material objects. Some people are constrained by greed, some others are by money and some others are by social status. Money, wealth, jobs and social status all control man in one or another, man become slaves to all these material objects and a Muslim is not a slave to

all these material objects, but he is a slave to the Lord of this universe. In this sense, he is a free man and his freedom comes from his faith in the Creator of this universe. So, any aggression on freedom of people is a worst form of injustice according to him. People are born free and their freedom must be protected. He argues that people should be treated equally in public affairs. People should share duties and responsibilities equally. He argues that people should be provided equal opportunities in finding jobs and employments. So, any form of discrimination is not allowed.

2 Tāhā Jābir ʻAlwāni.

In his research, ʻAlwāni reconstruct the entire theme of *maqāsid* from a different perspective. He argues that we need to arrange it directly from the scriptural texts of the Qur'an and Sunnah. Why do we need to reconstruct the general philosophy of Islamic law once more? He answers this question tracing historical and modern dimensions of the general philosophy of Islamic law and justifies the *raison d'être*. He argues that the traditional legal speculation suffered many historical, political and philosophical setbacks. According to him, the partial, literal and trivial legal interpretation dominated a large part of Islamic history. An all-inclusive approach to the general philosophy of Islamic law was not always maintained. Moreover, unhealthy relationship between political and religious leaderships and an excessive use of legal stratagem created many hindrances in the development of Islamic law. Though many classical Islamic jurists eliminated some negative trends in the development of Islamic law, they could not do much, consequently, our intellectual, psychosomatic and social development suffered from such impediments. ʻAlwāni who was living in US for the last three decades noticed this problem clearly. He says that neither classical legal works nor modern literatures give any ready answers for hundreds of issues the Muslim communities in modern time. This does not mean we should undermine the contribution made by classical Islamic jurists rather their contribution was time constrained. Their legal opinions may have been suitable and fitting for their time yet, today we will in a different world with different human problems. (al-Wani: 2012.pp 20-22). Hence, he proposes that we must return to the Holy Book of Allah and His Prophet to find solutions to our problems. Why? he argues that Qur'an is a universal book, that deals with universal problems. It speaks about the cosmos of this universe and its functions, it speaks about human behaviours, it speaks about animate and inanimate objects of this universe. Its guidance is not limited to any place or any time rather it's universal guidance to all humanity. It is the only book that could correct all distorted divine message of all previous prophets, therefore, ʻAlwāni argues that we should return to Book of Allah to resolve ever-increasing problems of humanity. (Ibid: 2012.p 20-23).

Furthermore, Islamic law was developed as a theoretical and speculative subject, which did not provide pragmatic solutions to the most important issues in day-to-day life. More importantly, the general philosophy of law i.e. *Maqāsid al-Sharīʻah* was marginalised to a great extent. Consequently, the inherent relationship between Islamic law and its primary sources was widened. Sometimes, the influence of pure rational enquiries of theoretical principles by means of legal mechanisms of *Istihsān, maslaha,* and *Qiyās* led scholars such as *Tūfi* to abandon the primacy of the Qur'an and Sunnah. Had Tūfi given any proper consideration to the general philosophy of Islamic law, he would not have preferred any Qur'anic verse to the rational device of *maslaha*. (Ibid, p. 88.) The epistemological foundation of his legal theory of *maqāsid* consists of divine revelation and legal reasoning *(Ijtihād*). These are the basic foundations of Islamic law. The functional nature of *ijtihād* is nothing but application of human reason in the domain of revelation in our interaction in day-to-day life. He based epistemological foundation of his theory in the following verse of the Qur'an, which reads "For each, we have appointed from you a code of legislation and a traced-out way" (*minkum shirʻan wa minhāja*). According to ʻAlwāni, the implication of this verse is that a code of legislation and a trace-out way are from people who have a role in the crystallisation and development of

this code of legislation and methodology. Therefore, a rational to Islamic law is one of the main special characteristics and features of the general philosophy of Islamic law. He creates the entire theme of *maqāsid* directly from the primary sources of Islamic law. The starting point of his theory is the very foundation of the relationship between God and Man (as vicegerent of God on earth). This relationship begins with the agreement between God and Man. Man, as a vicegerent of God is given the authority to maintain the affairs of this world. The fundamental Qur'ānic principles of *al-'ahd, al-istikhlāf, al-āmāna, al-ibtilāh* and *at- taskhīr* manifest the true nature of relationship between God and Man. Yet, classical jurists did not give much attention to correlate these fundamental Qur'anic principles in legal theories as much as theologists did. Had the central focus of jurists been on elaborating human actions bearing in mind these Qur'anic principles, the entire legacy of legal thought would have been different. Moreover, Islamic law would have been interpreted in view of its general philosophy.

He contends that the entire divine message has three fundamental doctrines and goals. These three goals are: *Tawheed, Tazkiyah* and '*imarathul al-ardhu*: Thus, *Tawheed* is the foundation and essence of *'ibāda* of which *Tazkiyah* is the main purpose. *Taskhīr* means the power to control nature and natural resources and know how to benefit from it. It is a divine gift, given to man by God so that Man acts according to the scheme and will of God and not according his own desires. After all, this entire universe is created for the benefit of human beings and nothing is created in vein. ('Alwāni T. J. pp. 83-84). In constructing the theory *of maqāsid* in this way, he argues that all traditional definitions of *maqāsid* should be incorporated into these highest purposes of law including justice, freedom and equality. He further categorically argues that these traditional concepts of *maqāsid (darūrīyyāt, hajjiyyāt, tahsinīyyāt*,) are not serving the ever-increasing needs of modern societies. These conceptual legal theories are outcomes of rational enquiries of the classical scholars into the sources of Islamic law in relation to an individual life during their time. From the time of al-Imām al-Juwaini up to the time of Ibn 'Ashur, these traditional definitions of *maqāsid* had been the same. Further, he notes that the traditional approach to *maqāsid* has been partial and non-comprehensive. The scope and structure of the classical theories of *Maqāsid al Shaī'ah* need to be expanded and reviewed. A comprehensive approach is yet to be built based on universal principles of *Shaī'ah,* which is not based on particularities of law. (Ibid, p. 88.d, 46). There are many special characteristics in this theory. It is an all-encompassing approach to the primary sources of *Shaī'ah.* It is not based on the works of classical scholars. Further, his approach to *maqāsid* that highlights the universal principles of the *Shaī'ah,* responding to the needs of modern Muslim societies. He argues all positive and substantive laws should be interpreted in view of the general philosophy of Islamic law. Moreover, he argues that his scheme of *maqāsid* is universal in that it incorporates the essence of all divine messages. He argues that given the nature of social changes taking place in this age of globalisation, it is high time to contrive and construct the general philosophy of Islamic law incorporating modern developments. He draws the attention of modern scholars to contrive new methods to reconstruct the scope and structure of the general philosophy in a modern paradigm so that it incorporates all aspects of social changes capable of answering modern necessities, needs and challenges. Although his theory has not been recognised by all contemporary scholars as a full-fledged legal theory, it constitutes a working model for any further scrutiny. He further asserts that contemporary Islamic legal theorists have to identify the ultimate purpose of *Shaī'ah* in order of priorities of contemporary Muslim societies as the needs and challenges of communities differ from century to century.

3)Taha Abdul Rahman: 1944- 2017

Taha Abdul Rahman is considered one of the leading Islamic philosophers of modern time. He was born in Morocco in 1944 and he did his licentiate in philosophy at Muhammad V University. He completed his PhD at Sorbonne in 1972 on the topic of language and philosophy.

and he earned another PhD in 1985 on deductive and natural argumentation and its models. He taught in many Moroccan universities. He has produced many books on Islamic ethics, philosophy, language, linguistics, logic, modernism, Islamic legal methodology and Islamic renewal and reformation. He aims at reforming of Arab and Muslim thought through some ethical theories. Many modern secularist intellectuals such as Muhammed Arkoun, Mohamed Abed al-Jabiri argue that Islamic intellectual heritage, and rational thinking are lacking any coherent rational intellectual methodology to take the Muslim world out of this decline in the Muslim civilization. They argue that the Muslim world must follow secular, and Aristotle rational intellectual heritage to come out of this decline and stagnation. Yet, the special features of the Islamic philosophy and rational thinking is that Islam reconciles between reason and revelation unlike many other religions. Islam has not given preference to human reason at the expense of revelation and neither it has belittled the significance of the reason in understanding the revelation and this universe. Ibn Rush and al-Ghazali disputed strongly on this point of reconciliation between reason and revelation. Ibn Rush gave preference to human reason over revelation and Ghazali reconciled between reason and revelation. Taha Abdul Rahman through his ethical theory of trusteeship paradigm proposes a renewal of Islamic ethical philosophy. Muhammed Hashas argues that like Muhammed Iqbal who tried to reconstruct Islamic thought from Islamic ethical perspective and Fazlur Rahman from a hermeneutical perspective, Taha Abdul Rahman prepossess his philosophical concept of "trusteeship paradigm *(al-Itimaniayh) or annaq al-itimani"*. Using this concept, he makes a staunch criticism of philosophical theories of atheistic secularism, modern ethical theories, and refutes the reason and revelation dichotomy. By this ethical theory, he reconstructs ethical reasoning not only rational ethics. According to him the meaning of trust *(Amāna)* has a deeper philosophical and ethical meaning. It is a trust that entire humanity declared consciously before God. This is an agreement that man made with his creator in his world of human souls before he is born. Man came into this world with subconscious memory of this agreement. This is what he called *Fitra.*

This is a Quranic concept by which it is believed that Man willingly accepted divine responsibility of doing good on earth. This human bond with divine should be perceived in his interaction with himself, with God, with others and wider universe. (Muhammed Hashas, 2014, p5). So, Taha Abdul Rahman's ethical theory is made by components. Namely revelation, reason, ethics, and doing good. These are neither separable nor antagonistic to each other. He puts ethics at the centre of human actions and give preference to ethics over human reason. The interesting ethical theory of Taha Abdul Rahman is that he argues behind each rules of Islamic law there is some ethical values attached to it. According to him, Islamic law is not merely set of legal rules rather there are some moral and ethical values attached to Islamic law. so, by applying Islamic law, the Muslim community should attain some moral and ethical standard, so, Islamic law is not merely mechanical sets of legal rules rather they have some ethical and moral values in them. For him there are two kinds of Islamic jurisprudence. One is jurisprudence of practical rules on apparent obligations and duties on daily religious duties and rites. Then second kind of jurisprudence is ethical jurisprudence that deals with moral and human values. So, we should not merely deduce rules of laws from the primary sources of Islam rather we should deduce some moral and ethical principles from the Islamic rulings as well. so, he says that ethics is essence of all rulings in Islamic law. He disagrees with the classical structure and classification of the general philosophy of Islamic law. His contention is most of classical Islamic jurists through their methods of classification of different kind of *maqāsid* as such (*darūrīyāt, hajiyāt*, and *tahsīnīyāt*) degraded the ethics from their scheme of the general philosophy of Islamic law. He argues that role of ethics has been degraded into complimentary component or secondary component of the general philosophy of Islamic law. He argues that the ethics is essence of all Islamic rulings and Islamic teaching so, it should be given preference in the scheme of the general philosophy of Islamic law. The prophet said,

"I've been sent for nothing but to complete the best ethical values" so, the prophetic mission is for nothing but to complete ethical and moral values. He argues that all classical codifications of the general philosophy of Islamic law does not include this essential element of ethics in their scheme so, he proposes to create the general philosophy of Islamic law. For him religion means ethics and man without ethics would not have a good life. He argues that " the existence of man does not precede the existence of ethics but accompanies it. so, he establishes that human life is interrelated with ethical and moral values. It is through ethics and morals that man excelled all creations in this universe. It is not power of intellect that give merits to man but it his moral and ethics. So, human action and human deeds should carry this ethical and moral values. Based on this argument, he argues that Greek and modern western civilizations are mere verbal vocal civilizations. Because, good deeds and good action with ethical and moral values is the foundation of Islamic civilization.

According to his definition of the maqasid, it is a science that aims at human reformation intellectually, spiritually and morally. His science of ethics includes understating human behaviours, human intentions and human values. His schemes of maqasid is based on some sets of moral and ethical values.

a) Material values: Under this element of maqasid comes protection of life, health, wealth, linage and material benefits.
b) Intellectual values: under this element comes protection of freedom, security, education, and work skills.
c) Spiritual values; under this element comes spiritual development, love, mercy piousness and all good manners come. (Taha Abdur Rahaman. 2017 pp.200-229)

For him Islamic law has two internal and external dimensions: external dimension of Islamic law is application of apparent rules of jurisprudence in daily life or considering legal consequence of Islamic law in daily life and yet, internal dimension of Islamic law is to consider the ethical and moral consequence of law when apply the laws life. this he calls knowing idea of praxeology *the fiqh al-falsafa*. Or science of philosophy. He argues that philosophy has its limits and limitation. It is a discipline of inquiry and questioning, but it is a limited one. Yet, he argues that *fiqh al-falsafa* is an expansive and all-inclusive one. This include, language, linguistics, logic, science of tafsir, hadith, fiqh, spirituality, among others. It can be said that Taha Abdul Rahman has indeed introduced some innovative new ideas into the scheme of the general philosophy of Islamic law. The structure and scope the general philosophy of Islamic law has been same since the time of Imam al-Ghazali, yet, Taha Abdul Rahman gives some new dimensions to the scheme of the general philosophy of Islamic law. moral and ethical teaching of Islam get prominence place in his scheme. The spiritual dimension of Islamic teaching is given preference over material dimension of the general philosophy of Islamic law. It looks like he is giving mystical and spiritual structure to the general philosophy of Islamic law.

4) Jamāl 'Attiyyah:

'Attiyyah in his recent work on the application of *maqāsid* (*Nahwa Taf'īl Maqāsid al-Sharī'ah*) discusses some aspects of human resource developments in relation to *Maqāsid al-Sharī'ah*. In fact, he has revitalised the entire scope of *maqāsid* in a modern paradigm. He identifies twenty-four specific purposes of law pertaining to the individual, family, Muslim community, and humanity. ('Attiyyah. J., p. p.139). It can be said that this is a totally different approach to the study of *maqāsid*. This is a new perception of the doctrines of *maqāsid*. He identifies entire tenets of *maqāsid* in four main areas of human life.

Maqāsid related to individuals	*Maqāsid related* to family	Maqāsid related to Muslim community.	Maqāsid related to humanity at large:
life	Regulate male and female relationship	Protect the integrity of Ummah	Cooperation between different nations

intellect	Develop spirituality in the family	protect the security of Ummah	To enrich the earth and build a strong human civilization
Religious consciousness	Regulate financial affairs of family	Establish justice	Protect world's peace and security.
Human dignity	Promote reproduction of population	Protect spirituality and morals of Ummah	
Wealth	Create love and affection between spouse	Promote cooperation	
	Protect progeny	Promote education	
	Strengthen family ties	Promote economic growth	

***Diagram:12 Maqāsid* scheme of Jamāl 'Attiyyah:**

I) The purposes of law in relation to individual life:

The purposes of law in relation to individual life are five according to this classification namely protection of one's life, intellect, individual religious consciousness, dignity and wealth. Here he almost follows the traditional classification but with modern interpretation and understanding. He excludes preserving lineage from this part of *maqāsid* but includes preserving dignity as one of its elements of *maqāsid*. These aspects of *Maqāsid* are seen from the perspectives of individuals: i.e. the individuals share the responsibilities to preserve these aspects of *maqāsid.*

a) life:

He proffers a modern interpretation to this element of *maqāsid*. Right to live is a basic human right for all human beings. He argues that safety and security individuals come foremost in this element of *maqāsid*. Hence, to secure the sanctity of individual life, Islamic law sanctions severe punishment for murder, suicide, physical attack, and torture. In addition to the classical understanding, he notes that the health and safety issues should be included in this element. Promoting the quality of human life with hygienic food, drinks, clothes, and comfortable shelter should be part and parcel of this tenet. Moreover, it should also incorporate the protection of human life from epidemic diseases, and drug addiction. Securing life from fatal dangers such as fires, accidents, electrocution and poison is part and parcel of this tenet of *maqāsid.* Additionally, health and safety check in transport service, at work places, such as schools, offices and various industrial sites is part of protecting human life. (Ibid, p. 142.) So, 'Attiyah he expands the meaning and scope of preserving life from traditional understanding to a modern meaning.

b). intellect:

In his understanding, preserving intellect also gets a new dimension. This element must be comprehended in relation to modern development in the concept of knowledge. It should include enhancing all branches of knowledge, not just religious education. It should start with compulsory education from an early age. Education is vital for economic growth. All forms of technological, scientific and vocational training and skills development should be included in this tenet of *maqāsid.* Interestingly, 'Attiyyah, further notes that protecting individuals from alien thought is one of the primary objectives of the general philosophy of Islamic law. It means that protecting them from the ideological indoctrination and brain washing. (Ibid, p.144.) However, implementation of such argument is very much complicated in today's world of globalisation where the world is literally controlled by mass media and modern information technology. The Muslim world does not have any control over the technological advancement of the modern world.

c). Religious consciousness:

For him, this is different from preserving religion. Preserving religion is a collective responsibility of Muslim communities. However, here he maintains that individuals should maintain religious consciousness by enhancing their faith, rituals, and avoiding major sins and cultivating moralities. It is the responsibilities of the individuals that they practise their religious rituals and increase their faiths. Thus, maintaining religious consciousness is seen from an individual perspective.

d) Human dignity.

According to 'Attiya's scheme of *maqāsid* human dignity constitute a secondary element of *maqāsid* on an individual level. For this, he notes that everyone's human dignity and personal freedom is protected by many rules and regulations in Islamic law. Discretionary punishment is sanctioned to protect from false accusations of unchastity (*al-qazf*), backbiting, insulting and other offences to protect human dignity. al-Qarāfi (684H), al-Thufi (716H), al-Subki (771H), and al-Shawkāni (1250H) and many other classical and modern Muslim jurists argued that protecting human dignity is an integral part of the general philosophy of Islamic law. (Ibid, P. 146). Yet, human rights and dignity are grossly violated in many Muslim countries than anywhere else in the world. Once against Islamic ideals are not given practical application in many Muslim countries but we see the practical dimension of these values in many western countries today.

e) Wealth:

Preserving the wealth of individuals according to 'Attiyyah is an essential element of *maqāsid*. He argues that the real owner of wealth is God alone and Man is just representative agent and not the sole owner of wealth. Hence, he must preserve his wealth and spend as God dictates and not according to his own whims and desires. Islamic law regulates the circulation of money among the people. It encourages investment and forbids mismanagement. It also enforces the laws of punishment for thefts and burglary to protect individual's wealth. (Ibid, p.147). All this is done to protect the wealth of people. Yet, public money and wealth are grossly wasted in many Muslim countries than any other parts of the world.

II) The purposes of law in relation to family:

'Attiyah identifies seven specific objectives of law in relation to Muslim family. Those specific objectives can be summarised in the following three areas.

1. Regulating the relationship between male and female by the medium of marriage is the most important purpose of law in this regard. Islamic law regulates this relationship with sets of rules. Relationships outside marriage and homosexual and lesbian relationship are prohibited to preserve the integrity of the institution of marriage. Certain types of punishment are decreed for adultery and fornication to protect this institution. The law regulates this institution to preserve paternity, lineage and create a healthy family structure and environment. This in turn helps to produce a conducive relationship between husband and wife phytologically, emotionally, physically and mentally. A healthy family structure is an important element to regulate good relationship between family members, relatives, and neighbours and to lead a peaceful life in the society. (Ibid, P. 148)

2. Interestingly, 'Attiyah notes that creating religious consciousness is an additional objective of law in relation to family. It has been a duty of all prophetic mission to invite their close relatives. He argues that it is the responsibility of parents to implant religious teachings in their children and create religiosity in the family.

3. Above all, he notes that regulating the economics and financial affairs of the family is one more end goal of law in this aspect.

III) The objectives of law related to Muslim community:

These seven purposes could again be summarised in the following way.

1. Protecting the identity of the Ummah with its all characteristics is one of the primary objectives of Islamic law related to the Muslim community. This includes maintaining the

brotherhood and unity of Ummah. Re- establishing of the institutions Kilāfah, *Hisbah* and *Shūra'* is a collective Muslim community responsibility. However, he notes that specific characteristics of this Ummah do not mean it excludes the co-existence, multiculturalism, ethnicity, religious diversity, pluralism and freedom to form various political parties and social organisations.

2. Preserving the internal and external securities of the Ummah. The defence and security of this Ummah is an essential element in his scheme of *maqāsid*. He further argues that the Muslim Ummah should have self-sufficiency in food, weapon industries and technology to defend itself. Otherwise, the Ummah will remain dependant on the other nations for its basic needs. These ideas are encouraging in a theoretical level, but what we see is a culture of dependency of the Ummah on other nations to meet its basic needs.

3. Establishing justice is another collective responsibility and the higher objective of law according to this scheme. 'Attiyyah further notes that the rules of Islamic law are primarily instituted to establish justice among people. Establishing justice through good judiciary, maintaining social justice system, promoting justice with other nations are part and parcel of the general philosophy of Islamic law. He argues that the Muslim Ummah must do justice in its dealings with people of different faiths and culture. Thus, he argues that justice should prevail in circumstances. Discriminating people for their social values such as faith, colour and financial background is prohibited in Islam. Moreover, preserving religious doctrines, duties, rituals, ethics, and cultural identity are some other objective related to the Muslim community. He argues that collective performance of religious rituals such daily congregational prayers and hajj gathering, and other collective duties reassert these objectives in the Muslim community.

4. Educational developments, protecting the intellectual heritage of the Ummah from all sorts of brainwashing constitutes one more objective of Islamic law. 'Attiyyah argues that the Ummah is subjected to a collective brainwashing from the information revolutionaries of the modern technology. The alien ideologies, culture, traditions and customs erode the cultural and religious identity of the Ummah. The mass media greatly influence the thinking patterns and behaviours of the Ummah. Hence, protecting it from such influence should be a collective responsibility of the Ummah. Further protecting the economy of the Ummah and developing human recourse of the Muslim Ummah is another objective of the Muslim community. In addition to this, according to 'Attiyyah's scheme of *maqāsid*, Muslim's perception to the concepts of knowledge needs to be rectified urgently in this age of globalisation. Today, it is not appropriate to divide knowledge into watertight compartments of Islamic and un-Islamic knowledge. The Muslim and Non- Muslim perspectives to the concept of knowledge differ in many issues. The Muslims perspectives on some aspects of political science, economics, and social sciences are bound to be different from non-Muslim perspectives. However, there would not be much difference in Muslim and non-Muslim perspectives to knowledge in physical and empirical sciences. Thus, he demands an integrated approach to the concept of knowledge in Islam.

IV). The objective of law related to humanity at large:

These five purposes of law can be summed up in two main areas, namely preserving the interest of humanity and spreading message of Islam to the entire humanity.

1. First**,** building mutual understanding and trust and strengthening mutual co-operation among the people is one of the purposes of law in relation to humanity. Interestingly, 'Attiyyah argues that the Qur'ān mostly addresses its teachings to all of humanity and its message is not confined to Muslims alone and according to the Qur'ānic teaching, the origin of human race is one. Hence, building mutual understanding and trust and strengthening cooperation among the people should be a prime objective of Islamic law today. He argues that it is an instinct and natural element of human race to have different

groups of people based on colour, ethnicity, tribe and religion. This should not be a deterrent factor for mutual understanding and cooperation among multicultural and religious people. Consequently, he argues that building a world civilization with all dimensions of development in the spheres of science, technology, agriculture, industry and service sectors are some element of purposes of law in this regard.

This further includes cooperating world community in the protection of environment and in the fight against crime and working for security and peace in the world based on justice and equality and co-operating to protect the freedom and human rights of humanity. Hence, different countries and nations with different ideologies, cultures and religions should get together and work towards a good course in the interest of humanity of the world. According to this theory, there is no superiority for any group of people based on their religion, culture, colour and ethnicity rather all human beings are equal, and origin of humanity is one. (Ibid, p.168.) Thus, given the nature of world today, pluralism and multi-culturalism are unavoidable phenomena and yet, he argues that it is the primary duty of the *Ummah* to preserve its identity and corporate with people of other religion in common issues to promote mutual understanding and work for humanity. Moreover, 'Attiyyah argues that the general rule in Muslim Non-Muslim relation is peace. Peace should prevail in the world. He disagrees with the classification of nations into watertight compartments of *dār al-harb* and *dār ul Islam*. He rejects the traditional stand on the Muslim and non-Muslim relationship, which resonated resentment and persistent enmity. He contends that this illogical conclusion of the classical scholarship is no more applicable today. He argues that there is no compulsion in the religion of Islam. it gives the freedom of faith and people have the right to choose their own religion. Islamic Law does not sanction fighting against people of any faith for the sake of their faith, culture or belief. There is no legal justification from Islamic law to wage war against any religious groups. What Islamic law permits is to defend themselves against any form of aggression (Ibid, p. 169.). Not only Islamic law permits the self-defence but also it is an international norm for all nations.

2. Secondly, spreading the message of Islam to all humanity. This according to him is a most important purpose of law in relation to all of humanity as the Qur'an addresses its message to entire humanity in many verses and according to the Qur'an, the people of the book and the Muslims share the divine messages although some alteration and human interference occurred to the divine messages of the people of the book the basic message remain the same. Since the Muslims and the people of the book share same values in faith in one way or another they should come together and cooperate each other with mutual understanding to the concept of the freedom of faith. He further notes that it is imperative that Muslims maintain such understating in their relationship with Christians and the Jews. To achieve this goal, he argues that one needs to master the modern information technology to spread the message of Islam and one needs to understand people's culture, traditions and their languages and methods of communions, and one must have skills and abilities to read their mentalities and thinking. Ironically, he notes that one can enjoy the freedom of thought and speech more in the western countries than in the Muslim countries. Hence, the message of Islam can be spread in the west more quickly and more efficiently than in the Muslim countries. 'Attiyah makes a deliberate attempt to incorporate all aspects of life under the umbrella of the scheme of *maqāsid*. He argues that his scheme is not confined to those five universals maintained by classical scholars in the classification of *maqāsid,* rather 'Attiyah divides the structure of *maqāsid* into four main areas. Sometimes, he adds current issues such as human development, economic development, human rights, world security, and environmental issues to the scheme of *maqāsid*. Indeed, the classical scholars of Islam did not foresee these issues. These are modern developments in our modern world, which have no precedent in legal thought of classical scholars. 'Attiyah tries to analyse them from an Islamic

legal perspective. One wonders whether every aspect of modern development comes under the scheme of *maqāsid* according to this scheme.

One can get such an impression from 'Attiyah's scheme. Interestingly, in the element of preserving life he notes that health and safety issues such as food hygiene and nutrition are included in his scheme. Human right issues such as protecting the rights of the weak and handicaps should be included in the *maqāsid* scheme. Thus, human rights concepts such as freedom of thought, ideology, belief, speech, and economic freedom become an essential element of his scheme. He agrees with the will of international community to interfere in the internal affairs of any country that violate and infringe human rights people. Although such interference is done to protect the national interests of some superpowers, it has been an international norm to interfere in the internal affairs of any country that seriously infringes human right issues. Thus, 'Attiyah incorporates such international cooperation to protect human rights into his scheme of *maqāsid.* Moreover, one more aspect of his *maqāsid* theory is that he equates modern human development (*Tanmiyah*) with the notion of *maqāsid*. He notes that enhancing the human development is a part and parcel of *maqāsid*. *('Attiyah. J. 2000, pp.163-4.)* The verse Qura'n: 11:61 is quoted in support of this. "It was He who brought you into being from the earth and made you inhabit it" that humanity should help each other irrespective of their faith to develop human civilization, protect, environment, fight against crimes and different areas of human developments whether industrial, agricultural or service sectors.

More interestingly, according to his theory of *maqāsid*, ensuring world security and peace is an integral part of it. To secure international peace, international peace agreements between the countries are much needed today. Thus, he endeavours to build a peaceful and healthy international relationship between the Muslim and non-Muslim world. But he argues the general principle in Muslim and non-Muslim relationship is peace and only defensive fight is demanded. (Ibid. p.169). Broadly speaking, these are indeed new developments in our understanding of *maqāsid.* In short, he argues that the scheme of *maqāsid* constitute a foundation to build a strong Islamic civilization. It aims at creating a society based on equity, social justice, mutual understanding and human development. He expands the understanding of *maqāsid* from a set of human rights and morals into a dynamic mechanism incorporates all the elements of modernity. These are fascinating ideas and yet, in practice, these ideas are rarely applied in many the Muslim countries. For instance, Diena Abdelkader argues many Muslim countries violate basic human rights and freedoms of their people. Hence, it can be said that although 'Attiyah explicitly explains all aspects of *maqāsid*; a pragmatic application of these doctrines is not always found in many Muslim countries. It can be said that his scheme of *maqāsid* is a mixture of many issues of modern development. This maiden work undoubtedly, opens a new chapter in the history of *maqāsid* studies. For the first time, the author proffers a pragmatic framework for the application of *maqāsid* and expands the scope of *maqāsid* from a set of religious values into a dynamic system. Yet, I think that Muslim scholars should do a collective research in the field of general philosophy of Islamic law: both the classical and modern Islamic literature on Islamic law should be consulted to review the challenges of modernity bearing in mind the general philosophy of Islamic law.

It is generally argued that Muslim communities protect the integrity and family structure than any other communities. For instance, in many western countries, the numbers of single mothers are increasing. Yet, it can be convincingly argued that the single mothers are compativley less in numbers in Muslim communities than any other communities in the western countries. It's because Islam protect family integrity and family structures. The Qur'an commands the Muslim community to protect the family structures and family relation in many verses. The ideals and principles of the general philosophy of Islamic law are designed to protect and promote the family relations and integrity. It can be fair to say that

family law in Islam has already provided some pragmatic solutions for many family problems that humanity encounters in this modern age. 'Attiyah argues that protecting and promoting peace and security in the world is one of primary objectives of Islamic law. yet, today, this primary objective of Islamic law is challenged by the action of a few radical Muslim groups. All these radical groups do not represent the general Islamic view. Maintaining the peace and social order in the world is one of the primary objectives of Islamic law. Therefore, Muslim communities across the globe must support and cooperate with the international community to promote peace in the world.

5) Yusuf al-Qaradāwi.

al-Qaradāwi (2000) argues that the crisis in Muslim legal thinking surfaces not from sources of laws, but from Muslim attitude to the scriptural texts. He argues that the approaches to the scriptural texts should be comprehensive. Such comprehensive understanding of Islamic law is inherently related to understanding its higher purposes. He strongly advocates that neither literal nor traditional interpretation would be appropriate in modern time. Therefore, he proposes his methodology to understand the scriptural texts based on the higher purposes of law. The comprehensive and contextual understanding of the Qur'an and Sunnah is needed to understand the Islamic law properly in a holistic approach. The wrong interpretation is given to many verses of the Qur'an for two reasons. The lack of understanding of linguistic traditions of classical Arabic and ad hoc treatment of Qur'anic verses in an out of context reading are two reasons for some wrong interpretation of texts. The lack of knowledge in the Qur'anic sciences and its internal structure, failure to understand the Qur'an in the light of the Sunnah are some other reasons why some people give wrong interpretation in Islamic law. The implication of such interpretation can be seen in the mystical, literal, philosophical, scientific and the sectarian interpretations of the Qur'anic texts (al-Qaradāwi, Y. 2002, pp.265-395.). The clear implication of the misinterpretation of the Qur'an is depicted with reference to the *Ayatt al-Saif.* al-Qaradāwi argues that some extremists interpret this verse of the Qur'an out of context. They argue that this verse has abrogated many other verses. According to them, it has abrogated more than one hundred twenty verses. The verses that demand to treat non-Muslims equally with a sense of human dignity and compassion. Moreover, the verses that command the Muslim community to invite people with good tidings are allegedly abrogated by the verse of Saif.

Once again, referring to al-Shātibī's arguments on the issue of abrogation, al-Qaradāwi notes that people of latter generation misunderstood it. It is argued by al-Shātibī that abrogation (*Naskh*) was not applied to the Makkan universals, but to some specific rules of Medina revelation. He further maintains that abrogation is not common in the *Sharī'ah* as it is often assumed. There is no conclusive proof to argue that one verse abrogates another except in a few cases in the Medina revelation. Moreover, he dismisses the occurrence of abrogation commonly in the *Sharī'ah* saying that this perception was due to a misunderstanding by early scholars who applied the term of abrogation more generally and more liberally. They used this term to the particularisation of (*takhsīs*) of general (*'umūm*) and to the qualification (*taqyīd*) of unrestricted language (*mutlaq*). However, al-Shātibī argues that the term abrogation should be used in a much more restricted sense and not generally as commonly believed. (Ibid. p.333). Thus, using his of notion of abrogation, al-Qaradāwi argues that the misunderstanding of the technicality of abrogation has misled many people. Thus, a clear understanding of the technicality of the structure of the scriptural text constitutes an important element in understanding the general philosophy of Islamic law. In the same vein, like al-Shātibī, al-Qaradāwi argues that to understand the general philosophy of Islamic law, one needs to have a thorough understanding of the Sunnah. In his recent study on prophetic traditions in relation to *maqāsid* doctrines, he asserts that to understand the traditions comprehensively, one must consider the following methods:

1) Understanding the traditions in the light of the Qur'anic verses. unless this method is maintained in our understanding of Islamic law, one may partially understand some aspects of law or come to some apparent contradictory conclusions based on weak Hadiths. For instance, al-Qaradāwi refers to the prevailing different opinions among the scholars of the four legal schools concerning goods in which the payment of *Zakāt* is prescribed. He notes that the classical scholars except Abū Hanifa confined the prescription of *Zakāt* on certain food items. Such a conclusion is drawn based on some Hadiths without a comprehensive reference to the Qur'an, which prescribes the payment of *Zakāt* on anything. It reads, "It He is who produces both trellised and untrellised gardens, the date–palms, crops of diverse flavours, the olive and the pomegranate, alike and yet different. So, when they bear fruit, eat some of it, paying what is due on the day of harvest (6: 141).

2) Understanding the Hadiths in the light of *maqāsid*. al-Qaradāwi argues that one needs to gather all the prophetic traditions on a subject matter to understand a theme from them considering the higher objectives of Islamic law. Otherwise, one may draw a conclusion out of context from a tradition in contrary to the general philosophy of Islamic law. Thus, he calls for a collective and contextual understanding of the traditions. one companion was reported to have said. "I heard the prophet (peace be upon him) say: any house which permits such equipment to enter, God will cause humiliation to enter therein." (Shahih al-Bukhāri, p.528.) This hadith discourages use of agricultural equipment. However, when we read collectively all the prophetic traditions with reference to the subject matter of agriculture, we understand that the prophet had encouraged people on many occasions to be involved in agriculture. it was related by Anas ibn Mālik that the Messenger of God said, "Anyone who plants a tree or sows seeds and then a bird or a person or an animal eats from it, then it is considered as if he has given in charity." (Ibid, p.528.). To reconcile between these contradictory traditions, one needs to gather all the Hadiths related to the subject matter of agriculture and understand the circumstances and contexts of those Hadiths. When commentators interpret the first hadith in its context, then it becomes clear that the prophet condemned the excessive involvement in agriculture at the expense of obligatory duties. Thus, unless one reads the Hadith literatures in their contexts collectively in the light of the general philosophy of Islamic Law, it would be more difficult to arrive at a proper understanding.

3)Understanding the specific rationale and logic of certain traditions: it can be noted that some traditions were reported from the prophet in certain contexts either to secure benefits or eliminate harm on specific issues. It may appear that the rulings of such traditions were general and eternal. However, if one examines the circumstances of such traditions, one can note that these traditions were reported from the prophet for specific reasons on specific circumstances. If the rationale of such tradition changes, the ruling must change as well. An illustration of this is in the following Hadith, "No woman travels without a consanguine *mahram.*" The reason for such prohibition is that it was not secure for women to travel alone those days. However, today, circumstances have changed dramatically, and women can travel on their own without any fear since there are many travellers in modern transport facilities. There are many hadiths, which must be analysed in their contexts as we do with certain Qur'anic verses.

4) Distinguishing between the objectives and the means: While the objectives of the traditions remain the same, the means may vary. It is recommended in many Hadiths to use a certain type of stick (*siwāk*) to clean the teeth. Do we need to use the same sticks as the prophet used in his time or is it merely a guidance to use any means of cleaning? al-Qaradāwi notes that the underlying objective of these traditions is to maintain cleanliness, which can nowadays be achieved by comfortable means such as tooth- brushes.

5) Knowing the metaphors of Arabic language: The Qur'ān and Sunnah use metaphors in many places. Unless one understands the metaphors in the Arabic language one could misunderstand the meaning of the Qur'ān and Hadiths. An example is the Hadith, which

reads, “The black stone is from the paradise.” al- Qaradāwi notes that the metaphorical element of the Arabic language is very much apparent in this *Hadith.* Its literal meaning is not viable and feasible. The proponents of literalism such as Ibn Hazm too agreed with the metaphorical element of the Qur’ān and Hadith. Moreover, while al-Qaradāwi appreciates the contribution of the classical scholars to the study of *maqāsid,* he gives a new impetus. He notes that there are four types of *fiqh*: a) *fiqh Sharī‘ah*: i.e. understanding the letter and spirit of the *Sharī’ah* b, *fiqh al-wāqi’ī*: i.e. a branch of law that deals with realities of life, which are not regulated by the texts or any legal precedents. In other words, reading the situations, social occurrences and their circumstances in view of the general philosophy of Islamic law. c) *fiqh al-muwāzatāt* i.e. the law of equivalence, which deals with an analogical understanding of legal and social issues in relation to public interest, d) *fiqh al-awlawiyāt* i.e. the laws of priority which treat legal issues in order of prominence. The inherent relationship between these branches of Islamic law manifests its coherent nature. He argues social issues to be understood in view of the four branches of Islamic Jurisprudence, which meet the realities of life and its demands. (Al-Qaradāwi,2000 pp.45.).

He analyses the subject matter of Islamic jurisprudence in a comprehensive way away from a strict and literalistic adherence to the apparent meaning of the texts. He strongly argues that the Muslim legal scholars of today should give preference to socio-economic, political, religious and legal issues with comprehensive understanding of these branches of Islamic jurisprudence. The systematic understanding of priority in Islamic Jurisprudence is the central theme of his approach. The core theme of his legal argument is that the obligatory nature of commandments and prohibitions of divine rulings are not all at the same level of legal status and merits. The values and legal ranking of human acts and obligations differ according to Islamic law. Consequently, the degree of merits and rewards in religious duties and human acts varies and fluctuates as the texts of the Qur’ān and traditions clearly note in many places (al-Qaradāwi Y.9-12). The legal ranking of human acts and obligations differ in Islamic law divine. Some are fundamental, some are optional while some others are forbidden. On the other hand, legal ranking within the sphere of divine prohibitions are not all the same. Some sins are grave while others are minor. In our understanding of the general philosophy of Islamic law, we should consider all these differences and give due preference in order of priorities. Thus, certain human acts and duties get more merits and more rewards in certain times and certain contexts. al- Qaradāwi notes that unfortunately, most Muslims including the so-called religious people do not understand these types of Islamic jurisprudence. The classical Islamic scholars understood the *sharī’ah* from these perspectives. Moreover, according to al-Qaradāwi, what is regrettable is the absolute failure of Muslims to understand the corpus of Islamic law from these perceptions. Consequently, the fundamental obligatory duties and needs are neglected at all levels of Muslim communities at the expense of some optional and supplementary obligations. To clarify his argument, al-Qaradāwi gives two pragmatic examples where the order of priority is neglected. The first one is related to the performance of optional hajj observed by millions of Muslims every year. According to his estimation, only 15% of all pilgrims are first-time performers who are observing their obligatory duty. The rest of pilgrims perform this duty voluntarily for the second time or third and some on an annual basis. This type of hajj performance is observed to attain some spiritual enlightenment during hajj sessions. al-Qaradāwi argues that rich Muslims should spend this huge amount of money on something more important and obligatory such as establishing institutes of learning or helping the poorest from the Muslim communities. Here, he does not cast any doubt on the obligatory nature of hajj, but what he argues is that optional or supplementary hajj is performed at the expenses of some other major important duties.

The second example is the construction of extra mosques in some cities, which already have many mosques. He argues that some people prefer building mosques hoping to gain greater reward from God. However, he argues that the money spent on the construction of extra mosques can be used in a more useful and more rewarding way such as educational projects and social projects which will be comparatively more beneficial than building additional mosques. (Ibid, pp.12-18). Thus, he does not deny the obligatory nature of these duties, but he argues that optional and supplementary obligations should not be given precedence over the most important and urgent duties. Muslims (particularly Muslim minorities) are subjected to ethnic cleansing, genocide, severe famine, poverty, educational and economic backwardness. One can see that millions of Muslims are involved in optional and supplementary religious duties such as optional hajj and ummra' spending billions at the expense of their most urgent social obligations and duties. The general philosophy of Islamic law demands that the most urgent obligations should be given the priority over the less urgent ones. The lack of understanding of the laws of priority has created a chaotic and disorganised situation all over the Muslims world today.(Ibid,pp.117-118.). From the Islamic legal perspective, these issues should be given preference at the expense of supplementary duties and actions. Thus, the issue of priorities, necessities and urgencies get a prominent place in the legal thinking of al-Qaradāwi. It is his firm conviction that immediate and instant duties should be given priorities over the duties, which can be fulfilled later in time. Accordingly, some modern Islamic scholars argued during the time of Balkan war that the protection of Bosnian Muslims should be given preference over the obligatory duty of *Haj*. Such postulate is absurd and unthinkable according to traditionalists. al-Qaradāwi was asked about the validity of such an argument from an Islamic legal perspective. Based on the laws of priority, he maintained that protecting Bosnian Muslims from ethnic cleansing is an urgent duty of the entire Muslim Ummah. Therefore, if some Muslims delayed their obligatory duty of *haj* to give their support to protect those Muslims whose lives are in danger, such deferring is in conformity with Islamic law. While people in and around the Holy cities of Mecca and Medina can perform the duty of *Haj,* Muslims in the rest of the world could contribute their money to protect Bosnian Muslims, as it was their collective duty. (Ibid, p. 16)

al-Qaradāwi argues that most Muslims do not comprehensively understand Islamic jurisprudence of priorities and necessities. One can see a chaotic and disorganised status of legal thinking of Muslims in the comprehension of Islamic duties and obligations. It can be noticed that some kinds of *fard Kifāyah* (a certain type of obligation to be filled by a limited number of qualified persons) are neglected to some extent in the Muslims countries. The technological, scientific and industrial advancement and development can be mentioned from this type of duty. (Ibid. pp. 101-103.). These duties do not get religious impressions in the minds of Muslims, although these become part and parcel of Islamic duties when we read them from an Islamic legal perspective. However, al-Qaradāwi advocates these duties should be given the foremost priority by the Muslims today. (Ibid.p.102) Moreover, more consideration is given to certain duties at the expense of some other duties. For instance, one can see some Muslims strictly observe the five daily prayers but neglect the duty of paying the *Zakāt* in due time and ignore the social responsibilities such as helping the poor or striving against to social injustice. sometimes, an over-emphasis is given to avoid reprehensible things or minor sins over avoiding strictly prohibited actions and grave sins. The laws of priority are an important element in the general philosophy of Islamic law as priorities change according to place to place, person to person, circumstance to circumstance. From this perspective, al-Qaradāwi emphatically argues modern technological and scientific development should have the most prominent place in order of priorities for the Muslim intellectuals not only to acquire the ability to impart the message of Islam to the world communities but for the benefit of all humanity. Order of priorities changes according to the skills and abilities of people thus, laws

of priority put issues in perspective in the interest of individuals and communities. Although the laws of priority get an important place in the general philosophy of Islamic law, al-Qaradāwi notes that this subject matter have not gained such prominence in the writings of modern Islamic scholars. However, this subject matter gained a prominent place in the writing of classical scholars such as al-Ghazālī, Ibn Taymiyah, Ibn Qayyim and others. The laws of priority are inherently related to the laws of equivalence: *(Fiqh al-muwāzanāt)*. The laws of equivalence differ in their values, scope and legal ranking. The identification of the laws of equivalence demands a high level of intellectual exertion and analogical and comparative legal thinking. al-Qaradāwi identifies three levels and dimensions of the laws of equivalence.
1) The laws of equivalence are contrived to evaluate and compare the inherent element of interest in any contrasting legal issues based on analogy and comparison. As we have already seen the laws of priority and the laws of equivalence demand to give precedence and priority to the fundamental and essential elements of Islamic law. Therefore, in the evaluation of interests the most essential elements of religion come first in order of priorities. Thus, the human interest and welfare are identified in different dimensions in terms of their values and scale and scope as seen in the following analogical comparisons.
a) The public interest of those certitude is unquestionable is given precedence over the public interest whose certitude is ambiguous.
b) Greater public interest is given precedence over lesser public interest.
c) The public interest is given precedence over private or personal interest.
d) The public interest of the majority is given precedence over the interest of the minority.
e) The permanent public interest is given precedence over a contingent one.
f) The substantial interest is given precedence over a marginal one.
g) al- Qaradāwi notes that this type of analogical study of the notion of *maslaha* in a broader sense is taken from the history of the prophet who made a treaty of *Hudaibiya* to maintain and sustain the substantial and permanent interest of Muslims over immediate and temporary interests. It is argued that some sort of compromise is made in this treaty to secure the long-lasting interest of the Muslims. Based on this historical precedent al- Qaradāwai argues that the legal and social issues of the Muslims communities need to be analysed in a comparative and analogical basis. On the other hand, although we agree with the arguments of al-Qaradāwi in this subject in theory, the pragmatic applications of these legal theories and principles are undoubtedly questionable in contemporary Muslims world.
2) The laws of equivalence are used to evaluate and compare between evils and harmful things to choose the lesser evil and harmful things. This helps to discard greater evils. From the perspective of the laws of equivalence, the legal ranking of evils and harmful things are not the same. They differ among themselves. Several legal maxims were contrived by classical scholarship to identify the ways and methods of averting evils. The basic rule in relation to removing evils and harm is that inflicting harm should be avoided for all people as much as possible. Neither inflicting harm nor counter- harming is permitted in Islamic law. The laws of equivalence also demand that harm cannot be averted by means of equivalent or greater harm. This law also demands that lesser harm or evils can be tolerated in case of conflict between two evils or harm and same time personal harm can be tolerated for the sake of averting a general harm. The general philosophy of Islamic law demands such analogical consideration and comparisons in averting evils and harm in societies.
3). The laws of equivalence are also used to evaluate and compare evils and harm afflicting man. This law demands an evaluation and comparison between good and bad in case of conflict between human interest and afflicting evils. If human interest is greater than an evil in any issue a small amount of harm can be tolerated to secure a greater benefits and interests. However, if the harm is greater than the benefit, such greater harm should be averted. Such analogical legal reasoning is taken from the following Qur'ānic reads that "They question

you about drinking alcohol and gambling. Say: in both is great sin and some benefits for men; but the sin of them is greater than their benefits".2:219. Classical scholarship logically concluded that if the conflict of interest arises in the issues intermingled between benefits and harm one should compare to choose the most beneficial one. However, averting harm gets precedence over gaining benefit if they are equal in quantity. (Shiekh Agar Muhammad.2001)

The laws of priority are also related to the doctrines of *maqāsid.* The central theme of the doctrines of *maqāsid* is securing benefits and averting harm. It is imperative that one knows the wisdom and rationale of law before its application. For this purpose, al-Qaradāwi argues that one should clearly understand the clear-cut objectives of divine instructions and the means that are used in achieving those objectives. The difference between the aims and means should be very clear. While *Sharī'ah* objectives remain the same the means introduced by the *Sharī'ah* to achieve those objectives may change in accordance with changing circumstances. For instance, it is a recommended obligation to feed the poor people with (*Zakāt al-fitr*) during the last part of Ramzan. Several traditions reported in this issue specify the grain items to be offered. However, al-Qaradāwi argues that meeting the basic needs of poor people is the main objective of this tradition rather than specifying the grain items of the offering. He notes that one must read the underlying objectives of rituals and the apparent means of rituals. Means may change while objectives remain intact. Thus, while reading divine scriptural texts one needs to know all these subject matters to understand them in a coherent and comprehensive way. al-Qaradāwi notes that in addition to the tenets of *maqāsid* mentioned by the classical scholars, there are some fundamental ethical principles to which that Qur'ān makes a frequent reference. Some of these ethical and moral principles are justice, brotherhood, social security, dignity, and freedom. al-Qradāwi notes these constitute an essential element of *maqāsid*. (al-Qradāwi, Y 2000,. P.75) He calls on people to reconsider the structure and scope of *maqāsid*, not limiting them to five. Furthermore, he notes that the comprehensive meaning of human interests intended by the Islamic law are beyond human comprehension. It covers the interests of man in this world and the next, spiritual and material, social and political, individual and communal, and the interests of the present generation and future generations. Man is confined by time and space. With his limited knowledge and weakness, he cannot fully comprehend what is best and what is bad for him (Ibid. pp.62-3).

He also encourages the Islamic scholars to investigate modern issues in conformity with *maqāsid* and *masalaha.* The mechanism he suggests is that firstly, we should investigate the intellectual heritage of classical *fiqh* literature of different juristic schools so that we can identify which legal opinions enforce *maqāsid* and *maslaha* in the light of the social changes taking place in modern life. Secondly, we must investigate the Qur'ān and Sunnah in view of *maqāsid.* Thirdly, we cannot find legal precedents for all our contemporary issues in the classical fiqh literature. Therefore, we must make greater efforts to understand contemporary issues bearing in mind *maqāsid* doctrines. Unfortunately, a comprehensive understanding and application of laws of equivalence and priorities are almost absent in Muslim society today. The apparent disagreements on many issues among Muslims groups is a clear manifestation of this lack of understanding of these laws of priority and equivalence. The disagreement is a natural process in our understanding to the texts of Qur'ān and the prophetic traditions. This is unavoidable given the nature of the texts and nature of human intellect. Human minds think differently and differ diramatically.

The social issues and problems faced by contemporary Muslim minorities particularly in the West have no legal precedents or parallels in Islamic legal history. Hence, he argues that these problems should be examined in conformity with the general philosophy of Islamic law. Moreover, he contends that it is the responsibility of capable Muslim scholars to generate a specific branch of Islamic jurisprudence (*Fiqh al-Aqalliyyāt*) to deal with the problems of

Muslim minorities. Such a branch of Islamic jurisprudence should not be confined within the boundaries of four legal schools of thought, but one should go beyond the boundaries of *Madhab*. He should read the sources of Islamic law to address the challenges and problems of Muslim minorities, but he will not find convincing answers and suitable solutions for the modern problems within the boundaries of these four legal schools. The Muslim minorities in the West face many challenges and problems these include political, economic, religious, social and educational and many others.These problems need to be addressed from an Islamic legal perspective to find viable and suitable solutions and answers. Issues such as acquisition of nationality and citizenship in the western countries, issues of employment and conscription in the defence forces of these countries, issues of mortgage, insurance, mixed marriage, and many other issues and problems have no legal precedents in Islamic law hence these issues need to be addressed in conformity with higher objectives of Islamic law. (al-Qradāwi1, 2002., pp. 28-74). An example is that if wife of a Christian or Jewish couple embraced Islam according to the four legal schools of thought, she should be separated immediately, or after waiting a period of *Idda* or otherwise, after his husband's refusal to embrace Islam. al-Qaradāwi notes that applying such a classical verdict is not feasible today especially if the wife is very intimate and affectionate to husband. Moreover, a separation would be more difficult if they have children. Hence, al-Qaradāwi goes beyond the boundaries of four schools of legal thought to find a suitable answer to this issue. On the authority of Ibn Taymiyyah and Ibn Qayyim al-Qaradāwi argues that wife remains with her husband, but matrimonial relationship is not permitted or otherwise she is given a choice either to remain with him or for her separation. Or otherwise, the court decides whichever is better for them. al-Qaradāwi notes that one needs to select a suitable judgment from these above-mentioned verdicts in the interest of all parties concerned. Thus, understanding the higher objectives of Islamic law and a contextual understanding of the legal issues in order of priorities constitutes a significant place in the legal thinking of al-Qaradāwi

6 Jasser Auda

In defining the legal philosophy of *maqāsid Sharī'ah* Jasser Auda gives some simple examples to illustrate them. He explains that it is a natural human instinct to ask simple questions about any occurrences or incidents such as why this accident happened? Why there are some codes of rules for traffic on the road? This rational question of why is used at different levels. He tells *maqāsid Sharī'ah* is a branch of knowledge that addresses the challenging question of why at all levels: such as why do we fast? Why do we pray five times and why do we give charity? Why do we have death venality in Islam? Why do we say salaam? And so on. (Auda:2016 p2). This can be explained with one more example. Suppose you own a factory and many people work for you. You will set some rules and regulations to run this factory smoothly. These rules and regulations are set for a purpose. It is to run this factory smoothly. Likewise, the Creator of this universe sets some rules and regulations for this universe and human beings. Those rules are set to run this universe efficiently. For instance, we notice some physical laws in this universe, such as sun rises every day morning and sets every evening. This physical phenomenon has a purpose. Like that Allah sets some rules and regulations for human life. Those rules and regulations are set with some purposes and objectives. Knowing and understanding those purposes of divine commandments and prohibitions are known as *maqāsid Sharī'ah* to put in a simple language. It can be convincingly contended that Islamic legal philosophy of law deals with the qualitative research question of why? Auda (2016) equates different levels of qualitative research questions with different levels of *maqāsid.* For him the qualitative question of "why" is used at different levels to gauge the levels of different *maqāsid.* He uses these different levels of qualitative "why" to gauge human actions from a simple action of stopping at red light to moral principles and values such as justice, equality, public interest

and spirituality. (J. Auda, 2016. pp3-5). But these different levels of *maqāsid* are not same in grade and ranking.

Classical scheme of *maqāsid*	**Auda's scheme of *maqāsid***
1) Necessities with all components:	The six level of *maqāsid: why justice: because of Allah is just: Spiritual or religious dimension:*
2) Needs	The fifth level of *maqāsid:* Why we are human beings are equal? It is for justice.: philosophy:
3) Luxuries	Forth level of *maqāsid:* why do we need to consider safety of people? Because we all are equal.: value of equality of human beings
	Third level of *maqāsid*: why do we need to follow rule of traffic law? It is for the safety of people.: Public interest: Mutual interest:
	Second level of *maqāsid*: Why do we need to stop at red light? It is a rule of law: Rules of law.
	First level of maqāsid: why do we stop at traffic light? It is because of Red light? Level of Signs or cause of stop:

Diagram: 13: Auda: *maqāsid*

What are similarities and differences between the classical scheme of *maqāsid* and Auda's scheme of *maqāsid*? Which one is better, and which one is all inclusive scheme? Auda's scheme of *maqāsid* is a value-added scheme. He gives different layers to his scheme. All layers are not in same status or are not in the same level of values rather all are in some hierarchical orders. Man's devotion, faith, and spiritual development is highest level of *maqāsid* in his scheme. The lowest level of his scheme relates to some religious rites, rituals, customs and sign. For instance, he gives an example of moon sighting for fasting in the month of Ramadan. Muslim communities been asked to fast in the month of Ramadan when they see moon. Here moon sighting is one of low levels of *maqāsid*. Because, moon sighting is a prerequisite to begin the fasting in month of Ramadan. The problem with this, is that some could argue that sighting moon is not an objective itself rather it is just a mean to start fasting. Interestingly, he includes some elements of classical categories of *maqāsid* in his scheme. His scheme includes the legal device of public interest (*maslaha*) or five universal principles of *maqāsid* as classified by classical Islamic scholars. He further argues that this is an inclusive scheme in that different branches of Islamic legal philosophies could be included. For instance, philosophy of Islamic economy, philosophy of Islamic education, philosophy of politics in Islam and other areas. He makes a clear distinction between the highest level of *maqāsid* and lowest level of *maqāsid:* for instance, take example of fasting, moon sighting is lowest level of maqāsid: the height level of maqāsid of fasting is attaining God consciousness or piety.Today, we notice in the Muslim world that some rigid Salafi groups generate heated arguments on the issue of moon sighting and even some groups fast different days. They read this issue at the lowest level of maqāsid at the expense of highest level of maqāsid of fasting. At the highest level of maqāsid of fasting, it has some noble objectives and yet, at the expenses of all these objectives some rigid Salafi groups would argue about moon sighting. Auda's scheme of maqāsid includes priorities of Islamic law. This system of classification of human acts and activities in term of their merits is not a new idea in Islamic legal thought. Imam al-Ghazali elaborated this extensively on his classification of human actions what he called as "*Maratibul A'mal".* Auda incorporates the

priority of Islamic law in this way as a part of his scheme of *maqāsid:* The uniqueness of Aude's scheme of *maqāsid* is that he incorporates the legal ruling *(hukm)* in his scheme. For instance, fasting is invalid without seeing the moon same as red light example. If someone crosses the red light, he breaks the law and he should pay the penalty. Auda did not explain how legal principles and legal maxims are incorporated within the scope of his scheme and Moreover, classical scheme of maqāsid includes the element of *Hājiyyāt:* (Needs) and the element *of Tahsiniyyāt(luxuries).* How will these elements be fitting in Auda' scheme of *maqāsid?*

I find some uniqueness in Auda's scheme of maqāsid**.** It gives a new paradigm and new impetus to the study of Islamic legal philosophy. Indeed, he has redefined and re-structured the legal philosophy of Islamic law. Some special characteristics can be identified from his scheme.

1) Classification into different levels of *maqāsid*
2) Incorporation of Legal rulings (*hukm*)
3) Incorporation of public interest *(maslaha)*
4) Incorporation of different moral values of Islam into his scheme.

Critiques of this scheme would argue Islam is not merely a legal system or spiritual system rather Islam is a civilizational force that includes all aspect of human development and progress. Auda failed to design his scheme of *maqāsid* in view of Islamic civilization that aims to build up a strong civilization on earth. This includes all strategical educational, economic and political policies should be part and parcel of any modern scheme of *maqāsid.* Manzur E-Elahi (2010) argues that scheme of *maqāsid* could play vital role in civilizational awakening and advancement of Muslim communities today. It can be the foundation of general guidelines, frameworks and policy strategies of all modern fields of development. It can be a driving force for human resource development of Muslim communities across the globe. It can play a significant role in the development and enhancement of human abilities and skills of Muslim ummah today. It can be an instrumental mechanism for intellectual and civilizational renewal of Muslim communities today.

It can be basis of broader guidelines for different developmental initiatives and civilizational awakening of Muslim community once again in modern world. "It could form the epistemological and philosophical scaffold for directing the theories, source, and objectives of civilizational renewal. It could also constitute the ethical and educational reference for guiding the activities of social and civilizational transformation of the Ummah. Moreover, it could assist in discovering laws and pattern of civilizational transformation. In all these activities, the maqāsdi framework can provide principles, guidelines and methods of discovering and implementation of the objectives of Islam in a real practical context" (Abu Hurayra. 2015. P 1). The architect of Human resource development report, Mahbub al-Haque and Hossein Askari have set some broader guild lines and frameworks to understand the deficiencies of Human resource developments in Muslim world in different areas of developments. Most of his ideas, ideals and concepts are more fitting to maqāsdi approach of development and progress of Muslim community. Although. They did not contrive the human developmental concepts from Islamic perspectives, most of their human resource development programs come under guidelines of the general philosophy of Islamic law. yet, their ideas of development are not incorporated into the frame works of the general philosophy of Islamic law. I think they give practical application to some concepts of the general philosophy of Islamic law through their projects and program. In short, Auda' ideas on the general philosophy of Islamic law are useful to gauge the moral and religious values of human actions. Yet, it is questionable if his scheme of *maqāsid Sharī'ah* is comprehensive one. At philosophical level, his scheme of *maqāsid Sharī'ah* looks more cohesive to measure the values of human action in line with Islamic ethics and morals and yet, what are the practical values of his scheme? In another word, how could his ideas of the general philosophy of Islamic law help to enhance socio-economic, political and human development of the Muslim world? Much has been written on

the theoretical dimension of the general philosophy of Islamic law and yet, very little has been written on the practical application of the ideals of the general philosophy of Islamic law at this world of global village.

7)Sheikh Abdullah Ibn Bayyah.

Sheikh Abdullah Ibn Bayyah is one of leading scholars of modern legal theorists in modern time. Like many other contemporary legal scholars, he too critically examines, and evaluates radical social changes that the humanity experiences in the fields of science, technology, education and other fields of social life. His contention is same as that of al-Shātibī. He argues that the legal theorists must make legal changes in order with social changes. Otherwise, the functional nature of Islamic law will be ceased and stagnated. The functions of law will be marginalised. There would not be any connection between the functions of law and social realities. The humanity has invented, discovered, and progressed rapidly and yet, the Muslim jurists have not responded positively with legal changes. He is one of moderate legal jurists of modern world who devotes his time and energy to promote peace and harmony in the world. His contention is that the humanity should live in peace with different cultures, religions and languages. In his latest book on the general philosophy of Islamic law he argues that the general philosophy of Islamic law is more comprehensive and more flexible than the notion of spirit of law. The western legal experts and judges interpret the law and passed judgement based on the spirit of law. He asks three basic questions related to the general philosophy of Islamic law.

1) To what extend Islamic legislation responds to the new social challenges?
2) To what extend Islamic legal responses are compatible with human needs and public interest of humanities.
3) To what extend the divine revelation support the role of human reasoning in Islamic legislation. Or to what extend human reasoning is acceptable in Islamic legislation in view of divine revelation. He argues that these are some of the fundamental questions in the general philosophy of Islamic law. He argues that al-Shātibī, the architect of the general philosophy of law, greatly contributed to the development of the theories of the general philosophy of Islamic law and yet, his legal theories are restricted by apparent literal meanings of divine texts in some respects. He strongly believes that legal methodology of Islamic law and the general philosophy of Islamic law should be integrated into one legal research methodology to address the modern social realities. He argues the general philosophy of Islamic law deals with three questions. With the question of public interest and who defines it? what are the roles of human reasoning in Islamic legislation and what is its scopes and boundaries? What is the role of divine revelation and what are its limits and boundaries? what aspects of religious rites are comprehensible by human reason and what are not? What are the universals of Islamic laws and what the particularities of Islamic law? Sheikh Abdullah Ibn Bayyah deals with these fundamental question in his latest books on the general philosophy of Islamic law.

His contention is that the general philosophy and legal methodology of Islamic law should function as one integrated legal methodological unite to serve Islamic legal reasoning to find solution for ever increasing problems of social realities. He argues that any separation between these two sciences of Islamic legal studies would not be appropriate. He argues these two legal sciences are inherently interrelated. For the question of who define the general philosophy of Islamic law. He does not give clear cut answer except to say that legal experts and jurist who are well versed in Islamic legal sciences. Today, to define the public interest in Islamic law you need the experts' advice not only from Islamic legal scholars, but you need to have advise of experts in many fields. The Muslim politicians across the Muslim world play a greater role protection of public interest and yet, today it could be argued that many of them demote public interest. It is argued that many Muslim politicians work against the notion of public interest in

many Muslim countries. of course, legal experts and Muslim jurists could develop the ideas of public interest and the general philosophy of Islamic law. yet, it is the Muslim politicians who have got the executive powers to apply those ideals of Islamic legal philosophy. On the issue of role of human reason, Sheikh Abdullah Ibn Bayyah, follows the path of al-Shatibi in recognising the greater role of human reason in understanding the revelation and yet, like al-Shatibi, he acknowledges the limits of human reason as well. Sheikh Abdullah Ibn Bayyah is one of the best Islamic legal theorists of modern world and he has produced some good legal works on Islamic law and yet, I disagree with his political ideas. He is a mystical person with a huge spiritual and intellectual heritage and knowledge and yet, I disagree with his reformative and political ideas. He works for world peace and inter faith dialogues. Yet, he lacks a comprehensive political visionary. Only God knows what is in human heart and yet, he is pleasing the dictatorial rulers of the Muslim world. Many Muslim academia and intellectuals agree that the Muslim world today greatly suffers due to incompetence of the Muslim political leadership. Most of the socio-economic, political and religious problems are created by the Muslim political leaders. For the centuries, the Muslim world is ruled by dictatorial rules and family politics. As result of this, the political democracy did not grow in the Muslim world. Sheikh Abdullah Ibn Bayyah himself is a politician and served as the Minister of justice in his country. He has more political knowledge and experience than many other contemporary Muslim jurists. Yet, his political reformation agenda is to work with existing political leaders although they have done greater damage to the Muslim world. Today, the politics controls all aspects of human life. The human life is totally controlled by the political mechanism today, finance, education, employment, social welfare, defence, security and all other aspects of human welfare is controlled and maintained politicians today. Therefore, it could be argued the application of the ideals and concepts of the general philosophy of Islamic law would not be fully possible in this tyrannical political Muslim world. We do not see democratic traditions in the Muslim countries today. Therefore, without proper political reformation, the ideals of ideals of the general philosophy cannot be compressively promoted in the Muslim countries. I compare Sheikh Abdullah Ibn Bayyah with that of Ibn Khaldun, who worked with politicians of his time while Imam al-Shatibi maintained a staunch criticism of politicians of his time.

8)Ahmad Raisūni

Ahmad Raisūni is one of leading contemporary scholars who has done extensive research on various aspects of the general philosophy of Islamic law. following the footstep of both al-Shātibī and Ibn ’Āshūr, A. Raisūni has expanded and elaborated the general philosophy of Islamic law. I would say that A. Raisūni has facilitated our understanding of the general philosophy of Islamic law by making it simple. The legal thought of al-Shātibī is very difficult to understand. The legal maxims, theories and principles, al-Shātibī used are complicated to understand. Moreover, his Arabic language is pre-modern Arabic language and it is not easy to read his legal work. A. Raisūni in his writing on the general philosophy of Islamic law, acted as a facilitator by making the legal thought of al-Shātibī accessible to all students of Islamic law. Ahmad Raisūni is a Moroccan Islamic scholar and he went to the famous university of al-Quaraouiyine in Fez. He worked in the University of Mohammed V for some time and at the ministry of justice. He has written many books and research papers on the general philosophy of Islamic law. He is a member of European fatwa commission and a member of the council of the international Muslim scholars. He has contributed immensely to study of the general philosophy of law by his lectures, series of talks, conference papers and publication. He strongly argues that the science of the general philosophy of Islamic law should be declared as an independent Islamic science. His contention is that the studies and researches on the general philosophy of Islamic law have dramatically grown in the recent time. Moreover, this science could be used as a systematic legal methodology to address all modern problems of the Muslim community and humanity. Moreover, he argues that the traditional legal theory of *Usūl al-fiqh*

do not provide some systematic legal mechanism to address increasing challenges of modernity. He does not reject the role of the traditional legal theories rather he argues that introduction of the general philosophy of Islamic law facilitates our understanding of the modern challenge. Moreover, it helps us to find appropriate and viable solutions to modern problems of the Muslim community. Raisūni argues that the definition and meaning of Shari'ah has been reduced to into some punishment laws. He argues the wider meaning and implication of Islamic law is more than mere punishment laws. The Islamic law include all rules and regulation on Islamic theology, Islamic ethics, business transaction, family laws and all aspect of human life. All divine limits on any aspect of social, political, economic, personal and public life of the Muslim individuals and Muslim communities are part and parts of Islamic law. He argues Islamic law include some the divine laws that were revealed in previous revelation of old and new testaments as well. likewise, the higher objective of Islamic law should have wider meaning and implication. It is not limited in some specific areas of Islamic law rather, it covers aims at discovering the overall objectives of law in aspects of Islam. He argues that Islamic law is a set of laws that have been prescribed by God to attain some objectives in implementing divine laws. According to him that Almighty Allah does not prescribes any law without any reasons or logic. Allah is most wise, most merciful and all knowing. So, his action and his law are rational and wise. This is a firm belief of the Muslim community. so, the ideas of the general philosophy of Islamic law comes from Islamic theology and Islamic faith. Allah created each of his creation with wisdom and Allah put some time limit on each of his creation. All are created by Allah with some plan and wisdom. So, it would be unthinking to say that divine law does not carry any wisdom and objectives. Moreover, Allah say that "We sent down prophet with clear cut criterion so that they establish justice on earth". Moreover, Allah says that "we have sent you as a mercy to humanity" so, divine law is nothing but mercy to humanity. Yet, some Muslim jurists rejected the ideas of knowing the causes of divine laws. They argued that rationalization of divine law is not acceptable. Specially some literalists in Islamic legal history such as Ibn Hazm argued that rationalization or knowing the causes of divine law is works of devils. Because, no one has right to question Almighty Allah. Why did he do or why did not he do? yet, A. Raisūni knowing the rationales of divine law is different than questioning actions of Allah.

He has written more than 25 books on the general philosophy of Islamic law analysing many contemporary Islamic issues such as notions of human rights, democracy, Arab spring, Muslim politics, and many areas of Islamic law. He is an authority and expert on the general philosophy of Islamic law. Moreover, he has supervised more 25 than M A and Ph.D. dissertations on the legal philosophy of Islamic law. I will highlight some of universal general principles that he has deduced from his inductive reading the Holy Qur'an: Qur'an speaks in many people that Allah created man to test him who is best in his deed and action. Some Islamic scholars argued that testing man on this world is part of divine objective itself. Yet, A. Raisūni argues that testing is not an end goal itself rather Allah wants to see who does good deeds, compete in good deeds, and excel in good actions. So, Allah tests man to see who is best in his deeds. Moreover, he finds that educating, and nurturing people is one of universal principles of Islamic law. Another universal principle of Islamic law is to do justice to all unconditionally. He finds that Allah down revealed books with prophet to do justice. Moreover, promoting public interest and protecting communities from inimical things are part and parcel of universal principles of Islamic law. (Abullah.al-Jabbari. pp5-7. 2017.). What is new in his thought of the general philosophy of Islam is that he comes up with some innovative legal principles through his inductive reading into the primary sources of Islamic law: He deduces some legal principles from the Holy Quran by his inducive reading into different texts of the Qur'an. Moreover, he reads the modern challenges, modern problems of the Muslim communities and humanity in view of the general philosophy of Islamic of law. He does not limit his legal interpretation into

mere literal reading of the texts rather he goes beyond the literal reading to understand the rationales and wisdom of the texts. He has indeed, broaden many areas of Islamic legal studies.

9 Tariq Ramadan

Tariq Ramadan is one of leading Islamic scholars of the modern world. He relates and reconciles Islamic teachings with modernity. There is no antipathy between Islamic teaching and modernity if we could rightly relate Islamic teaching to modernity without damaging the essence of Islamic teaching. He thinks that Islam is a dynamic religion that has got a universal message. It means religion of Islam has got a flexible and dynamic nature to apply Islamic teaching anywhere on earth. It can incorporate and interact with different cultural groups of people without diluting the essence of Islamic message. His book radical reform is designed to address this issue of how to relate Islamic ethical and moral values to the modern social, economic, scientific conditions without diluting basic teachings of Islam. To do this we need a new mindset of thinking. Nothing wrong with Islamic teaching and but it yet, how we interpret and relate them depend on the quality of Muslim intellectualism. He proposes to renew and reform traditional Islamic legal theories and Islamic legal methodology. He argues that the traditional legal methodology and legal theories are providing viable methods to provide modern day problems of the Muslim community in this modern age. He argues that the traditional ideas of the general philosophy of Islamic law is not enough to deal the problems of modern world. He goes beyond the literal reading of the divine text to understand them in their contexts. In his book (radical reform) he proposes some radical change in our attitudes to the divine texts. He invites both scholars of texts and scholars of contexts to work together. What he means by this is that we need the advice of experts in different fields of modern sciences to relate Islamic texts into modern world. His methodology in reading and understanding the divine texts can be illustrated in this way….

Literal reading of text	Reading the rationales of the text. (knowing the reason behind the rule.	Historical and contextual reading of text	Modern day social reality of life: know the context.

Diagram: 14; **Application of divine texts in modern society.**

He argues that we should understand the texts and as well as the contexts we are living in today in this modern world. He argues that mere literal reading of the divine text is not always viable to the modern-day realities of modern societies. We must be faithful to the text and its meaning, but we must also consider the context for which we apply the texts. He argues that today, in this modern world the context is very important equally as the texts. To place and apply the divine texts into the modern-day realities we must consider these four elements of the texts. Its literal, historical, contextual and rational meaning of the texts. Moreover, we should understand the realities of modern societies to apply the divine texts. More importantly knowing the reason of texts. dealing with the question of why a ruling is prescribed? It is important to go with reason behind the text. For instance, he argues that Saudi should impose a moratorium for capital punishment in Saudi. Of course, there are some divine texts that prescribe capital punishment for some crimes and the texts are very much clear in stipulating some punishment for some grave crimes such as murders, robbery, adultery, and piracy. Yet, he argues that we should consider the realities and modern-day contexts to apply those Islamic capital punishments. He argues that today Saudi socio-economic, political conditions are not conducive to apply Islamic law of capital punishment. He argues that there is no a just and socially equal society in Saudi Arabia today. He argues that Saudi government does not stand for Islamic ideals of social justice, equality, freedom and fair trials. Therefore, cutting the hands of thieves or chopping the heads of guilts are not reconcilable with Islamic teaching. why? Because, he strongly believes that there is no social justice and conducive social environment

in Saudi to apply Islamic law. People must be educated in Islamic law, trained in spiritually, and social justice system should be created to apply Islamic law before applying Islamic law and yet, Saudi has not yet, created such conducive social environment to apply Islamic law so, the application of capital punishment should be suspended in Saudi Arabia.

He argues that the people of literal school in Islamic law do not understand the modern context and they try to be sincere to the apparent meanings of the texts. His contention is that we must be faithful to the text but, we should forget the context as well. We must understand the text with its the objectives. We should understand the rationales and objectives of the text. There is nothing wrong with the text, but wrongness lies in our attitude towards the text. The problem is with our attitudes in mind. Every rule of law in Islam is prescribed for a reason. For instance, why do we pray five times? What do we fast once a year for 30 days and likewise each religious rite is prescribed for a reason Islam? So, we must understand the reason behind the rule. Likewise, he argues we must understand the context in which we are living in today. The people of literal school are obsessed with literal meaning of the texts at the expense of knowing the rationales of the text. Because of this literal approach to the text, they sometime ignore the objective of the text. In his radical reform he argues that "the Awakening of Islamic thought" necessitates the critical thinking of scriptural source of Islamic law: He argues that today Muslims need a "contemporary *fiqh*, distinguishing what in the texts is immutable and what may be not changed" He argues that the legal methodology of Islamic law *(usul al-fiqh),* critical thinking of *(Ijtihad)* and legal device of *(maslaha)* could be utilized for the radical reform program. He examines all three different legal schools that defined the fundamentals of *Usul al-fiqh:* namely deductive school, inductive school and school of higher objective of Islamic law (*maqasid* school). He suggests that we should have "a new geography of the fundamental of Islamic law and jurisprudence" like that of fields of medicine, arts, cultures, economy and ecology etc). in the footstep of Abullah Diraz, and Taha Abdul Rahman, he argues that we should abstract some ethical and moral values from the primary sources of Islamic law.

In his centre for the study of Islamic legislation and ethics he proposes his methodology to incorporate the texts and context. He contends that the scholars of texts and scholars' modern subjects should work together to extract ethical principles from the texts. He argues that with collective intellectual efforts of scholars of texts and expertise of specialists in field of science, economics, politics, sociology, phycology and other modern sciences he argues, we could extract ethical and moral religious and social values that can be applied in this modern world of globalization. This centre aims at developing the general philosophy of Islamic law as an intellectual instrument and tool to devise some strategic policy making and legislation. It aims at using the general philosophy of Islamic law to promote common ethical and moral values that are common to all humanity. Moreover, it aims at promoting applied ethics in all modern human sciences. This centre encourages scholars of text and experts in modern science to engage in an intellectual exercise to promote ethical values that common to all. Tariq Ramadan's ideas go beyond the scope of traditional and literal reading of the Islamic law and yet, I think these ideas are idealistic and it would be daunting task these idealistic ideas in the Muslim world today for many reasons. The Muslim world is divided into many Islamic ideological, religious and mystic groups. Therefore, it would be difficult to bring all these groups under one united forum. Moreover, these projects need some governmental financial support and the Muslim rulers they do not want to encourage Islamic legal or intellectual reform. Moreover, there is a knowledge disparity between scholars of text and scholars of modern science. This is an idealistic and ambitious idea to form such a collective Muslim intellectual forum from different parts of the Muslim world. Today, the Islamic world is polarised into different ideological, political and religious groups. It would be a daunting tasking to unite them all. After, all such a collective intellectual effort needs a governmental approval and financial supports. As of today, the Muslim governments do not support any

Islamic reformation at all rather, they are trying to suppress all Islamic intellectual reformative activities. Reforming Islamic legal methodology is not an easy task as it has been claimed by many people before Tariq Ramadan. Muhamad Iqbal, Fazlul Rahman, Hassan Turabi and many other legal experts suggested that Islamic legal methodology and the Muslim attitudes into Islamic texts should updated to meet the demands of time. yet, practically these ideas have been theoretical and philosophical without any practical implication for their ideas.

I think Tariq Ramadan's radical reforming ideas are valuable and yet, how do we apply those ideas in any practical sense in the Muslim world. He wants to see the scholars of texts and scholar of contexts engage together to abstract some ethical values and share their experience and knowledge. It would be easy to project such a collective intellectual exercise and yet, practically it would be more difficult to carry out such a project in the Muslim world. Why is it? For centuries, the Muslim jurists, and clerics have been trained in water-tight compartment of isolated Islamic institutions. Today, the Muslim world produce millions of Islamic scholars in different parts of the Muslim world. These Muslim scholars are graduates of old-style Islamic learning. They are trained in a traditional Islamic learning with traditional Islamic curriculum and syllabus. The books and materials they read in these Arabic colleges and Islamic universities are outdated. Many of those legal manuals deal with medieval and pre-modern historical and legal issues. The graduates of these Arabic college and Islamic universities are sincere in their missions and yet, their knowledge and experience are relatively outdated to meet the challenges of the modern world. On the other hand, the western educated experts in modern sciences do not have through Islamic knowledge to gauge modern scientific and social issues in view of Islamic teaching and Islamic ethical values.

Most Muslim scientists such as late Abul Kalam of India, Abdul Qadeer Khan of Pakistan and thousands of Muslim scientists who are educated in western universities do not have a deep knowledge in Islamic teaching. A few Muslim experts and scientists may have some basic knowledge of Islam and yet, most of them do not have any clues about Islamic teaching. So, it would be a daunting task to make them work together in any collaborative intellectual task. I think this ambitious project of radical reform is a good idea and yet, as of today, the Muslim world is not ready to apply this project right now. I suggest that the Muslim world should have some long-term project to educate the next generation of the Muslim communities from grass root level. The educational reform should proceed any radical reform in legal studies. It is education that can speed up the reformative agenda of the Muslim world in any areas of human development. I think that the Muslim world should plan at least 30 years far ahead. The Muslim world is rich in human resources. Its population growth rate is higher than many other communities. So, the Muslim world should invest in human resources development and education programs. What do I mean by this? The Muslim countries should plan how to educate new born babies and how to introduce creative learning and creative teaching in schools. It is through this new generation of new born babies; the Muslim world could make a difference in the field of education. I think that we should not divide the education into two branches of knowledge. Making a demarcation between religious and secular education is an alien concept in Islam. There is no such a thing call secular knowledge and religious knowledge in Islam. Any knowledge that takes a Muslim closer to God is an Islamic knowledge. The medieval Islamic scholars did not make such a separation in knowledge and education. The Holy Qur'an does not encourage to sperate knowledge in this way.

I suggest schools in the Muslim countries should have an integrated curriculum that incorporates both religious and secular education as a one unites of learning. Such an integrated learning process should go beyond secondary schools into university education. So that this radical reformation process can be made easy to apply in the Muslim world. Moreover, learning

and teaching methods in many Muslim schools across the Muslim world are outdated. Still the Muslim schools follow old fashion teaching pedagogies. Today, teaching and learning have been revolutionised with many modern learning methods. Most importantly, students centred learning methods are introduced in teaching today. Today, students create knowledge and teachers act as facilitators in the classroom. Teachers should know how to stimulate learning process rather than dictating to the students. This teaching method is vital for creative thinking. Moreover, students in many western countries learn through experimental and empirical methods of learning. The Muslim world should follow such creative teaching methods to make any reformation in the Muslim world. I think that at the first stage of radical reform we should reform the Muslim minds first. But it would be difficult task to make many meaningful changes in the attitudes of adults and grown up. Yet, if we plan 30 years ahead, we could do this in thirty years' time if we have got some solid educational reformative programs. Mere legal reform as Tariq Ramadan suggests would not work in the Muslim countries. As we noted before, the Muslim countries are polarised in many ideological groups. It is through intellectual reformation we could make any meaningful social changes. All what schools in the Muslim countries need to do is to encourage and stimulate creative thinking in the minds of students. Still teaching and learning programs in the Muslim countries are outdated. Unless, we make this fundamental change in our education, I do not think such a collaborative intellectual enterprise will work in the Muslim world right as the educational status stands now.

10)Jassem Sultan.

He is a Qatari national. He is educated in London in the field of medicine and yet, his childhood Islamic education and training made him one of the leading Islamic thinkers and reformists of the modern Islamic world. He is working today as a strategic planning consultant in many private and governmental institutions in Gulf region. He has produced more than 10 books and he is famous for Islamic Awaking project. This project aims at revolutionising Muslim minds and providing intellectual, strategic and reformistic guideline for the Muslim communities at all level. From families to individuals, from private institutions to governmental departments. All above mentioned Muslim scholars have directly contributed to the discourse of the general philosophy of Islamic law. All of them have analysed and discussed the themes of the general philosophy of Islamic law from different perspectives, yet, why do we include Jassem Sultan in this group. I think that Jassem Sultan speaks about the methodological reform of the Muslim minds than anyone else. The subject of general philosophy of Islamic law is more than legalistic studies. It should deal how to reform modern Muslim minds in this modern world. How do Muslim youths think, how do they enhance their knowledge in this modern world? How do they relate the divine texts into the modern world? After all, the general philosophy of Islamic law aims at promoting human intellect. He aims at reforming the Muslim minds and he aims at promoting intellectual, cultural, political, economic, civilizational, humanistic awaking among the Muslim communities.

He finds that the classical legal theories and legal opinions are not always viable and appropriate for the modern contexts and for the modern needs of the Muslim communities. He calls up a methodological reformation in our attitudes and approaches to the primary sources of Islam. He finds a huge disparity between the inner dimension of Islamic texts and the Muslim understanding of divine texts. He argues that we should understand the current socio-political, economic, and educational context of the Muslim community. The true nature of social realities of the modern world should evaluated not in view of medieval and classical legal ideas rather on the basic of modern contexts. For instance, a lot of changes have taken place in politics in this modern world and yet, the Muslim world read into the classical texts to define the qualities and qualifications of the Muslim politicians today. Likewise, a lot of changes have taken place in the field of politics and yet, the trade and business are outdated in many Muslim countries. His main contention is that he wants to reform the Muslim minds. His project is to

make an intellectual reformation and awaking. He firmly believes that today in this modern world, learning pedagogies, learning methods, learning materials, and the quality of teaching must be updated to meet the needs and necessities of the Muslim world today. He does not directly deal with the general philosophy of Islamic law or any aspects of traditional Islamic legal theories and yet, his project of legal, educational, political, and social reformation projects are compatible with the ideals of Islamic legal philosophy. The fundamental ideals of the general philosophy of Islamic law deal with educational, economic, political, social, and religious development of the Muslim communities. It goes beyond this to enhance human values and ethics in the world. So, Jassem Sultan argues that we should understand, know the social realities of modern world from anthropological, sociological, political, economic, and ideological perspectives. He finds a huge knowledge gap between the Muslim world and the rest of the world in knowledge, science and technology and Moreover, he finds many deficiencies in our reading of the divine texts, He finds that how we relate the divine texts into modern world is unfitting and inappropriate to some extent.

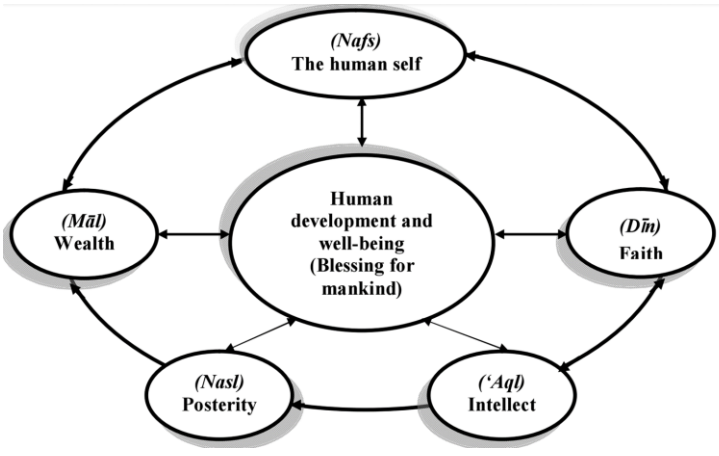
His Islamic renaissance projects include many areas of reformation. He aims at reforming the minds of youth, politicians, clerics, academics, Muslim teachers, professionals, business communities. His reformation project is a comprehensive reformation project. He has some short and long-term strategic reformation project that he aims at reforming the Muslim minds. It is his firm conviction that reformation should start with creative and innovative thinking. Following mere Aristotle and medieval philosophical ideas are not always viable modern technological and scientific world. He argues that the Muslim world need to a lot of radical reformation changes in education and innovative thinking to catch of the rest of the world in science and technology. He argues that the Muslim jurists must learn many modern sciences such as politics, economics, phycology, sociology, history, science, and many other areas of human sciences so that they could address the modern social issues that the Muslim community faces today. Otherwise, they would not be able to confront the modern challenges. So, learning all these sciences are prerequisites for the students of Islam to become jurists. He argues the science of the general philosophy of Islamic law is not yet, systematically developed to address the modern challenges. He argues that we cannot solve the modern social problems with classical solutions. The social problems of humanities are unique for this modern world. So, the solutions to the modern problems should be made through modern methods and modern mechanisms. Unlike Jassem Sultan, Ibrahim al-Bulehi, a Saudi liberal thinker argues that Muslims should liberate their mindsets, mental attitudes and logical thinking from the grip of Muslim historical heritage. He argues the Muslim world is lagging all other world civilizations because of its blind attachment to the past Islamic heritage. His contention is that Muslim mind has been programmed with past Islamic heritages. Some of the past Islamic heritage are good and some are bad. Yet, Muslim mind has been programmed with all past Islamic heritage. Today, he argues that we must free Muslim minds from the negatives of the past Islamic heritage to compete all other world civilizations in this modern world. Developing human thought and knowledge is one of the primary objectives of Islamic law. Liberating human thought from the negative nostalgia of the past Islamic heritage is one of his projects. There is nothing wrong in his struggle to free Muslim minds from the chuckles of past historical nostalgia as long he stays within the limits of Islamic guidance. After all, promoting human intellect is part and parcel of Islamic legal philosophy.

11: Omar Chapra:

Omar Chapra is one of leading contemporary Muslim economists in the Muslim world. He has worked at Islamic development bank and some other financial institutes. He has produced several Islamic books on Islamic finance, Islamic banking, and the socio-economic development of the Muslim countries and yet, his last book on the general philosophy of Islamic law is one of the rare books on human resources development of Islamic world. He

examines, evaluates and gauges the human resource development of Muslim community in line with the general philosophy of Islamic law. His contention is that the classical concepts of the general philosophy of Islamic law is designed to develop human potential. It aims at skill development of the Muslim communities. He takes it holistically incorporating spiritual, educational, economic, and social life of individuals and communities. In his book "The Islamic vision of development in the light of maqasid al-Shariah" Omar Chapra (2008), argues that classical theories of maqasid could be developed into a fully-fledged system of development in Islam. His vision of development has spiritual and material dimension. The mere material development is not true development as western economists have suggested. According to him the eternal goal of individuals and the Muslim communities should be to please Almighty Allah. So, he argues that an acceptance by Almighty Allah is should be the primary objective of human life on earth. He argues that development and progress should not be gauged merely through money and wealth that people accumulate rather the notion of development should have wider meaning and implications. The modern notion of the development does not consider spiritual, material and physical needs of people as whole. The modern notion of the development is defined in relation to material needs of humanity at the expense of human beings' spiritual and moral needs. He argues that money or material wealth does not bring eternal happiness for human beings. Moreover, man has some spiritual, phycological, mental and moral needs. Man needs peace of mind, kindness, love, brotherhood and justice. He contends that the Islamic concept of human development is holistic and comprehensive one that meet all these needs.

He has not defined the notion of the general philosophy of Islamic law and follows the classical codification of the general philosophy of Islamic law. yet, he put the five universal principles of the general philosophy under heading of human development and wellbeing. Interestingly, many modern Islamic scholars such as I. B. Ghanem and other argue that traditional taxonomies and classification of the general philosophy of Islamic law do not suit to modern time. They argue classification such as protecting one's faith, wealth, intellect, and progeny does not make sense in this modern global economic world. So, they concept such as economic development, education development, spiritual development and human resource development are more fitting to use in this modern economic world rather than using classical terms and terminologies. The ideas of Omer Chapra on the doctrines of the general philosophy of Islamic law are somewhat identical to the ideas of I. B. Ghanem. Yet, Omer Chpara's wider scheme of *maqāsid* incorporates many good deeds and moral values. He mixes up between means and aims in his scheme of the general philosophy of Islamic law. yet, he is loyal to classical taxonomies of the general philosophy of Islamic law.



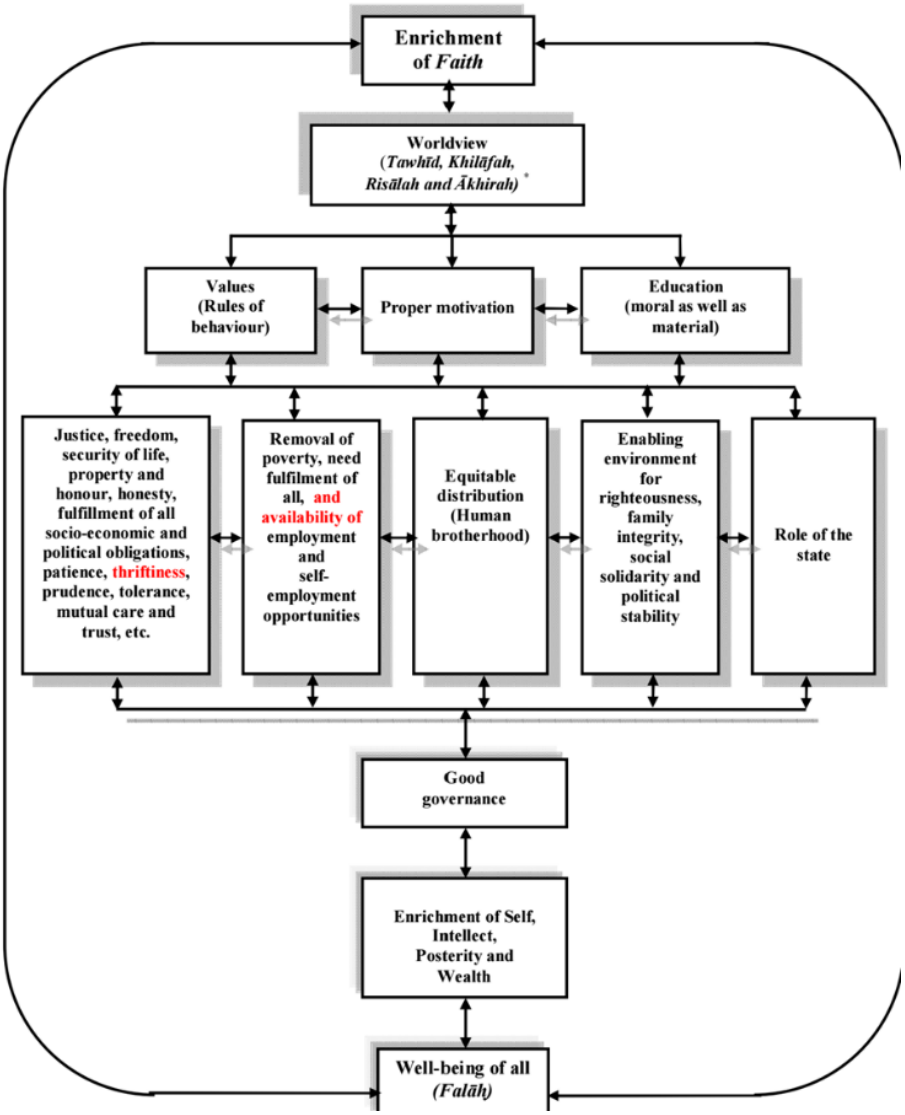
Source: Islamic version of HD: p:8

This above diagram illustrates that his scheme of the general philosophy of the Islamic law, adopts classical taxonomies under modern concepts of development. In his classification, he puts the element of human self on the top of his scheme of the general philosophy of Islamic law. It may be his contention that human life is imperative and without life there is no obligation and no meaning for people's wealth and money. so, he puts element of human life at the top of the general philosophy of Islamic law. It makes sense to make such a correlation.

In his scheme of the general philosophy of Islamic law, the universal principle of protecting human life gets first place in the hierarchical order. Because, without human life there is no obligation. All obligations and responsibilities are prescribed upon living human beings. So, right to life gets a preference in his scheme of the general philosophy of Islamic law. Human wellbeing is the central theme of his scheme. Under this principle of human wellbeing, he includes 14 components of human development indices. All these 14 components are included under the invigoration of human self. All these are imperative for the wellbeing of humanity. All these components are inter-connected and integrated. The central theme of his argument is the divine revelation is revealed for the success of man in this world and the next life. The human well-being is the ultimate objective of divine revelation. In his scheme of invigoration of human self, he includes all ingredients for human success in in this world and the next life. He makes some logical, rational, philosophical connection between the elements of his scheme and relates all five-universal principle of Islamic legal philosophy to the overall wellbeing of human being. Yet, the focus of his scheme of human wellbeing has been on the wellbeing of individuals rather than wellbeing of the international Muslim community. He does not propose any ideas how to build up a strong Islamic civilization collectively with cooperation of 53 Muslim countries.

Yet, no doubt Omar Chapra comes up with some new ideas in his reading into the general philosophy of Islamic law. He has attempted to include different aspects of modern developments in his scheme of the general philosophy of Islamic law. His scheme is all inclusive scheme to the general philosophy of Islamic law. He has attempted to include the spiritual, material, educational, emotional needs of individuals and Muslim communities in his scheme of the general philosophy of Islamic law. It looks his scheme is a deliberate attempt to include all human activities in his scheme and yet it looks somewhat fully-fledged scheme to the general philosophy of Islamic law.

Figure 3

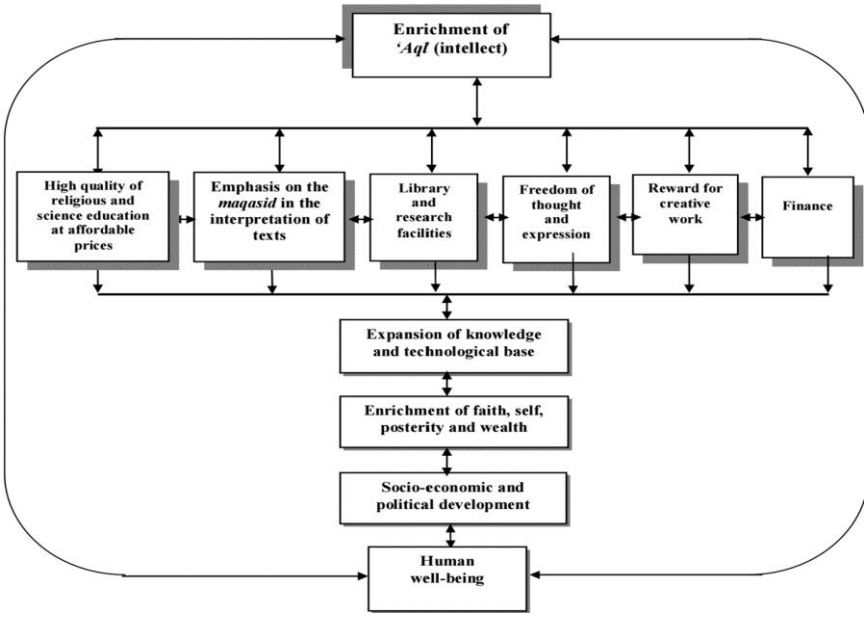


Source: Islamic version of HD:10

In his scheme of the general philosophy of Islamic law, the enrichment of faith gets a preference over other elements. For him, the enrichment of faith is indispensable for eternal success, and yet, the invigoration of human self comes first in order of the universal principles of the general philosophy of Islamic law. He takes the notion of enrichment of faith as a complete theological, philosophical and spiritual outlook of Islamic teaching. to enrich faith means according to his scheme of the general philosophy of Islamic law, to get all social, religious, political, economic values from the creator of the universes. In that, he argues that Islamic world view is different from all other theological, religious, philosophical doctrines. The doctrines of *Tawhid, Kilafah, Risalat, and Akhirah* are foundations of Islamic world views. The enrichment of faith in Islam is based on these foundations. The uniqueness of his theory is that he includes good governance and the role of state in his scheme of the general philosophy of Islamic law. In modern politics, the application of ideals and values of the general philosophy of Islamic law needs good governance and competent political leadership. He included these in his scheme and yet, he does not elicit on the quality and qualification of the current Muslim political leadership of the Muslim world. He makes an interconnection between all other elements of the universal

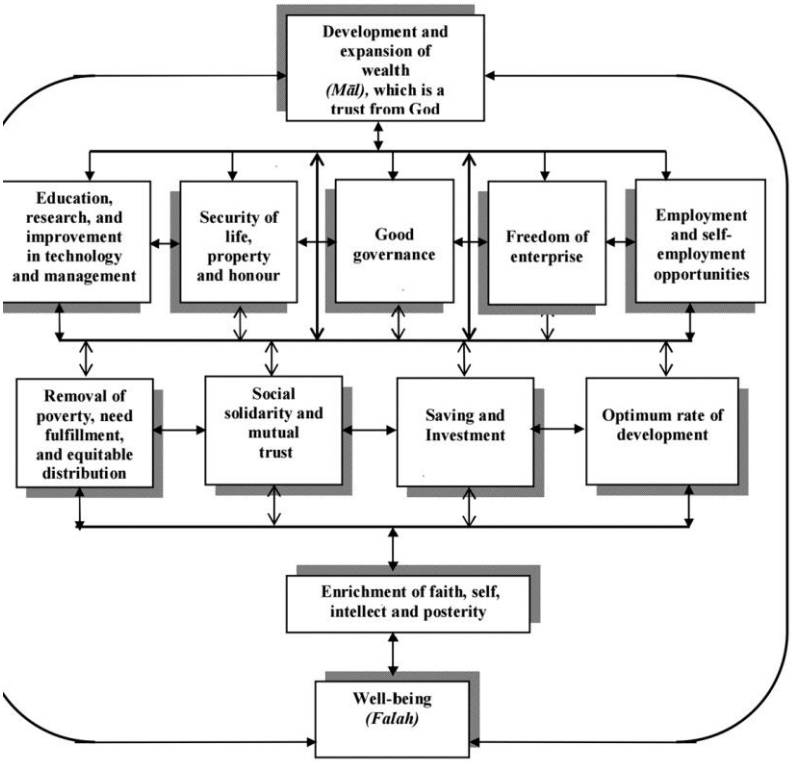
principles of the general philosophy of Islamic law. yet, he does not propose any viable mechanism for spiritual development at community level: how do we collectively make spiritual development of the Muslim public from grassroot levels?

Figure 4



Source: Islamic version of HD: p:39.

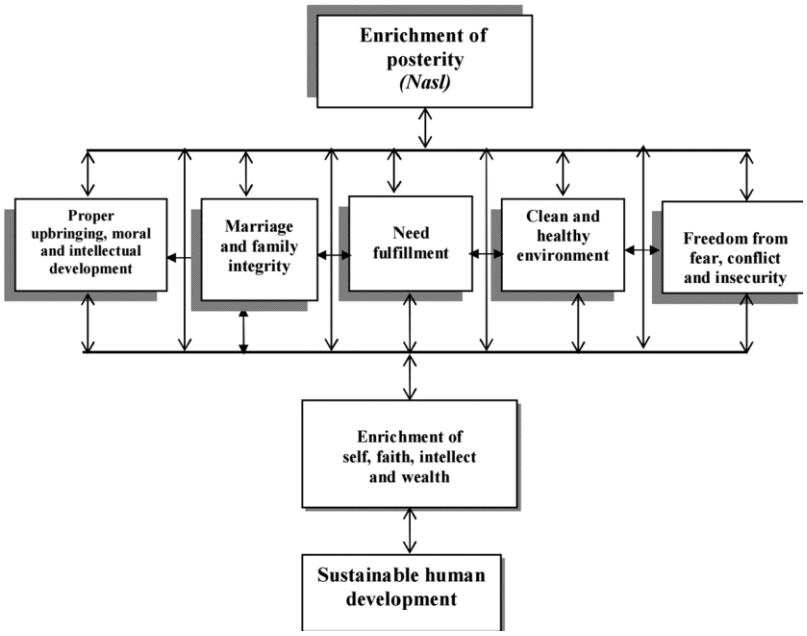
In his scheme of enrichment of human intellect, he argues that enrichment of human intellect should include religious and secular education. It has been argued that a demarcation between religious and secular education is one of the main reasons for the underdevelopment and stagnation of creative thinking in the Muslim world, Omar Chapra integrates both education as a one unit of knowledge. This is a new dimension in his concept of the general philosophy of Islamic law. None of the Muslim scholars before him integrated the religious and seculars branches of education in their scheme of the general philosophy of Islamic law. Moreover, he argues that entire corpus of Islamic law should be interpreted and evaluated from the perspective of the general philosophy of Islamic law. Moreover, he suggests that all facilities should be provided to enrich education in the Muslim world. The freedom of thought and freedom of expression should be included in education of the Muslim countries. yet, this is a controversial issue in Islamic law. Islam encourages freedom of expression and yet it is a relative freedom of expression.



Source: Islamic version of HD: p:48

Omar Chapra explores the inherent connection between the economic growth and education. In this modern world, economic growth demands human resource development. Today, economies of the developed countries depend on the quality of skills of their citizens. Of course, today, without strong economy no country will be able to flourish and prosper. Today, a strong economy is indispensable for development and progress. In Islamic economy the money and wealth are divine gift to humanity as a trust. All wealth belongs to Allah and yet, man is given the ownership of wealth in this world on a temporary basis. He explores this aspect of Islamic economy and yet, in his theory of the general philosophy of Islamic law, he relates strong economy to development, security, peace, good governance, employment and training opportunities. Poverty eradication, social welfare, social solidarity and development all need strong economy so, he argues working for economic growth is one of the main primary objectives of Islamic law. According to his scheme of the general philosophy of Islamic law, the economic growth helps to enrich spiritual growth. It has been argued that poverty could lead a weak Muslim into disbleif. That is why Islalm a total renounciation of worldly needs. It is a human nature that human beings love this world and its beautity. Islam acknolwdges this natural feeling of human beings.

Figure 5



Source: Islamic version of HD: p:41

In his scheme of the general philosophy of Islamic law, the enrichment of posterity needs good family background, family integraity, marriage relationship, freedom from fear, conflict, war and insecurity. To creative a healthy and energetic society, humanity needs a good family upbringing and happy family life. The institution of family is very much important to enrich family posterity. So, he argues that the corpus of Islamic law set all rules and regulation to enrich the life of individuals, families and communities. He makes interrelates between five universal principles of the general philosophy of Islamic law. In short, his scheme of the general philosophy of Islamic law looks an all-inclusive one. In theory, his scheme looks a comprehensive one and yet, how does the Muslim world apply all these ideas of the general philosophy of Islamic law as he proposes. Hundreds of books have been written on theories of the general philosophy of Islamic law and yet, very little has been written on how to apply the ideas and concepts of the general philosophy of Islamic law in practical life in the modern complicated world. Islamic law is rich with many legal doctrines and legal theories and yet, how do we apply them in our modern context? what viable and practical economic, social, political and educational strategies and policies do we have to apply all these brilliant ideas and ideals. As I. B. Ghanem and Hossein Askari, argue the Muslim world does not suffer from all these theoretical and philosophical ideas and ideals and yet, the Muslim world suffers from a lack of good governance, and policy making. I. B. Ghanem and Hossein Askari propose some brilliant projects, strategies and plans on how to put those ideas and ideals of the general philosophy of Islamic law into practical application in Muslim countries. Although Omar Chapra adds some new concepts into the frameworks of the general philosophy of Islamic law, his scheme does not include some strategic methodologies how to apply those concepts in practical life.

Chapter 3: A Comparative analysis into the works of modern scholars into *maqasid.*

All these scholars have examined the theories and doctrines of the general philosophy of Islamic law from different perspectives: from legal, ethical and developmental perspectives. The intellectual contribution of these scholars into the general philosophy of Islamic law could be classified in this way.

The general philosophy of Islamic law from ethical perspectives.	**The general philosophy of Islamic law from developmental perspectives.**	**The general philosophy of Islamic law from theoretical perspectives**
Taha Abul Rahman	Ibn Ash'ur.	Abulallah ibn bayyah
Tariq Ramadan.	Jamal Atiyah	Jasir Auda
	Jasem Sultan	Al-Qaradawi
	Alwani.	Ahmed al-Raisuni.
	Omar Chapra.	

Diagram 15

The ideals of the general philosophy of Islamic law have been developed, constructed, and expanded by different Islamic jurists at different time in Islamic history. The modern Islamic jurists and legal experts too have treated the ideas of the general philosophy of Islamic law from individualistic perspective. There have been no any collective or collaborative intellectual efforts to define, develop and expand the theories and doctrines of the general philosophy of Islamic law. Today, many social studies and research projects are carried out collectively in the fields of arts and humanity sciences. Yet, the contemporary Muslim scholars have not yet, come up with any collaborative research project in the general philosophy of Islamic law. These scholars have come up with some brilliant ideas in the fields of general philosophy of Islamic law and yet, these ideas are individualistic ideas and what we today, is pool all these ideas and concepts on the general philosophy of Islamic law to construct and devise a comprehensive concept of general philosophy of Islamic law. Some of these Ideas and concepts expressed by these contemporary Muslim scholars are brilliant and yet, to implement these areas, the Muslim countries need some good political leaders. Some of these ideas may seem brilliant and yet, due to lack of capable and dedicated Muslim political leaders, the Muslim policy makers and strategic planners cannot implement these ideals of the general philosophy of Islamic law. Today, the Muslim world is blessed with some talented and dedicated Islamic scholars and policy makers and yet, the Muslim politicians stand between these Muslim scholars and their policies. It is the Muslim political leaders who do not let the Muslim jurists and policy makers to make any meaningful reformation and development programs in many parts of the Muslim world.

Ibrahim al-Bayyoumi Ghanem these two important questions in relation to application of the ideals of the general philosophy of Islamic law? How and where do we apply the broader principles of the general philosophy of Islamic law? He argues that neither a rural community nor a society that is ruled by theocracy is fitting to implement the ideals of the general philosophy of Islamic law rather a civic society is most appropriate society to apply the ideals of the general philosophy of Islamic law. He argues that the prophet Muhammed established a civic society in Madina. That is civic society was a plural society that included Muslim, Jewish and pagan Arab communities. Through the covenant Madina prophet established a civic society that protected the rights of all communities and made the universal human brotherhood. The change of old name Yathrib into the city of Madina itself indicates that prophet wanted to establish a civic society. His argument is that Islamic civilization from the formative period of Islam till pre-modern time created civic societies in many parts of the

world. He argues wherever, Muslims went, they developed the migrated land. Muslims built roads, wells, hospitals, institutions, and settlements to meet the basic needs of civic societies. Muslim. "civic or civil society is a group of organizations that work together for the social and civic good of a community. The groups forming the civic society basically work voluntarily to bring about social and civic changes and provide better services to the people. In general, the various institutions that form the civic society work independently from the established government and are basically non-profit organizations. In the U.K. the civic society encompasses a voluntary body which looks after the requirements of the local community. Some of the activities of a civic society may relate to the upkeep of historic buildings, planning better traffic schemes, demanding better plans for new buildings and so on". Another definition is given as below. "A civil society is a public space between the state, the market and the ordinary household, in which people can debate and tackle action…so, it could include any voluntary collective activity in which people combine to achieve change on an issue- but not political parties, even though civil society has a political dimension. By this definition, civil society includes charities, neighbourhood self helps schemes, international bodies like the UN or the Red Cross, religious-based pressure-groups, human right campaigns in repressive societies, and non-governmental organizations improving health, education and living standards in both the developed and developing nations".

. Ibrahim al-Bayyoumi Ghanem contends that the public interest and welfare of communities are protected in western countries by all these civil societies. He argues they stands between public and governments in western countries as pressure groups to control, monitor and gauge the actions and services of governments in western countries. Trade unions, charities, independent enquiry commissions, human right watch dogs, Green peace organization, environment protection groups, NGOs, and many other voluntary organizations are acting as pressure groups to protect the public interest and public services in many western countries. Ibrahim al-Bayyoumi Ghanem argues that mere profound knowledge of the general philosophy of Islamic law is not enough rather, policy makers, Muslim experts and Muslim political leaders should know how to implement the ideas and values of the general philosophy of Islamic law in practical applications. He argues mere existence of ideals of the general philosophy of Islamic law in Islamic law manuals and books alone is not enough to see any meaningful impact of the general philosophy of Islamic law in practical life. Most of the Muslim community are inspired and influenced with the ideals and ethical principles of the general philosophy of Islamic law. They have ambitious intention to apply the ideals of the general philosophy of Islamic law in practical life in Muslim countries and Islamic law is rich with many broader general principles of Islamic law. yet, he argues that countries not yet, some solid systematic projects and programs to apply those general principles of Islamic law in practical life. He argues that without proper projects and mechanism, the ideals of the general philosophy of Islamic law cannot be applied and implemented in Muslim world. There is no any systematic mechanism or an organised system in Muslim countries to put the duties and responsibilities of government departments in line with the general philosophy of Islamic law. So, he argues that the Muslim world badly needs some modern programs and projects to execute the ideals of the general philosophy of Islamic law in practice. So, he argues to apply the ideals of many concepts of the general philosophy of Islamic law, the Muslim world needs some solid projects and programmes and developmental initiatives.

Moreover, it needs some solid organizations and public service providing administrative department with high skills and talents in public service management. He argues that Muslim countries need to have some strong civil societies to check the function and transparency of the governments in Muslim countries. In many western countries there are many civic societies to challenge the accountability of the ruling political party. Moreover, public enquiry commissions have freedom to questions any hierarchical officers in government. Moreover, political leaders in western countries behave more responsibly with sense of accountability for their political decisions and actions. Political leaders in western countries are happy to resign their post and position as and when they are found doing any political blunders in their life. yet, in many Muslim countries we do not have such a system of producing the politicians into public enquires or challenging them in court. Moreover, civic societies, charities, welfare organizations, NGO, and media are under full control and supervision of intelligence services of many Muslim countries. They do not have the leverage and freedom to work independently in many Muslim countries. That is why all these ideals of the general philosophy cannot be implemented in many Muslim countries through civil society or any other charitable organizations. For the last 70 years Muslim brotherhood has been doing all these projects and charity works in Egypt helping millions of poor and weak people in Egypt. MB used to run hundreds of hospitals, schools, business establishments, factories, industries and many charities. In fact, they have been implementing the ideals and principles of the general philosophy of Islamic law as much as possible within their financial and human capacities. There was a great expectation in the Muslim world, with the presidency of Dr Morsi, he would have taken Egypt into the right direction of development and progress. yet, external and internal political enemies did not give him time and space to make any meaningful changes in Egypt. It is my firm conviction that Muslim countries are unable to progress and develop not because of lack of natural or human resource but mainly due to the ineptitude or incompetence of Muslim political leaders in many Muslim countries. It is reported economies of many Muslim countries such Iran, Egypt, Syria, Iraq and many other north African Muslim countries were far better than economies of Japan, Malaysia, Korea, Tailand and many other Asian countries in 1960s and 1970s. Today, economies of Japan, Malaysia and other many Asian countries are far better than these Arab and Muslim countries. There is no doubt dedicated and honest political leaders of those countries guided their countries to the right path of development with good economic and education policies. Yet, many Arab and Muslim political leaders are misused their political powers, and sometime preferred their personal interest over national interest of their countries.

The political dictatorship, mismanagement and aggression of Muslim leaders in many Muslim countries are some of factors that contributed many Muslim countries to fall behind in development. Even though many Muslim countries are blessed with natural resources such as oil and natural gas many Muslim countries are lagging in development. Many Muslim countries are rich in human resources with young and dynamic population growth. It is estimated, more than 40% Muslim population in many Muslim countries are teens and youth. The quality of human resource in many of these Muslim countries is very high and potential for skill development and progress. For instance, the quality of human resource or potential of population of Iraq, Iran, Palestine, Syria, Egypt has been same as the quality of human resource of many Asian countries. yet, political leaders and policy makers in those Asian countries managed to develop the human potentiality of their population and yet, in many Arab and Muslim countries due to poor political leadership ignored the potentiality of human skill

development. Moreover, many Muslim and Arab political leaders have been tricked by many political leaders of developed countries. Arab and Muslim political leaders have been conned by their counterparts in many developed countries through their crafty diplomatic and business deals. I agree with Ibrahim al-Bayyoumi Ghanem the role of civil society in application of the broader ideals of the general philosophy of Islamic law is imperative and important. Yet, politics controls many aspects of human life today in this modern world. It controls economy, education, health and safety and many other aspects of modern-day life.

Moreover, political leaders control the entire national finance and budget of their countries. so, to execute all those projects and programs Ibrahim al-Bayyoumi Ghanem highlighted in his argument need good political leaders in Muslim countries. I do not belittle the role of civil society in application of the ideals of the general philosophy of Islamic law and yet, 90% of national income of the Muslim countries is managed by central government in Muslim countries. So, I would argue that competent and devoted political leaders are imperative for Muslim countries to apply the ideals of the general philosophy of Islamic law in this world of knowledge-based economies. Studies on the theme of *maqāsid* have been either historical or theoretical. only a few studies have been done on the pragmatic application of *maqāsid* in contemporary Muslim societies. Diena explores the negative consequences of the negligence of *maqāsid* doctrines by the political authorities in Muslim countries. Ibn Ashur, Omar Chapra, ‘Alwani, and Jamal Atiyah argue that the ideals of general philosophy could be used as developmental tools to devise new strategic policies and planning in the Muslim world. For them the ideas of the general philosophy of Islamic law are not merely legal theories and principles rather they are broader guidelines to develop the Muslim countries in all areas of development and progress. The Islamic legal theorists such as ibn Bayyah, al-Qradawi, Auda argue that the legal concepts of the general philosophy of Islamic law could serve as a flexible mechanism and instrumental legal tool to apply Islamic laws in all ages and times. The general philosophy of Islamic law could be used as guidelines to select an appropriate, suitable, timely needed legal opinion of among diverse Islamic view legal opinions. They redefine the entire structure of *maqāsid* as a dynamic mechanism for the development and enhancement of Islamic civilization in the contemporary world.

However, Taha Abdul Rahman and T. Ramadan argue that the general philosophy of Islamic law aims at promoting some moral and ethical values. They argue that the scholars of texts and scholars of contexts should work together to subtract some moral and ethical values from the divine texts. It is their contention that the scholars of texts alone cannot work on their own in this modern scientific world. To find Islamic solutions for the problems of modern world both the scholars of texts and scholars of contexts should work together. Comparatively, all these modern Islamic scholars give a new impetus to our understanding of *maqāsid* doctrines incorporating modern development. While al-Qaradāwi approaches the subject matter of *maqāsid* from a theoretical and methodological perspective, Attiyyah approaches the subject from a practical and pragmatic perspective considering the social changes taking place in the modern world. While it seems that Attiyyah, has been greatly influenced by political, economic, social developments of modern world, al-Qaradāwi has been influenced by the classical scholarship in his study of *maqāsid.* On the other hand, al-‘alwāni projects to review the entire structure of *maqāsid* from general and universal teachings of the Qur’an. It should be said that al-‘alwāni examines the general philosophy of law from a holistic purposes not merely from legal perspective. A common thesis advocated by these modern scholars is that

everyone in one way or another agrees that the general philosophy of Islamic law should be reviewed. New methodologies are needed now with all social changes we see in the world. Social issues, problems, needs and demands should be identified and recognised in order of priorities in accordance laws of equivalence and laws of priorities. All aspects of positive laws should be examined in view of higher objectives of Islamic law. Although these are constructive ideas, the pragmatic application of these ideas is questionable in the contemporary Muslim world. The lack of comprehensive understanding of the doctrines of *maqāsid* may be one reason for the problems of the Muslim communities today in many areas. Moreover, the Muslim world does not have good political leaders to apply the ideals of the general philosophy of Islamic law. Hence, it can be very convincingly said that comprehensive understanding of the higher objectives of Islamic law is imperative to address the modern problems of the Muslim world. As we noted earlier dramatic social changes are taking place in all sphere of life in the modern world. Any attempt to re-construct the scope of *maqāsid* in the modern world one should consider these social changes. Otherwise, *maqāsid* will remain a philosophical and theoretical subject without any relevancy to modern world. It can be said from our previous analysis that subject of *maqāsid* is still in the process of evolution and progression and by nature of subject matter it will remain open ended. The priorities, needs, necessities and demands of societies will change in very century, age and place. Thus, doctrines of *maqāsid* will expand incorporating all these changes as 'Attiyyah's analysis of *maqāsid* depicts. The priorities, needs, necessities of the modern world demand such expansion. The classical tenets of *maqāsid* were introduced into the fabric of Islamic law in a historical context. Although those tenets are viable today their meanings and connotations need be re-interpreted. This study further reveals that modern scholars have attempted to extend the scope of *maqāsid* incorporating modern concepts of human rights such as freedom of thought, freedom of expression, political freedom and other elements of human right issues. In addition to these, this study further finds that some modernists have attempted to incorporate economic, scientific and technological developments to the tenets of *maqāsid*. We find al-Qaradāwi has called upon Muslims to reconsider their duties and obligations in order of priority and understand modern issues in the light of the laws of equivalence. On the other hand, we find that 'Attiyah has demanded to reconsider Muslims' relationship with other nations and international organizations in light of the general philosophy of law beyond the literal meanings of the texts. Moreover, al- 'Alwāni has advocated to re-structure the entire theme of *maqāsid* in light of the Quran and Sunnah, taking into account all modern developments. Thus, we find the theme of *maqāsid* in a constant process of evolution and progress. It has been argued that some central themes of general philosophy of Islamic law (maqāsid al-Shari'ah) have been more appropriately implemented in western countries than many of Muslim countries.

In a recent study by Prof Hossein Askar of George Washington University, he finds that "that many countries that profess Islam and are called Islamic are unjust, corrupt, and underdeveloped and are not "Islamic" by any stretch of the imagination". His contention is that " if a country, society, or community displays characteristics such as unelected, corrupt, oppressive, unjust rulers, inequality before the law, unequal opportunities for human development, absent of freedom of choice, (including that of religion), opulence alongside poverty, force, and aggression as the instruments of conflict resolution as opposed to dialogue and reconciliation, and above all, prevalence of injustice of any kind, it is a prima facie evidence that it is not an Islamic community". He uses some indices to gauge the social justice, human rights, freedom and many social values in Muslim and Western countries. In fact, it is

very much clear for any discerning student of middle east politics, most of Muslim countries are lagging in most of social values that Islamic legal philosophy aims at promoting. It would be difficult to generalise this contention. The Muslim community and its foundations are based on some theological doctrines, and social values which are unique to Muslim community alone in this world. Indeed, the Muslim community is blessed with a complete code of life which includes all good social values to usher it into right direct of development yet, today, the Muslim community is suffering from many socio-economic, political and intellectual problems. The failure to understand the ideals of the general philosophy of Islamic law may be one of the reasons for this long suffering of the Muslim world. Is it acceptable to argue that some western countries implement some social values that are enshrined in the Islamic legal philosophy of Islamic law?How far the western social values are compatible with Islamic teaching? Some academics claim that the social values such as social justice, equality, freedom, liberty that have been applied today in some western countries in fact are inherently Islamic. These social values are already implemented in Muslim Spain and in the Muslim world in the middle age and the western countries borrowed and copied from the Muslim Spain. They claim that many aspects of Magna Carta are taken from Islamic intellectual legal heritage. How far this could be true? These are mere deliberations or some historical facts. What is the historical justification to make such claim? Some claim that Maliki legal school of thought prevailed in Muslim Spain and Maliki legal school was famous for the use of legal device of public interest *(maslaha)* and rational approach in legal interpretation. It has been argued that common law was introduced in England with introduction of Magna Carta. Some academics argue that Islamic law had greatly influenced western common law: This influence came into West from Muslim Spain. This study is not an examination on the Influence of Islamic law over English law or over any western common law rather this study aims at why some social values that embedded in Islamic legal philosophy are implemented in many parts of western world why all those social values are not implemented in Muslim world.

It can be contented that the western notion of development or some aspects western legal interpretation and social values are not always in congruent with general philosophy of Islamic law. The Western notion of development is materialistic and secular notion of development. The Islamic world view contrasts with the western world view, way of life, ethics, moral concepts, customs, traditions and mentality of people. Yet, this does not mean that there is no common ground between Islamic values and western social values. There are so many areas of western social values that go alone with Islamic social values that are enshrined in the legal philosophy of Islamic law. For instance, notion of equality of humanity, social security system of western world (to help out economically deprived people) disability allowance for disable people, sick allowance for sick people, job seekers allowance for jobless people, housing benefit for homeless people, social care system for elderly people, all types of laws against racism, discrimination on basis of ethnicity, colour, language, age, sex, nationality, religions and equality of all, freedom of speech, freedom of thought, equal employment rights, equal democratic rights, separation of executive power from judiciary, independency of military forces from political influence, political leadership is subjected to legal jurisdiction, impeachment and replacement with election, political freedom to elect and sack any political leaders, voting right for all, democratic election process and time frames, employment law to protect rights of employees and employers, qualification based system of examination for all diplomatic, civil service professionals, civil servants and all jobs.

These are some of good social values that go alone with Islamic social values of the general philosophy of Islamic law. Of course, there are many social values in western

community that go against the general philosophy of Islamic law. The list may be a long one but some of them are individualism, consumerism, atheism, secularism, materialism, lesbianism, homosexuals, feminism, greed, following human desires unlimited freedom and many more issues are go again the general philosophy of Islamic law. Of course, Muslim community must avoid all western social values we have been demanded by the general philosophy of Islamic law. Yet it does not mean that we should not take what is good from social values of western civilization. Thaha Hussain reported to have said that Muslim community cannot march on the path of progress and development until it takes bad and good social values of western civilization. There is nothing wrong in taking what is good from any civilization. The classical Muslim scholars did take from Greek what was good and beneficial from Greek intellectual heritage to build Islamic civilization. This is what the general philosophy of Islamic law dictates for us. The Islamic legal philosophy has got the flexibility, leverage scope to accommodate all good that come from any world civilization. In the past, the Muslim scholars at the peak of their intellectual and civilizational renaissance actively engaged in translating and transferring from Greek intellectual heritage that paved the way not only for Islamic civilizational progress, but it also laid the foundation for the western civilizational renaissance according to Muslim and Non-Muslim historians. If our forefathers could engage in a such notable task of intellectual, scholastic, intercultural and inter-civilizational knowledge exchange, there is no harm today for the Muslim communities to take what is good from the western civilization and for that matter from any civilization. Our prophet did not reject any good comes from any other communities during his time. It was reported that when radio and TV were introduced into Saudi Kingdom some Saudi clerics opposed introduction modern technological instruments from the west world saying that these instruments are detrimental to Islamic teaching. Late King Faizal asked his officials to telecast some Quranic recitation to make clerics know that these can be used for a good purpose as well. So, it can be said that whether we like or not, today, the modern scientific, technological and telecommunication networks are universal in this age of globalization and digital revolution. The Muslim community can not to avoid the impact and influence of the modern technology and yet, it can protect itself from harmfulness of all ideological onslaughts.

It could be guided, what to take and what not to take from any other civilization. In this respect, the legal philosophy of Islamic law can be an overall guiding light. Rather than selecting and choosing isolated single texts or historical precedents we must explore overall picture, mission and mission of Islamic teaching. In recent decades, the western civilization has made some great contribution in sciences, technology, telecommunication and in many fields, these contributions have no equivalent or parallel in human history. The Muslim community should appreciate such contribution to human civilization and take what goes along with Islamic legal philosophy of Islamic law and reject what does not go along with it. Barrowing virtuous ideas, policies, concepts, doctrines, methodologies, technologies, strategies, principles, models, examples, manners, customs, traditions, good statements, habits, practise, laws, products, services, skills, knowledge and moral values from any world civilization is not illegal for Muslim communities if they are in concurrent with the general philosophy of Islamic law. The humanity with its diverse customs, traditions, languages, cultures, skills, knowledge and experience is blessed by divine gifts, so, there is no harm in Islam for the Muslim community to share the human experience with people of other faiths. Therefore, taking what is good from modernity is not against the Islamic teaching at all. Rather Islam encourages people to invent, discover and create what is beneficial to the humanity. The next part of this book explores some modern social problems to gauge the compatibility of modernity with the general philosophy of Islamic law.

Chapter 4: The application of *Maqāsid in modern time*

1) Maqāsid and Islamic civilization:

Any discerning student of politics would agree that the Muslim world is suffering from some intellectual, political, ideological and social crises today. No time in 1400 hundreds history of its civilization, the Muslim world has faced troubles as of today. Bernard Lewis notes that "By all indicators from the United Nations, the World Bank, and other authorities from the Arab countries- in matters such as job creation, education, technology, and productivity -lag ever further behind the West. Even worse, the Arab nations also lag the more recent recruits to western-style modernity, such as Korea, Taiwan and Singapore. (Bernard Lewis 2003: 97-98). The Arab Human Development Report 2002 has released some striking statistics about Arab world socio-economic and educational status among all world nations today. Some Arab intellectuals and economists have compiled this report identifying many shortcomings in Arab world in the areas of human development indexes. Moreover, the recent Human Development Reports of UN has also revealed some striking revelations about Arab and Muslim world's human development indexes. All these reports indicate that the Muslim world is falling behind many nations today in all development indexes such as literacy, life expectancy, health, employment, freedom, democracy, justice, quality, and empowerment of women. AHDR 2002 reports "The Arab world translates about 330 books annually, one of fifth of the number that Greece translates. The accumulative total of translated books since the Caliph Maa'mouns' time (the Nine Century) is about 100.000, almost the average that Spain translates in one year". Recent Reports on Human Development Index is released in 2015 by UNDP and out of 49 very high human development countries only 5 Muslim countries are included among those 49 countries for very high human development: This report includes many areas of indices for human development: health outcomes, education achievement, population trend, gender development, inequality, human security, works and employment, environmental sustainability, and national income. International integration and supplementary indicator perception of wellbeing (HDR, 2015: 234-266). Only some small gulf countries with population of 40 million Arabs are included among high human development countries of 49. Although human development reports reflect the western notions of human development, these reports include some true statistics and description of decline the Muslim civilization today in this age of digital technology. Initially, the doctrines of philosophy of Islamic law are subtracted from inductive readings into the scriptural texts of the Holy Quran and Hadith. Classical Islamic scholars subtracted some higher objectives of Islamic law from their inductive reading into the primary sources of Islam law: For instance, they came into a conclusion that protecting and promoting the faith is one of higher objectives of Islamic law. Likewise, they defined some more doctrines of Islamic legal philosophy. Many of these classical legal doctrines of the general philosophy of Islamic law are contrived from Quranic verses and prophetic traditions that specify punishments laws in Islam. That is why they confined the legal doctrines of *Maqāsid* into five universal principles namely protecting faith, life wealth, intellect, and progeny. Today, the modern Islamic scholars have redefined the entire doctrines of Islamic legal philosophy.

Modern Islamic scholars have concluded the ideals of the general philosophy of Islamic law are open ended. Some argue that the doctrines of Islamic legal philosophy are still in process of development and progress. They argue that many religious and social values that Quran and Prophetic traditions speak about could be part and parcel of broader Islamic legal philosophies. For instance, maintaining unconditional justice, protecting human dignity, freedom, equality, security of Muslim nations, providing social security for people, protecting wealth of Muslim nations, education of Muslim nations, and even working to establish a good political order in Muslim countries can be one of higher objective of Islamic law. Modern Islamic scholars have pointed these are some of general objectives of Islamic law and yet, they have not limited the general of objectives of Islamic law in all these elements alone. They argue

that the scope and parameters of Islamic legal philosophy is still in the evolutionary process. We live in the age of digital revolution and artificial intelligence. These modern human technologies are designed to create so many social changes in human life. All these social changes should be evaluated and measured in line with the general philosophy of Islamic law.

Different definitions have been given to the general philosophy of Islamic law by many classical and modern Islamic scholars. Yet, some of these definitions are theoretical definitions. Some of them are identical one another. Most of these definitions are given purely from religious perspectives, concentrating on religious, spiritual and legal aspects of Islamic law and yet, Islam is not mere a religion rather Islam is a civilization. Studies on Islamic legal philosophy (*Maqāsid al-Shari'ah)* have been done to examine various aspects of religious values and dimensions of Islam and yet, Islam is a civilization on its own. The Islamic civilization laid the foundation for the renaissance of science and technology in the world. Muhammad al-Ghazali says that learning sciences such as engineering, agriculture, technology, zoology, chemistry and all modern sciences is not considered as a religious obligation by Muslims today as they pray five times. He strongly argues that failure to understand Islam as a source of human civilization has been one of main reasons for the decline of Islamic civilization in modern time. Most of classical and modern Islamic scholars have used the Quran and Prophetic traditions to subtract religious laws and yet, failed to appreciate the primary sources of Islam as foundations of human civilization. Qur'an speaks about this universe and its physical laws in more than one thousand places in the holy Qura'an. Muhamad al-Ghazali contends that Allah sent Prophet Adam down to earth with the knowledge, instincts or names of worldly sciences. Allah sent Adam with this knowledge to establish a human civilization on earth. Children of Adam inherited that worldly knowledge from Adam in their blood and genes.

Developing human skills is an integral part of Islamic civilization and yet, today, Muslim scholars have neglected physical sciences as part and parcel of Islamic teaching. In his book "Science in Medieval Islam" Howard. R, Turner says one of main reasons that Islamic civilization dominated most of parts of the medieval world was the passion Muslims had to seek knowledge of all sciences. "The rise, expansion, decline and resurgence of Islamic civilization form one of greatest epics in world of history. During the last fourteen centuries, Muslim philosophers, and poets, artists, scientists, princes. And labourers together created a unique culture that has directly and indirectly influenced societies on every continent". (Turner, 2009: 20). H. Turner traces the history of Islamic civilization and all reasons for its success in during golden ages of Islam: He says that two factors motivated medieval Muslims to engage in extraordinary intellectual expansion and discovery: Human curiosity and Qur'an teachings motivated Muslim intellectuals to investigate everything around them. Qur'an emphasises the value of knowledge in grasping the nature of world around us …Muslim religious doctrine defines the universe as a sign of God's activity; therefore, study of that activity is thought to provide knowledge of the right path toward the proper life on earth and salvation in the life beyond (Turner, 2009:18-31.). Islamic perception of this universe, man and God is somewhat different from all other human civilization. Islamic civilization puts God in the centre of this universe. The Islamic world view is that this universe is created by Allah and it is He who operates this universe with his unique wisdom and divine scheme. Exploring the mysteries of this universe is to know divine wisdom and divine scheme in this universe. H. Turner describes how this Islamic concept of this universe was deeply rooted in the minds of medieval Islamic scholars. They were motivated to explore the mysteries of this universe.

Today, Muslims have failed to appreciate this universe, its mysteries and physical laws instead they are preoccupied with religious rituals, rites and laws. Some radical Muslims have given a reductionist definition to religion of Islam as a form of rituals, rites and sets of rules. They have failed to appreciate Islam as a dynamic force of civilization. Turner describes that "From the broadest concepts of the physical universe to details of the smallest scale-including

invisible process within the human body- much was put in order and connected in ways some of which appear to reflect or to parallel the Muslim concept of cosmic unity spelled out in the Islamic Revelation…. from macrocosmic to microcosmic element, this Islamic universe appeared, in general, orderly, functional and workable" (Turner, 2009: 33). Medieval Islamic scholars read this universe and its mysteries to appreciate divine knowledge and power behind this universe. Eventually, they came into a firm conclusion that this universe reflects divine magnanimity and wisdom. The empirical and scientific knowledge took them closer to Allah and yet, today, modern man is more advanced in science and technology, but he finds it hard to believe that there is a God behind all these marvels of this universe. H. Turner says that a passion for knowledge of all sciences led the Muslims during their golden age to build empires and dynasties, to absorb, discover and expand the scientific knowledge of older cultures, including those of Greek, Romans, chines and Indians. He traces medieval Islamic accomplishments in several fields of science such as physics, chemistry, biology, cosmology, mathematics, astronomy, astrology, geography, medicine, and all-natural sciences, He argues that the Muslim scientific achievement influenced the advance of science in the western world from the Renaissance to modern Era. Today, where is such a vibrant intellectual activity and culture among Muslim today?

Muslims have the same Qur'an that stimulated the minds of Muslims in the medieval time. Mohamed al-Ghazel gives us some reasons for the underdevelopment of Muslims today. He says that Muslim failed to appreciate laws of nature and follow natural laws of this universe. Something terribly went wrong in Muslim approach to education and its philosophy. H. R. Turner explains how and why this partial approach to education took place in Muslim history. "In the early centuries of Islamic civilization, the broader possible learning was widely supported by orthodox Muslim precept. However, in time, an opposing doctrinal trend gained strength. Not only the limitations but also the "danger" of the knowledge was increasing described by religious authority and pious philosophers, who declared that gaining knowledge for its own sake could never be legitimate for Muslim—it must be acquired solely as a mean to understand of God, serving His will, and working to solve the problems of Islamic society. Limits of the scope of permissible learning to came to be defined by religious scholars, philosophical and scientific investigation came under increasing attack as protentional distractive to faith and society. The scientific, technological creativity of Muslim world short-lived or discontinued because Muslim creativity came into conflict with religious teaching within Islamic teaching, culminating in the works of Imam al-Ghazali. (Al-Khalili,2010: xxvii).

Rather than engaging in scientific and empirical research, Muslim scholars engaged in theological, legal, dogmatic and philosophical debates. For Imam al- Ghazali he was compelled to engaged in those debates to protect the Muslim community from falling into anti-Islamic philosophical thought. He was obliged to refute arguments of some philosophical and mystical thinkers. The conflict between Islamic orthodoxy and the rationalist movement of Mu'tazilite paved the way to stagnation of science in Islam and this conflict was marked with beginning of the end of scientific age in Islamic history. al-Ghazali made a staunch criticism of the philosophical thought of Ibn Sina and others in his famous book of "incoherence of philosophers". Ibn Sinan and Muslim philosophers of his time had been influenced with Aristotle. They assimilated the ideas of Aristotle in their thought. al-Ghazali defended orthodox Islam from alien philosophical influence. Yet, Jim Al-Khalili, argues that "innate religious conservatism of the school of thought that grew around his work inflicted lasting damage on the spirit of rationalism and marked a turning point in Islamic philosophy. In fact, many Muslims to this day, see him as having won some sort of intellectual argument that has regrettably left a whole chain of wonderful thinkers, spanning al-Kindi, al-Farabi, al-Razi, Ibn Sina and Ibn Rushd, labelled as heretics." (al-Khalili, 2010: 232). So, Jim Al-Khalili, argues that ideas of all these great men were ignored because of this conflict between religious orthodoxy

and rationalist movement. This paved the way for the stagnation of the creative and scientific thinking in Islamic civilization since this time.

Moreover, most Islamic historians say that the golden age of Islamic civilization came into an end with Mongols' destruction of Baghdad. During Mongols attack on Baghdad most books in the House of Wisdom were destroyed by the Mongolian army of Hulagu Khan. This argument is easily dismissed by some historians. They contend that Islamic empire had many flourishing centres in science in many parts of Muslim world such as Spain and north Africa, Persia and central Asia and many places. So, the destruction of Baghdad in 1258 may have been a terrible phycological blow for Muslims and yet, this single below cannot be solely blamed for the stagnation of creativity in Muslim minds. It has been a customary trend among some Muslim scholars to blame Western colonialism for the backwardness and decline of Muslim civilization. No doubt that Western colonization inflicted greater damages to Islamic way of life in Muslim lands. In some countries, Islamic education was totally changed, some areas of Islamic laws are replaced by western system of common laws. In some Muslim countries the impact of colonization had far reaching consequences. For instance, in North Africa, the French colonial powers forced people of North Africa to follow their way of life in food, cloth, language, and tradition. It would be pointless to say that colonial masters were blocking creative thinking of Muslim people in science and technology. Colonial powers would have belittled or down played the Muslim scientific achievements of Islamic golden age to show off their superiority and yet, to claim that they had blocked or stopped the creativity of Muslim scholars would not have any credibility. "the early scholars of Baghdad did not see any conflict between religion and science. The early thinkers were quite clear about their mission: the Qur'an required them to study (al-sam'aw'at wal'arth (the skies and the earth) to find proof of their faith. Of course, the term 'ilm" referred to primarily to theology, but in its early years of Islam never made a clear-cut distinction between religious and non-religious scholarly pursuits ((Al-Khalili, 2010: xxvii).

Many classical and modern Islamic scholars have spoken about Islamic legal philosophy or *Maqāsid al-Shari'ah*. Many of them have spoken about Islamic legal philosophy as a legal tool or mechanism to know the wisdom, rationales and reasons of Islamic legislation in many parts of divine laws: both in positive and substantial laws of Islam. As far as I know only a few Islamic scholars have tried to reconstruct *Maqāsid al-Shari'ah* based on human resource development. Many scholars have attempted to explore the inherent relation between human rights issues and legal philosophy of Islamic law and yet, a very few have attempted to demonstrate the inherent relations between the legal philosophy of Islam and human development in science, technology, agriculture, commerce, industries, space sciences and in all rother physical or any branch of human sciences. Mohammed al-Ghazali extensively spoke about this intricate connection between the religion of Islam and human development. For him Islam is a source of human civilization. The Quran was revealed not merely teach humanity some sets of religious laws but its urges the humanity to discover, invent, investigate, and examine all physical laws of this universe. Recently, Auda (2007: 24) argues that Human development is enshrined in *Maqāsid al-Shari'ah* doctrines in its own rights. He equates some concepts of modern human development process with *Maqāsid* doctrines on its own rights. The architect of human development index of UN Mahbud ul Haq (1934-1998) may have not known that the themes of human development are enshrined in Islamic legal philosophy and yet, he managed to contrive some sophisticated methods to measure human development indexes in some third world countries particularly with his special interest in Pakistan.

Under these topics, many studies have been done considering all different scholars' works from medieval time to modern time. One can notice that the legal philosophy of Islamic law has taken different dimension with these profound studies on different part of Islamic teaching. The Islamic legal philosophy of Islamic law, (*Maqāsid al-Shari'ah)* evolved into the

edifice of general philosophies of Islamic teaching with multidimensional aspects of Islam. In this way, the Islamic legal philosophy gets a new dimensions and new scope. Its scope, meaning and theme are broadened with this evolution. Yet, rarely a few works have been done on relevancy of legal philosophy of (*Maqāsid al-Shari'ah)* on civilizational development and human recourse development. Today, the entire human development process is based on brain power. The quality of human skills in science, technology, agriculture, trade, administration, management and different modern fields depend on human resource development. The inherent connection between the legal philosophy of Islamic law *Maqāsid* and all these areas of human sciences are not yet, fully explored and examined. In recent time, al-Wani, Tariq Ramzan, Jasir Auda and many others have attempted to reconstruct Islamic legal philosophy in a modern paradigm. They have attempted to reconstruct Islamic legal philosophy as a foundation of Islamic civilization taking into all good humanistic, and civilizational values. They have touched upon different dimensions of Islamic legal philosophy (*Maqāsid)* and have introduced some new ideas in our understanding of the Islamic legal philosophy and yet, they have not explored the intricate connections between universal doctrines of *Maqāsid* and their modern implications. They have rarely related the intricate connection between legal philosophy of *Maqāsid* and its relevancy to human resource development. Classical Islamic scholars defined the universal principles of *Maqāsid* in their historical context. Today, our social, political and educational contexts are different from Imam al-Juwayni's time or Imam al-Shatibi's time. Today, the entire edifice of Islamic legal philosophy should be designed considering not merely the legal aspects of Islamic law rather considering all modern development in education, politics, science, technology and all fields. The Islamic legal philosophy is primarily concerned about Islamic legal issues as designed in the primary sources of Islam. Yet, law is one of aspect of Islamic teachings.

There are two dimensions to the Islamic legal philosophy: *Maqāsid al-Shari'ah:* The divine nature of Islamic law about and its philosophy. The Islamic law is not like any other form of law. It is not like Greek philosophy or Roman philosophy or any Europeon modern philosophies or Eastern philosophies such as Indian or Chinese philosophies. Here we are discussing about the rationale and wisdom of divine laws that were revealed to Prophet Muhammed as a final divine message to humanity. There are huge differences between Islamic legal philosophy and any man-made philosophy. The Islamic legal philosophy hugely differs from western legal philosophies in area of politics, economic theories, and some ethical conducts. Therefore, when we discuss about Islamic legal philosophy: *Maqāsid* we are discussing within the boundaries and limits of the Islamic law. There is a clear distinction between what is compatible and what is not compatible with Islamic teaching in modern sciences, technologies, industries, and inventions that are produced by Western and Eastern world today. Most of scientific, industrial, agricultural and technological products and inventions of Western and Eastern Non-Muslim world reflect the ethical and moral codes of their faith and way of life. For Instance, producing nuclear weapons of mass destruction to maintain the balance of military power between nations, introducing euthanasia clinics, human cloning, animal cloning, GMF(genetically modified food), creating test tube baby outside wedlock, creating over inflated financial market based on speculation, gambling, exploiting, politically bullying weak nations with Veto powers, the introduction of atheism, and disbelief in the name of religious freedom, charging interest, introducing pornographies, legislating laws in contrast to clear cut divine laws are some of areas that the Islamic legal philosophy contrasts with the teachings and moral conducts of Western and Eastern civilizations. Likewise, the Islamic legal philosophy does not agree with many social norms, and sinful behaviours that are products of western way of life and belief system. This does not mean that the Islamic legal philosophy rejects all what the western world produced for the last five hundred years in the fields of science, technology, agriculture, industries and many other fields

of development. The western civilization has made marvellous contributions for humanity in the last few centuries. Particularly, for the last five decades, the Western world made some unique contributions in fields of medicine and health care, space sciences, aviation industries, information technology, transportation industries and in many fields. These inventions and discoveries are unprecedented in human history. Some Muslim radical clerics wants to reject all what come from the western civilization. Such a rejection is not only unwise but also unrealistic in the modern world. The power of gravity, electricity, telephone, X-ray machine, trains, flights, radio, TV, computer, mobile phone, digital technology, Artificial intelligence and many old and modern technologies are invented and produced by Non-Islamic civilizations. In the name of Islamization of knowledge some Islamic clerics argue that all what come from Non-Islamic world should be rejected. Such a radical view point is outdated and unrealistic.

Islam is a civilization rather than a set of some rituals and traditions. The final divine message that the last prophet came with starts with "Read in the name of your Lord". So, the Islamic civilization is based on knowledge. That knowledge can be divine guidance or human acquired knowledge from his skills. No doubt human intellect guides humanity in life. There is no demarcation in Islam between religious and worldly knowledge. Whatever knowledge is beneficial to humanity, learning such branch of knowledge is obligatory in Islam. Any modern invention that facilitates human life on earth is acceptable in Islamic law unless it is ethically and morally detrimental for human life, there no is harm in Islam to engage in a such invention. Promoting human welfare, and human interest on earth is part and parcel of Islamic legal philosophy. This universe and its resources are divine gift to man to use its resources, to cultivate and enhance its natural resources, Moreover, to examine, and to discover its wonders. Man is blessed with intellect to discover and develop this earth. Allah says in His Holy Qur'an that "He taught Adam names of all things": (Qura'n 2: 30). Based on this verse, Muhammad Al-Ghzali comes to a firm conviction that Allah had implanted the instincts and skills in the genes of Adam to be creative and innovative to know all worldly matters of cultivation, innovation, industries and all arts of civilization. The seeds of all worldly knowledges and skills were implanted in Adam by Allah when sent him down to earth. For Muhammad Al-Ghazali, all keys or seeds of good human inventions, skills and discoveries are included in these knowledges that Allah taught Adam. All modern sciences that man has invented and developed are outcomes and reflections of divine instincts that Allah implanted upon the genes of Adam. The human skills in agriculture, hands crafts, technology, industries, physics, chemistry, mathematics, biology, medicine, management, administration, and all physical and human sciences are nothing but reflection of divine instinct that Allah implanted in Adam. For that reason, man is a slave to Allah in this world and yet, he is a master on earth to take control of the natural resources in this universe. Moreover, Allah speaks to humanity saying that Allah made all this universe for man to utilities and cultivate it. Qur'an says that "And He has subjected to you whatever is in the heavens and whatever is on the earth- all from Him. Indeed, in that are signs for a people who give taught: (Qur'an: 45: 13) Qur'an further says that "And we have certainly established you upon the earth and made for you therein ways of livelihood. Little are you grateful (Qur'an 7: 10). Muhammed Al-Ghzali argues Islam is religion of intellect, wisdom, and human civilization. There is no any divine book that speaks about this universe in many places as Qur'an speaks about this universe and its planets. Quran speaks about this universe in more than 1000 verses. It speaks to human minds, human facilities in many places, and Quran asks man to ponder over in this universe and divine creations in many places and yet, today, Muslims all over the world have utterly failed to discover the wonders of this universe, earth, seas and all physical sciences. He says that the Muslims have failed to contribute to modern science and its development. For him such backwardness is not only a religious crime but rather it is an intellectual disorder in the minds of Muslims. He says that

the Muslim community today failed to inherit human instincts and human skills that Allah implanted in Adam.

Muhammad al-Ghazali asks some funny questions about this backwardness of Muslims. He asks if Prophet Adam comes to earth today and asks people in Germany for instance. What do have inherited from me? Someone may say that I have inherited the arts of engineering from you and someone else may say that I have inherited the arts of agriculture from you? If Adam comes to Muslim lands and asks the Muslim community what do have inherited from me? What have invented or discovered? Or how do you spend your days on earth? Muslim community does not have anything to say to Adam? Because today all-natural resources of this earth and universe are controlled and put into maximum use by people of non-Islamic civilizations. He asks who has a control over this sky today? Who has got control over natural resources of earth and sea today? Is it Muslim world or western countries? He tells us that White men come from Europe and US to discover Oil and Gas in our lands in Arabian Peninsula. (Sheikh Muhammed Al-Ghazali, pp.20-45). Moreover, He says extensive studies and energy have been used to do research on minor aspects of Islamic laws. More attention has been paid into some areas of Islamic rituals at the expenses of important issues in Islamic law: For instance, Islamic jurisprudence of Islamic economy developed by Imam Abu Yusuf was neglected at the expense of some excessive research on purification. Moreover, the Islamic jurisprudence of politics developed by Iman Shaibani was neglected at the expenses of excessive research on some aspects of Islamic rituals. Creative thinking in Muslim minds diminished since 8th century of Islamic calendar. Since then, the Muslim scholars engaged in dogmatic and legal arguments: most of these arguments are irrelevant and unrealistic. This stagnation in creative thinking was did not confine in Islamic legal thought but it encircled all aspects of human life. empirical and experimental studies and research activities. The empirical and experimental studies and research activities ceased in the Muslim world since this time in Islamic history. All sort of Muslim scientists, such as natural scientists, physical scientists, technicians, astrologists, health professionals, historians, inventors and innovators were disappeared. The Muslim scientific research activities came into standstill and while Islamic civilization was on path into decline western civilization begun to thrive from 13th century. This decline of Islamic civilization and rise of western civilization has been vividly described by some western historians. "after the fall of Roman empire, Islamic civilization militarily, culturally, scientifically pre-eminent in Europe. It was under the umbrella of Islam, from the mid-10th to the mid-13th centuries, that European civilization first begun to emerge from the so- called Dark Ages. When Christian Europe had lost nearly all Greek learning, it was known and treasured through-out Islam. The beautiful Islamic cites of Spain --Seville, Granada, and |Cordoba- were magnets for scholars of all faiths; Muslims, Jews and Christians collaborated to their great mutual benefits. Through the agency of Arab scholars, the West gained its modern numerals, rediscovered writings of the ancient Greek scientists, advanced in astronomy, and gained new learning from Persia, India, and particularly China, the only civilization to equal Islam for its science and technology". (Rodney Stark, 2003, Richard Koch and Chris Smith, p70).

Muslim scholars of medieval and pre-modern time not only engaged in legal, dogmatic and theological debates but they also engaged in phloemic and philosophical arguments. This change in the intellectual attitude of the Muslim scholars occurred after the golden ages in the Muslim history. "The early Muslim thinkers took up philosophy where the Greek left off. In Aristotle, the Muslim thinkers found the great guide … Muslim philosophy ….in subsequent centuries merely chose to continue in this vein and enlarge Aristotle rather than to innovate. (Caser. E. Farah, Richard Koch and Chris Smith, p71) while Muslims were engaged in Greek and Aristotle philosophical and logical debates, the Europeans, so called "Barbarians" of the "Dark Ages" made remarkable progress, not in science but certainly in technology. ` the European renaissance begun with intellectual renaissance. Europeans begun to enhance human

intellect and skill. They began to introduce technological and scientific innovation through physical and experimental science. They began to control "nature" using human intellect in accordance with physical laws that govern this universe. This technological and scientific knowledge and skill helped those so called "Barbarians" of Europe to overcome and prevail Muslim armies in many encounters. Some historians describe the Muslim and European military encounters in this paragraph. It tells us how the balance of military power between Europeans and Saracens began to shift.

"In 732 Charles Martel and a Frankish army routed the Muslim Saracens by deploying Knights in full armour, using stirrups and the Norman saddle for the first time, enabling the knights to stay on their horses, while lancing the Saracens. Over the next five centuries, Europeans invented machinery, historian Jean Gimpel says, "On a scale no civilization had previously known" …. The list of innovations included eyeglasses, camshafts, the compass, mechanical clocks, water mills, water wheels, and gunpowder" (Richard Koch and Chris Smith, p71). European scientific and technological inventions and development continued to grow for hundreds of years. Despite all resentments between religious and scientific scholars, Europeans continued to progress in science and technology over taking Islamic and Chines civilizations of pre-modern time. "From the eleventh century, European science began to catch up with and, by the end of the thirteenth century, surpass that of Islam and China. Robert Grosseteste (1186-1253), Bishop of Lincoln and Chancellor of Oxford University, originated the systematic method of scientific experimentation. The invention of the mechanical clock in the 1270s led to a new precision in scientific measurement… … The famous innovators such as Thamos Aquinas (1225-74), William of Ockhma, (1295-1349), Jean Buridan, (1300-90), Nicholas d'Oresme, (1325-82), and Albert of Saxony 1316-900 -invented the University replaced abstract, speculation with empirical observation, sought the simplest and most parsimonious explanations for scientific hypotheses, and took experimentation, mathematics and physics to new highs. (Richard Koch and Chris Smith, pp71-72).

The scientific and technological advance continued to grow in the subsequent centuries with ground breaking inventions in Europe and yet what happened in the Muslim world was, their invention and innovation in science and technology gradually began to fade way. Rational enquiries, empirical and experimental began to decline in the Muslim world. During these times, the so-called closure of the door of rational enquiry was declared by Muslim clerics in the field of Islamic studies. The stagnation in creative thinking not only intruded in Islamic law and its bearing was felt in all branches of human knowledge. While intellectual activities and creative thinking were fading away from Muslim world, European scholars marched forward in science and technology. "Between 1609-1687 Kepler and Newton justified and vindicated that the earth and the heavens are governed by a few universal, physical, mechanical, and mathematical laws. In 1609, by using masses of astronomical data, Kelper proved that the earth moved around the sun and not the other way around. The same year, Galilio, using his own new powerful telescope, revealed innumerable new stars, and a much vaster universe than previously envisaged. In 1687, Isaac Newton made perhaps the greatest intellectual breakthrough of all time- that four physical laws (three laws of motion, and the theory of universal gravitation) could explain everything previously known and observed about heavenly and earthy movements. This was the first convincing scientific theory of the entire solar system. No longer were heavens mysterious or beyond human reason. Gravity explained why apply fall off trees and how the planets were held in place; mathematics elucidated every piece of data about physical movement. Human reason had at last penetrated the mysteries of the heavens" (Richard Koch and Chris Smith, pp71-72). There is no doubt intellectual renaissance of the Muslim Spain and medieval time of Islamic empire would have laid the foundation for the scientific and technological progression of Europe. From thirteenth century onward, Europe continued to advance in science until the present. While all these scientific and technological

activities were taking place in Europe, the Muslim world went to into dark ages. Muslims continued to be falling behind in all fields of science and technology. The Muslim world could not compete Europe in science and technology since thirteenth century.

For the last six hundred years, the Muslim world has not made any significant contribution in any area of scientific or technological developments. To overcome this stagnation in creativity, Muslim countries should create some strategic planning and policy making in education. The general philosophy of Islamic law can be an instrumental tool to guide the Muslim policy makers in education. It could be concluded that the general philosophy of Islamic law should aim at promoting not merely Islamic legal interpretation, but it should aim at promoting a strong Islamic civilization. It should aim at promoting science, technology, and all modern sciences that are beneficial to humanity. It should aim at promoting rational and creative thinking in the minds of children in the Muslim world. Yet, today, the general philosophy of Islamic law is seen as a subject that deals merely with Islamic legal studies. The general philosophy of Islamic law is a holistic strategic mechanism that aims at enriching the Muslim community in all aspects of life. It is a protective mechanism that protects the Muslim community from all harmful things and promotes all beneficial things for the humanity. It is a scientific and systemically Islamic methodology that aims at promoting Islamic ethical and moral values in the Muslim community. It is an all-encompassing methodology that aims at promoting a healthy Muslim community.

2) **Maqāsid and Common Law**

The Legal philosophy of Islamic law and its contents are not comparable with any legal system of modern time in the world. We cannot compare Islamic law with common law of western civilization. Islamic law is different from all legal systems of law from many perspectives. Islamic law is divine in nature: it's a revealed law: it is divinely inspired law, hence; Islamic law is not comparable with any man-made law. Moreover, the substances of both legal systems are different in many ways: M. H. M Razik (2010. P 38) argues that "English legal methodology, for example, distinguishes between public law with its rules relating to the affairs of the state with man, and private law with its rules pertaining to the relationship between man and man. Islamic legal methodology too has a dual system but the structure here is different from that of English methodology…. Islamic law has a system of laws governing the relationship between man and God on the one hand, and man and man on the other". Islamic law is different from any legal system of the world humanity has got today: It is different in its substances, in its legal philosophy and in its application methods. Yet, like many other forms of laws, Islamic law is subject to dramatic changes in its application: Islamic law is subject to human interpretation and human legal reasoning in each decade. It is subject to constant changes and adaptation. Although Islamic law is not entirely subjected to complete changes and yet, some parts of Islamic law are subject to change. Western legal systems and legal methodologies have been dramatically changed. The legal system and common law in western countries evolved by the passage of time and modern developments. Yet, in Islamic legal history law studies did not evolve as we notice today in western countries. Of course, volumes of Islamic law books are produced by Muslim jurists throughout 1400 years and yet, most of those books are written mostly about Islamic religious laws and residuals yet, M. H. M Razik notes "public law", in the sense of constitutional law, administrative law, or criminal law as understood today by the Western and English legal system, did not form a separate major part of the Islamic legal methodology during the formative period of Islamic law, even though in theory it had well defined principles covering all areas of public law" (Ibid, p. 39). Why Islamic law did not evolve? It is due to many socio-religious and political reasons. Muslim jurists were not given the leverage to develop Islamic law: Moreover, rapid development of legal studies in western countries are recent legal phenomenon. With industrial, intellectual and scientific developments in Western countries, legal studies too developed rapidly.

M. H. M Razik (2010. P.9) argues that Islamic legal device of *Istihsāan* is a subsidiary source of Islamic law. That is similar or identical to the legal device of equity in western law. He argues that law must be interpreted in terms of human interest, to protect human interest and avoid harm. The legal device of *Istihsān* in Islamic law and equity in English law have been contrived to secure those human interests and meet the modern challenge of social change. Comparing the legal methodologies in Islamic law and western legal system, Razik identifies the similarities and differences between two legal methodologies. He notes that "the western system of Law differs from "Classical shari'ah in two principal ways; Shari'ah law is wider in scope and is Divine in origin, In the early Islamic methodology, …. The source of law was primarily derived from divine legislation and the objective was achieving benefit and avoiding harm in term of human interest. In the early English, legal system…. Human legislation of one form or another appears to be the primary if not only source. Although Christianity was adopted as the official religion of England in 313 Ac and Anglo-Saxons were converted to Christianity in the 6th and 7th centuries religion appears to have had little influence on the "temporal legislative process" (2010, pp.69-70). The combination of divine origin and human element is one of the unique characteristics of Islamic law. Law is revealed by Allah in Islam and yet, it is comprehended. Interpreted, deducted, modified and applied by human intellect. So, Islamic law is divine in origin and yet, it is being shaped, moulded and modified in some cases by human intellect. It has been argued that "the precursor to common law, the law of all persons and of all parts of England and Wales, falls into three major divisions: legal pronouncements, and edicts by the king, local customs, considered authoritative and recorded later by the Normans in the Doomsday Book" (Razik. 2010. p. 70).

Rebert Frank describes how politics played a role in the development of common law in England saying that when "Henry 1st of England ascended to the throne in 1068 he granted the Charter of Liberties. Although this document was not a bill of rights as such it did grant a series of decrees and assurances. The charter, at the outset, states "That by the mercy of god and common counsel of the barons of the whole kingdom of England I have been crowned king of the whole Kingdom" Rebert Frank argues that this statement by king, its intent, represents a move away from absolute monarchy and step towards constitutionalism and by this statement the king had recognised that the right to rule came not only from god but also from the common counsel of the barons. Moreover, political changes and democratic rights were given to public during of King John (1167-1216). The period of his rule was marked by conflict resulting in signing of the Magna Carta (Greater Charter), which was issued in 1215. Rebert Franks (2017 P.10) argues that this Charter was so importance in the political and legal history of England in that it influenced the development of common law and many other constitutional documents, such as the American Bill of Rights. It forced English King to renounce certain specific rights, respect certain legal procedures and accept that his Will could be pound by law. This charter limited the power of King by law. This was the starting point of democratization and constitutionalism that England went through from medieval time. The legislative supremacy or the sovereignty of Parliament has been the heart of the British constitutional law for over three centuries., since the Glorious Revolution of 1688 (Simon Askey and Ian McLeod (2014, P37). This does not mean that there was no power struggle or conflict between the kings and British parliament. Like many empires the British empire too experienced a lot of power struggles and conflict between kings, churches and parliament. The King Charles I believed in the theory of Divine Rights to rule over public and continued to fight with Parliament to tax more. Nevertheless, Parliament wanted the king to sign the Petition of Rights which stipulated some conditions to submit the King to the will of Parliament. Some of these conditions are

a) "The king could not establish martial law in England during the times of peace.
b) The king could not levy taxes without the consent of Parliament
c) The king could not arbitrarily impression people

d) The king could not quarter soldiers in private home". (Rebert Franks (2017 P. 12).

These political struggles continued for more than three centuries in many forms and eventually, all these political ideals and principles grew into a fully-fledged liberal democratic system. Today, the British parliamentary political system is one of the best parliament systems in the world. Some of the best characteristics of the British parliamentary systems according to Simon Askey and Ian McLeod. are

a) The legislative supremacy of Parliament
b) The rule of law and
c) The separation of powers.

Indeed, some political ideals of western liberal democracy are incompatible with Islamic political ideals. For instance, According to Islamic theology and Islamic law the ultimate legislative power rests in the hands of Allah. He is the creator and proprietor of this universe and he alone has ultimate authorities to legislate what is good and what is bad for humanity. The Muslim community believes that Almighty Allah has already given the mankind a set of basic laws through His final revelation. The final revelation covers all basic broader principles of law and yet, mankind has been blessed by Allah with the faculty of reason to develop rules of law and regulation in accordance with the need and demand of each community. I would like to reiterate here that Islamic does not discourage people from creating rules and regulations to reorganise life. Creating directives, regulations and taking some important decisions are not against spirit of the general philosophy of Islamic law at all. but Islamic law sets some limitations and guidance how to make new rules and regulations. In western democracy the supremacy of Parliament is maintained.

a) "Parliament can pass any legislation as it wishes to pass and
b) Only Parliament can repeal legislation which Parliament has passed." (Rebert Franks,2017,P.37). Yet, Islam sets some limitations to man's legislative power and Islam says that it is God who has ultimate power to legislate what is necessarily good and what is bad for humanity. Yet, man is blessed with human reason to come up with some new rules and regulations to make his life easy on earth. Creating directives and regulations and making decisions are not against spirit of the general philosophy of Islamic law. But he must do that in line with the divine guidance. They must not go against what God has already legislated for him.

This struggle between the kings, church and Parliament tells us the democratic struggle was deeply rooted in the European political history. History of Europe was tarnished by blood baths, wars and political unrest.Yet, they prevailed over all this and established peace and harmony. Above all, they came up with the finest political system that shares the power with people. People in these countries fought for more than three centuries to win the political rights and put political power back in the hands of people. People did not get their liberty, freedom and justice so simply rather they fought for these rights in western countries and yet, what took place in the Muslim history is astonishing. For the last 1400 years, the Muslim world has been suffering politically. We have not seen such a political and freedom struggle in the history of Muslims rather all what see is blood bath for political domination in Muslim history. Islamic history did not witness such a political change from the formative period of Islam to the present time. Even in this modern age of globalization, the Muslim world struggles to make any political changes and to move away from the dictatorial rules into a democratic and constitutional system.

That is why we do not see any meaningful political or legal changes in many Muslim countries today. The power structure in many western countries evolved from a basic system of absolutist model into a constitutional model. Many countries in the world

today are moving from an absolutism in politics into a liberal democratic system and yet, for the last 1400 years, the Muslim world has been struggling to come out of this absolutistic power structure into any form of liberal democratic system of ruling. What is the connection between the general philosophy of Islamic law and English law? The connection between these two is very much ostensible for any student of general philosophy of Islamic law. It is generally agreed by both classical and modern Islamic scholarship that Islamic law is instituted to promote and protect human interest and public welfare. From the Imam Juwaini to modern time architect of Islamic legal philosophy Ahmed Raisuni agree that Islamic laws are contrived to promote public welfare and public interest and yet, where do we see this basic notion of Islamic legal philosophy been applied and implemented today. A large percentage of people in the western world do not have faith in any religion. Indeed, many of them, are atheists or agnostics and humanists yet, today, the central themes and core principles of Islamic general philosophy of Islamic law are applied in western world than Muslim countries today. Such a contention may look odd with general Muslim perception of Islamic law and its application.

There are so many norms, customs, traditions and practices that westerners follow in their life are against very basic teaching of Islamic law and yet, I would argue that western world is far ahead of Muslim world in the application of some basic Islamic principles that are enshrined in Islamic texts and Islamic historical precedents. Freedom of expression, liberty, justice, social justice system, social welfare system, principles of equality, democratic rights, human rights, and so many other Islamic principles that are enshrined in the general philosophy of Islamic law are applied and implemented in the western world than the Muslim world. Islam in its teaching, theology, dogma and practice contrasts and contradicts with western theological, religious, political and economic thought and yet, some aspects of Islamic thoughts and practices are compatible with western thoughts and practices. The general philosophy of the Islamic law is instituted to promote some social values in human life. I would argue that western countries have greatly succeeded in promoting and protecting some of Islamic social values that general philosophy of Islamic law aims at promoting. Here I will highlight some of those social values that are compatible with Islamic social values. Europe went through 1000 years of dark ages in history. There are many characteristics to describes the dark ages. Irrational and superficial belief and faith dominated minds and hearts of people during those dark ages. Yet, periods of Enlightenment and Europeon renaissance freed the minds of people from grip of irrational belief and dogmatic traditions. Although, we are living in this modern digital technological world, a large proportion of Muslim population still live with mind sets of dark ages.

The remnants and features of dark ages are still inhabiting Muslim minds. The political dictatorship, irrational theological, superficial belief, polemic argument, intolerance, and unwanted religious disputes are nothing but some of the features of the dark ages. Many Muslim academics, intellectuals and thinkers are trying to liberate Muslim minds from the remnants of dark age and yet, socio- religious and political conditions of the Muslim world do not allow Muslim intellectuals to free them from the remnant of dark ages. Muslims are not allowed to freely express their political aspiration and they are not allowed to speak out against their governments in many Muslim countries. Muslims have been politically enslaved in many Muslim countries in this modern age of globalization and information technology. People in the dark ages were enslaved by kings without any political liberty and freedom. They were made to work for kings and lords as slaves without freedom. Likewise, today, many Muslim communities are treated as slaves in their own native countries by Muslim political leaders. Yet, rapid development in globalization, information technology, social media network and political awareness has put the politicians under immense pressure to make some political reform in many Muslim countries and yet, they are not ready to make any democratic changes

in Muslim countries. Algerian, Tunisian and Egyptian elections tell us that people in those countries want to see some democratic political systems in their countries and yet, peoples' political aspiration has been suppressed by the tyrannical political leaders in those countries. Often with the backing of the developed nations. The Muslim world needs free and peaceful social environment and social conditions to apply and implement the ideals and concepts of the general philosophy of Islamic law broadly in all walks of life. Although, Arab spring has failed to due to some internal and external political pressures, still the Muslim world needs to go through some periods of enlightenment and renaissance to create some conducive social conditions to apply the broader guidelines of the general philosophy of Islamic law. For instance, unlimited freedom and liberty to do whatever people want to do is not acceptable in Islamic law rather Islamic law prescribes relative freedom. The notion of freedom and liberty in Islam are relative and limited within Islamic teaching. No time in human history, humanity is subjected to human desire as of today, Today, humanity is a victim of its own human desire and predilection. One of main objectives of Islamic legal philosophy is to free man from his own desire and yet, today, human desire and human predilection control humanity in many parts of modern world.Alcoholism, drug addiction, a culture of pornography and consumerism, exploitation of poor, rape, decline of human values and noble human qualities are due to the fact, humanity blindly follows human desires without divine guidance. A.J. Makdisi. (1999) argues that the Islamic legal system was far superior to the primitive legal system of England before the birth of the common law. He argues that some aspects of common law were influenced by the Islamic law.

"Henry II created the common law in the twelfth century, which resulted in revolutionary changes in the English legal system, chief among which were the action of debt, the assize of novel disseisin, and trial by jury. The sources of these three institutions have been ascribed to influences from other legal systems such as Roman law. A.J. Makdisi has uncovered new evidence which suggests that these institutions may trace their origins directly to Islamic legal institutions. The evidence lies in the unique identity of characteristics of these three institutions with those of their Islamic counterparts, the similarity of function and structure between Islamic and common law, and the historic opportunity for transplants from Islam through Sicily" (A.J Makdasi,1999,p.1635).Makdisi identifies some unique characteristics and similarities between some aspects of Islamic law and English common law. He argues that some elements of common law are taken from Islamic law. He contends that "The origins of the common law are shrouded in mystery created over seven centuries ago during the reign of King Henry II of England, to this day we do not know how some of its most distinctive institutions arose. For example, where did we get the idea that contract transfers property ownership by words and not by delivery or that possession is a form of property ownership? Even more importantly, where did we get the idea that every person is entitled to trial by jury? (Ibid. p1636) He goes against some historical conventions that maintained that common law is taken from Roman law. "Historians have suggested that the common law is a product of many different influences, the most important being the civil law tradition of Roman and canon law. Yet, as we shall see, the legal institutions of the common law fit within a structural and functional pattern that is unique among western legal systems and certainly different from that of the civil law. The coherence of this pattern strongly suggests the dominating influence of a single pre-existing legal tradition rather than a patchwork of influences from multiple legal systems overlaid on a Roman fabric. The only problem is that no one pre-existing legal tradition has yet been found to fit the picture" (*Makdisi.p.1636*). Makdisi makes a comparison between these three elements of law. "Royal English contract protected by the action of debt" and the "*Islamic Aqd",* the "English assize of novel disseisin" and the "Islamic Istihqaq", and the "English jury" and the "Islamic Lafif" in classical Maliki jurisprudence.

His contention is that these institutions were transported to England by the Normans. This was done "through the close connection between the Norman kingdoms of Roger II in Sicily — ruling over a conquered Islamic administration — and Henry II in England.". Moreover, he makes some parallel between Islamic and western academic institutes in their teaching methods. Yet, what is fascinating to see is how legal experts in Europe managed to devise all these legal concepts into comprehensive legal practices in contract law. Take for instance, how contract law has grown now in Europe from its basic origin. Ronald Skinner notes that contract law went through a rapid development for the last three centuries. "contract law or the origins of contract law, goes back more than three hundred years. However, because of the very fast innovations in technology and the industrial revolution generally, the main body of contract law established in the nineteenth century, before that, contract law barely existed as a separate area of law (Ronald Skinner, 2016: pp 13-14). Yet, today, law of contract has grown to cover business contracts, employment contract, marriage contracts and many other areas of contracts are regulated by parliament acts in Europe and this Islamic concept of contract law is stagnant in Muslim countries. Moreover, courts in Europe appoint jurors in some cases to maintain fairness in court hearings. This is one of Islamic legal concepts as Makdisi argues. Yet, legal experts in Europe develop this legal concept and use it as a deterrent mechanism to protect justice system in Europe and yet, Muslim legal experts have failed to further develop this Islamic concept of jury system in the Muslim world.

It has been historically established that Norman Sicily and England had maintained close ties and Islamic influence on Sicily was well documented. Therefore, the Islamic influence on common law is an undeniable historical fact as Makdisi has already claimed with substantial evidence. This is a fascinating area of research for the students of Islamic law to explore Islamic connections with common law. Yet, legal experts and academics in the western countries managed to develop some innovative legal concepts and legal principles from all what they learned from Roman and Islamic law. However, the Muslim jurists and legal experts in the Muslim world could not develop any functional legal mechanism as we see in the western countries. In the western countries, judiciary, legal principles, legal concepts and legal mechanism grew rapidly in accordance with social changes and yet, in the Muslim world, the function nature of law stagnated for many centuries. More importantly, today, we should consider time and space factors when we apply the principles of Islamic law in Muslim minority communities where Muslims do not have any legislative or political authority. When Muslim communities live as minority under a non-Muslim polity, they are legally bound to obey by non-Muslim jurisdictions and not all aspects of Islamic laws are applicable in those countries.

The application of Islamic law by minority Muslim communities in non-Muslim countries will be restricted by many factors. The laws of land will not be Islamic laws. Sometime secular common law or western laws will be applied in those countries. Many aspects of Islamic law and laws of land will be conflicting each other. For instance, Quran says alcohol is haram and yet, it is legal in other religions. The Islamic law permits the slaughtering of cow for meat and many states in India consider the slaughtering of cows is illegal. There are many aspects of Islamic law that clash with western secular laws, how does the Muslim community reconcile in these situations? To resolve this conflict, we should find alternative legal mechanisms in line with the general philosophy of Islamic law. Unlike Muslim countries, the application of Islamic law in non-Muslim countries encounters many challenges. Legal experts in Islamic law must select most appropriate and viable legal rules from the corpus of Islamic law. For instance, in Sri Lanka Muslims are a minority community and they live under jurisdiction of non-Muslims. Yet, Sri Lankan government has made some special provisions for the Sri Lankan Muslim community to apply some elements of Islamic personal law among Sri Lankan Muslim community.

Now Sri Lankan government wants to make some amendments in Muslim Marriage and divorce of Act of 1951. This amendment is needed to protect the rights of widows and Muslim girls in Sri Lanka and government has requested some Muslim legal experts to make some amendments and yet, the Muslim community has not yet come to term with in making amendment to MMDA. For the last few years, Sri Lanka Muslim community has been debating this issue of Muslim marriage and divorce act. The focus of debate has been around some issues in Muslim marriage and divorce act namely the marriage age of Muslim girls, the polygamy, marriage and divorce rights, the appointment of Islamic female judges, and the registration of marriage. Some Muslim clerics are reluctant to make some changes in these areas of personal law fearing the any changes in Muslim personal law might dilute the originality and authenticity of Islamic law. They may have sincere intention in their claim and yet, they do not realise the general philosophy of Islamic law and the legal device of public interest in Islamic law provide appropriate legal mechanisms to make amendment in Islamic law without diluting the essential religious values of the corpus of Islamic law. It is not my aim here to discuss all those debates in detail and yet, it is very much clear this this debate takes place between two schools of thought. One is literal school of Islamic law and other one is rational school of Islamic law (Maqasid school of Islamic law). First school of thought wants to adhere to apparent and literal meaning of some legal texts without taking into consideration the rationale, wisdom, and context. yet, second group wants to make some amendments in personal law to meet the changing needs of the Muslim community in Sri Lanka.

Islamic law is rich with varieties of legal opinions in many issues. Many elements of personal law are subjected to different opinions. Hence, the legal experts and Islamic jurists have the leverage and freedom to choose most viable and suitable opinions to our Sri Lankan context from rich legal heritage. So, it is the duty and responsibility of Islamic scholars to choose most suitable opinions in line with the general philosophy of Islamic law. Sometimes, we do not find textual evidence or historical legal precedents for some new social issues. 6666 verses of the Holy Qura'n and limited numbers of prophetic traditions do not have readymade solutions for the unprecedented problems of the humanity and yet, the primary sources of Islam law provide some universal ethical and moral principles to deal with any issues. So, to apply Islamic law into modern context we should have a thorough knowledge of text, context and knowledge of maqasid: the rationale and wisdom and reason behind Islamic law: When the rationale or cause of law changes, amendment must be made in law to accommodate the social realities. Yet, this should be done in line with the general philosophy of Islamic law. In Sri Lankan context, we must prove that Islamic law is just, sympathetic and compassionate sets of law that promote not merely the welfare of the Muslim community rather the welfare and interest of humanity. So, this is a historic opportunity for the Muslim community of Sri Lanka exhibit the clemency and mercy of Islamic law in application. This can be done only through displaying the flexible nature of Islamic law incorporating the equitable justice of Islamic law to all sections of Sri Lankan community in protecting the rights of weak and vulnerable of Muslim girls. While the application of personal laws or some aspects of Islamic theology are not a problematic issue for the Muslim minorities in Non-Muslim countries the application of some aspects of Muslim law is problematic. This difference in the origin of law leads to the superiority of *Shariah* over man made laws since the latter carries all its makers' weakness and faults unlike the perfect law of God. (Auda:1-14). In short, a profound knowledge of the general philosophy of Islamic law helps us to apply Islamic law intelligently considering the rationale, wisdom and context.

3) Maqāsid and human right.

The general philosophy of Islamic law is instituted basically to protect basic human rights of the humanity. Not merely human rights of the Muslim community alone but human rights of entire humanity. It can be argued that not only mere human rights rather animal rights

and ecological rights of this universe are protected by Islamic law. Protecting human environment from every harmful act and behaviour is the primary objective of Islamic law. Protecting earth from pollution, global warming, climate change disasters and man-made environmental disasters are part and parcel of Islamic legal philosophy. It aims at protecting this earth from any physical destruction. Islam teaches us that the natural resources of the world is entrusted to man to benefit not to misuse them at all. Therefore, man must use the natural resources of this universe with maximum care with sense of responsibility and accountability. So, the Muslim world must support Green peace activities that aim at protecting the ecology and environment of the world. Today, western countries have created so many legislations and regulations to protect and promote human rights in western countries. No doubt human rights are protected in many parts of the western world. People enjoy their basic human rights in every sense. Historically speaking, it can be said that this campaign for human right protection began in the western world 800 years ago with the protest of barons against King John who treated them unfairly. Today, academics, human rights lawyers, and politicians refer to this historical monumental piece of legal document as a primary source material for western concepts of human rights and liberty. The western concept of human right, freedom and liberty are enshrined in the historical document called Magna Carta. What does Magna Carta mean? It means "Greater Charter" originally written in Latin language and had been translated into French and English. Latin was the language of royals during medieval England. King John who ruled England between 1199-1216 agreed to come to terms with barons who were fighting with him for their basic human right and reduction of taxes. Many historical and political factors contributed for the creation of Magna Carta. It was King John who created Magna Carta to overcome his political crisis. Magna Carta included 63 clauses to resolve his dispute with barons. The main contents of Magna Carta include many legal terms and conditions and yet, most important of them are:

1) Everyone including king is subjected to rule of law so that to keep the sovereign under rule of law.
2) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceeded with force against him, or send others to do, except by the lawful judgement of his equals or by the law of the land. To no one will we sell, to on one deny or delay right or justice.

Most clauses in the charter were designed to protect the right of free men of medieval England and yet, only a few percentages of people were free people in medieval England. Most people were unfree peasants and they were forced to seek justice only through their lords in their court. Thus, the freedom struggle began in western countries from this point in history. yet, Islamic law provided all these rights 1400 years ago with divine revelation. but Muslim political leaders and community have failed to apply the Islamic concepts of the human rights, freedom and liberty in practice for the most parts of Islamic history in the last 1400 years. Very often the religion of Islam is judged by the actions and behaviours of the Muslim community. The difference between Islamic notion of human rights and Magna Carta is that the principles of Magna were practiced and implemented. Yet, many aspects of Islamic human rights remained in the manual of text books without any practical application in the last 1400 years. It has been claimed that many clauses of Magna Carta have been repealed in modern times and yet, Magna carta remains a cornerstone of British constitution and legal system.

It could be argued that the starting point of European struggle for freedom, democracy, liberty, equal rights, human right begun from this point in British legal history. Yet, it has been claimed that first version of Magna Carta was a failure. It was revived in 1216, 1217 and 1225. It has been argued that modern human right convention of Europe and US have been greatly influenced by the core theme and connotation of Magna Carta. It is claimed that

the American Bill of Rights (1791), the Universal declaration of human rights (1948) have been influenced by the core theme of Magna Carta. Today, human rights acts of many European countries have superseded all core themes of Magna Carta which was designed for the needs and demands of medieval social contexts of England. It can be convincingly said that modern concepts of human right campaign begun in many western countries only after world war II. The second world war brought many socio-economic changes in many parts of western world. People in western countries begun to fight for their rights soon after ww11. Unemployment and poverty soon after WW2, brought many changes in many parts of Europe and poor and vulnerable people were protected with many new many social welfare legislations in European countries. With educational and political renaissance and awakening, people in western countries begun to demand their due rights in all walks of life. Parliaments in western countries too proposed many legislations to promote and protect human rights. Yet, it could be argued that the origin and history of human right and liberty campaign are gradually developed. The students of history know well that people in Europe begun to free themselves from grips of Kings only in recent time. yet, Islam gave all this 1400 years ago.The Muslim communities have all this in their religious texts but not in their practical life. However, they failed to develop some inventive legal mechanisms to apply Islamic legal theories and principles in this modern time. The general philosophy of Islamic law was created by classical Islamic scholars to meet the demands of social changes and yet, the application of the ideals of the general philosophy of Islamic law in the Muslim communities today is a big challenge.

The socio-political conditions of the Muslim world are not favourable for legal experts and academics to make any meaningful changes in Islamic law. It can be argued that the Muslim world needs some social revolutions like that of Magna Carta to make any meaningful changes in Islamic law. A cursory examination of both UN's Universal Declaration of Human Rights and Universal Islamic Declaration of Human Rights prepared by Islamic Council. U.K reveals that both charts have identical human values. It looks that many elements of UN's Universal Declaration of Human Rights share Islamic values such as protecting human dignity, universal brotherhood of human race, freedom, right to life, education, employment, unconditional justice, and so many other elements of this charts are identical with Islamic notion of human rights. On the other hand, Universal Islamic Declaration of Human Rights prepared by Islamic Council. U.K reveals that many elements of its human rights are taken from the primary sources of Islam and UN's Universal Declaration of Human Rights.

It is a historical fact that human rights are protected in western countries after long struggles. People made many sacrifices to protect human rights in western countries. There is no doubt that westerners enjoy more democratic rights than any other communities in the world today. It seems that the slogans of human and democratic rights serve the interest of western people than any other communities in the world today. It appears that human rights are created to protect the rights of some rich nations in the world. Indeed, there are so many international organizations to protect human rights. UN, Europe Union, ICC and many other international organizations are established to protect universal human rights of people across the globe and yet today, it seems that these organizations serve to protect interest of some developed nations. People in third world countries are still suffer from human right abuse and violation. Today, we have more commissions to protect human rights and yet, more human rights are violated today than any time in human history. Raymond Wacks (2017) put some of these violation in this way "Around the world, some 795 million people are estimated to be undernourished. Indefensibly, today more than ninety million children under the age of five are underfed and underweight. The world Health Organization reports that in 2015, 5.9 million children died before reaching their fifth birthday. That is -astonishingly-16.000 death every day……. It is astonishing that in the twenty-first century slavery still exists, but it is widespread, intractable

concern. It is estimated by the third slavery index that there may as many as forty-million slaves in the world today. Modern slavery is a major industry, generating up to $35 billion per year. It has been suggested that India has some 18 million slaves, China 3.4 million and Pakistan more than 2 million. In North Korea and Uzbekistan more than four percent of the population is enslaved. A dramatic example of inequality is the caste system in India, which entrenches sharp divisions between members of different communities. For some groups, discrimination is practised in respect of numerous aspects of life. The so-called 'untouchable' (the self-chosen term is Dalit) are restricted to menial positions and employment,even though such discrimination is outlawed by the Indian constitution". (Raymond Wacks, 2017, pp.181-182)

Islam has already stipulated all kinds of human rights through its divine laws and moral teachings long before UN declared its human right charts. Yet, many Muslim countries failed to apply those human rights in life. Islam speaks about unconditional justice in many places in the Qur'an and Hadith and yet, what we see in the Muslim world is not justice but unfairness and injustice. Islam speaks about equality in many places and yet, what we see in the Muslim world today is racial discrimination and prejudice. Islam speaks about universal brotherhood of humanity and yet, what we see today is Arabs discriminate non-Arabs. Islam speaks about accountability and responsibility in many places and yet, what we see today in the Muslim world is irresponsible behaviours of Muslim political leaders and Muslim communities. Islam speaks about freedom in many places and yet, what we see today in the Muslim world is people's voices are suppressed and people are enslaved in many Muslim countries. In short, religion of Islam is rich in human rights and human values and yet, Muslim communities do not represent Islamic human right values as prescribed in the primary sources of Islam. Yet, many western countries represent Islamic moral and ethical values in public life if not in private life. Therefore, there is nothing wrong in Islamic teaching and yet, it is Muslim communities and Muslim political leaders do not represent Islamic moral values in their practical life. Because of this, Islam has been blamed or wrongly represented.

Long before the introduction of Magna Carta and women's rights movements in Europe, Islam prescribed many elements of human rights and yet, we do not see the practical application of Islamic human rights in many Muslim countries. In contrast to this, we notice many aspects of Islamic human rights are implemented in western countries. In that sense, many non-Muslim countries are more Islamic than many Muslim countries. Today, most human rights are violated in Muslim countries. It is Muslim political culture should be blamed for all these human right violations in many Muslim countries. How many innocent Muslims have been tortured, punished and killed in Muslim countries by Muslim politicians in many parts of the Muslim world? Against all Islamic teachings and human norms, the human rights of the Muslims are violated in many Muslim countries. All those Islamic human right concepts are ignored in Muslim countries today and Muslim communities have reduced teachings of Islam in some dogmas and rituals. Because of this, the beauty of Islam, its moral and ethical values are concealed from humanity.

4) maqāsid and western social values.

It has been argued by both classical and modern Islamic legal scholars that the principles of Islamic legal philosophy (Maqasid al-Shariah) are contrived and constituted to promote and promote public interest and public welfare. This has been the core theme of Islamic legal philosophy and almost all classical Islamic legal scholars spoke about this topic in many of their legal treatises. Indeed, the Quran and Prophetic traditions have vividly elucidated and expounded this fact in many places and yet, this very public welfare and public interest is rarely applied and implemented in many parts of Muslim world, Nevertheless, policy

makers, executives, public administrators, civil servants, professionals and politicians in western world have devised some innovative mechanisms and systems to promote and protect public interest and public welfare in their all governmental and private departments. Each public department in western countries have some legal frame works, protocols and working strategies that aim at protecting and promoting public interests. From PM to civil servants in western countries, all aim at promoting and protecting public interests in their official duties and commitments. Above all, public too in western countries put the welfare of their nations above personal interests. Quranic and Prophetic teachings of public welfare and public interest in Muslim countries are almost departed. Most of Muslim rulers and policy makers in Muslim countries do not put public welfare or public interest in their policies and planning rather Muslim political leaderships have their self- interest and political ambition at the expense of public welfare.

It can be convincingly argued that the central theme of Islamic legal philosophy i.e. the notion of public interest, has been meticulously implemented in western countries than Muslim countries. Islamic legal materials and books talks about this notion in volumes and theoretically Islamic legal documents and manuals speak about this concept and yet, in practice we notice that western countries are applying this Islamic legal concept daily in their policies and legislation. The primary objective of this part of our study is to compare how Muslim world and Western countries apply and implement this basic Islamic notion of public welfare in their government and public sectors. For instance, in the United Kingdom, NHS, police service, Home Office, Education Department, Work and Pension department, Civil services department, and all other departments and public service work to secure public welfare and public interest. Do Muslim countries have such excellent working culture to put customers first in their public service departments?

It can be said Muslim countries are lagging very much far from all western countries in terms of social welfare service in all aspects in private and public sectors. Poor and weak are totally marginalised in many Muslim countries. This is despite of fact the Qur'anic and Prophetic teaching demand from Muslim political leadership and policy makers to make sure that rights of poor and weak are protected. Of course, the idea of "social welfare" differs from culture to culture and religion to religion. The western concept of social welfare is somewhat different from Islamic concept of social welfare in many ways and yet, there are so many similarities between two system of social welfare concepts. In Muslim countries, we rarely see any practical manifestation of meaningful social welfare system. Of course, there are many charitable organizations and welfare associations that do a lot of welfare projects and charitable works beyond government control and beyond government involvement and yet, those are not developed and devised in any systematic way as we see welfare systems in western countries. In western world, the concept of welfare is sometime identified with the notion of "social service". (Paul Spicker (2011) gives three kinds of meanings and definitions to the concepts of "welfare".

a) The term "welfare" means "Relief" a welfare recipient gets some monetary allowance to meet his basic needs.
b) It means overall well-being of individuals and societies in economic sense.
c) It refers to a "pattern of organised activities" equivalent to the social services.

All activities and projects that promote the well-being of individuals and community and meet socially recognised basic needs of people are considered as an integral part of social welfare system. Social services such as health, housing, education, social security and social work are part and parcel of these social welfare system. It is used to refer both to people's well-being, and to systems which are designed to provide for people. (Paul Spicker (2000) p 66.) "At the level of the person, well-being depends on a wide range of factors, both negative and positive. The negative factors are things which should not be done to people - such as murder,

arbitrary confinement, pollution of the person's environment, and so forth. The positive factors are things which should be present for people to experience wellbeing. At the most basic level, they include the physical necessities of life, like water, food and air, and the goods and materials necessary to ordinary life, like clothing and fuel. But they also include many social factors, including interaction with other people, affection, security and personal development. The negative factors are commonly discussed in the language of rights. The positive factors are needs, in the sense that they are necessary for people; people cannot live well if their needs are not met. The effect of a failure to meet any one of these needs - for example, for water, shelter, security or affiliation - is that this factor, or the lack of it, comes to dominate the person's life. Needs are necessary to well-being; without them, well-being is vitiated." These ideas are of modern social scientists are nothing but Islamic ideas of welfare projects that classical Islamic legal theorists formulated and propagated. Very basic doctrines of legal philosophy of Islamic law are constructed to meet these basic human needs and demands. It has been argued by both classical and modern Islamic legal scholars that the principles of Islamic legal philosophy (*maqāsid*.) are constituted to promote public interest and public welfare.

This has been the core theme of Islamic legal philosophy and almost all classical Islamic legal scholars spoke about this topic in many of their legal treatises. Indeed, the Quran and Prophetic traditions have vividly expounded this fact in many places and yet, this very public welfare and public interest is rarely applied and implemented in many parts of Muslim world, Nevertheless, policy makers, executives, public administrators, civil servants, professionals and politicians in western world have devised some innovative mechanisms and systems to promote and protect public interest and public welfare in their all governmental and private departments. Each public department in western countries have some legal frame works, protocols and working strategies that aim at protecting and promoting public interests. From PM to civil servants in western countries, all aim at promoting and protecting public interests in their official duties and commitments. Above all, public too in western countries put the welfare of their nations above personal interests. Quranic and Prophetic teachings of public welfare and public interest in Muslim countries are almost departed.

Most Muslim rulers and policy makers in Muslim countries do not put public welfare or public interest in their policies and planning rather Muslim political leaderships have their self- interest and political ambition at the expense of public welfare. It can be convincingly argued that the central theme of Islamic legal philosophy i.e. the notion of public interest, has been meticulously implemented in western countries than Muslim countries. Islamic legal materials and books talks about this notion in volumes and theoretically Islamic legal documents and manuals speak about this concept and yet, in practice we notice that western countries are applying this Islamic legal concept daily in their policies and legislation. The primary objective of this part of our study is to compare how Muslim world and Western countries apply and implement this basic Islamic notion of public welfare in their government and public sectors. For instance, in the United Kingdom, NHS, police service, Home office, Education Department, Work and Pension department, Civil services department, and all other departments and public service work to secure public welfare and public interest. Do Muslim countries have such excellent working culture to put customers first in their public service departments. With gradual process of human right campaigns and economic liberalization, western governments managed to introduce some social welfare system to meet the needs of low-income earners and poor in western countries. The introduction of housing benefits, income support, job seekers allowance, disability allowance, state pension schemes, tax credits, (working tax credits and child tax credits), child benefit, disability living allowance, incapacity benefits, pension credit, attendance allowance, maternity and paternity pay, carer's allowance, winter fuel payments, War pension, and Universal credit and many more financial support

schemes illustrate how Western countries apply the principles of public welfare and promote and protect public interest efficiently and professionally with maximum care and collective responsibility.(Office for Budget responsibility (2015)p.132).

Theoretically speaking Islamic teaching has got more welfare guidelines than any secular government of modern world has got and yet, Muslim world utterly failed to contrive any meaningful welfare system in Muslim world. The collection of Zakath, charity funds, and many forms of Islamic charities should be collected and distributed systematically with support of Muslim governments and yet, they have utterly failed to devise any concrete system. Today, Muslim countries are rich, and they have enough funds to allocate for welfare projects and yet, they have not devised any good system for social welfare system in any of Muslim countries as we have seen in western countries today. Economists and policy makers in Muslim countries have failed to devolve some solid system to promote social welfare system in Muslim countries. This is due to lack of organizational skills and strategic policy failure of Muslim educationalists and politicians in Muslim countries. Theoretically, general philosophy of Islamic law aims at promoting social welfare system in Muslim world, but Muslim world have failed to produce policy makers who could execute Islamic values in social welfare system. Of course, many Muslim countries are poor, and they do not have fund to devise any good social welfare system and yet, Muslims are most charitable people, however, Muslim charitable works are not regulated for the benefits of public.

This is despite of the fact that hundreds of Qur'an verses and prophetic traditions encourage to charitable works and fulfil needs of desperate in humanity. Likewise, NHS promotes and protects public health of people in this country with maximum care and responsibilities. One of main priorities of NHS is to safeguard the health and safety of public. This means protecting and enhancing public welfare and public interest. NHS functions with some excellent protocols and working ethics. Its Health and safety measures, its staff training strategies, its high quality of customer service and its professionalism all are designed to promote public interest. NHS defines its mission and objectives as following. "The NHS was created out of the ideal that good healthcare should be available to all, regardless of wealth…. it was based on three core principles:

- that it meets the needs of everyone
- that it be free at the point of delivery
- that it be based on clinical need, not ability to pay

These three principals have guided the development of the NHS over more than 60 years and remain at its core service. In March 2011, the Department of Health published the NHS constitution. It sets out the guiding principles of the NHS and your rights as an NHS patients". (Source. NHS. UK). NHS constitution defines the rights of patients, rights of its staff and their responsibilities. It also defines government's responsibilities to public health. Ethics and ethos of NHS and its customer care charts all are compatible with Islamic social values that are enshrined in Islamic legal philosophy. General philosophy of Islamic law aims at protecting and promoting public health care and yet, Muslim countries have failed to evolve best health care system as Islamic teachings demands from them. Today, western world has pioneered best health care system and its ethos and social values are almost identical and tantamount Islamic social values except in legal issues. Islamic Law prohibits abortion, Euthanasia, and some other health care practices and yet, overall, Health care values of western world are identical Islamic teaching on health care service. Similarly, Department of education, defence, finance, Home office and all other UK governmental department aim at promoting and protecting public interest and public welfare. Public interest is main priority of government planning and policy making. Modern western governments are some sort of public enterprise. Public are consulted in many decision-making processes that affects public interest and welfare. Classical Islamic scholars such as Imam al-Juwaini, Imam al-Ghazali, Imam al-Shatibi and others designed the

theories of legal philosophy of Islamic law to protect and promote public interest and yet, these Islamic theories are rightly put into practice not by Muslim countries rather by western countries. Classical theories of general philosophy of Islamic law dictates that promoting and protecting public health, education, economy, human welfare and its spirituality is an integral part of Islamic teaching and yet, who shines in these issues and human welfare and development. It is not Muslim world that shines in promotion and protection of public interest and welfare rather most of the western countries are shining in promoting the ideals and principles of the general philosophy promoted by Islamic law.

Moreover, there is a huge difference between the attitudes, manners and mind sets of people in Muslim countries and western countries. In a recent study, a Saudi academic describes the difference between people of the Gulf countries and Sweden. Describing how people in the Gulf countries behave against the basic ethical and moral values of Islamic teaching he argues that despite the fact, there are so many mosques, Islamic centres, Islamic institutions, Islamic classes, Islamic talks, Islamic spiritual classes, talks on the merits of the Qura'n, Hadith, Islamic theology, and so many religious guidance, peoples' behaviours, manners and attitudes are so bad in many Gulf countries than many western countries. All these religious talks, lecturers, religious sermons and mosques are not available for the people of Sweden for instance. People of Sweden are not bombarded with religious talks, sermons and religious advice and yet, Sweden is one of the leading countries for transparency, human right protection and humanism. He argues that when the Prophet sent his Companions to Abyssinia there was no Qura'n to recite and yet, there was a just king to protect them from any injustice. So, he argues that justice, equality and humanism is one of the fundamental principles of Islam. Yet, today, people's behaviours, manners and attitudes in many Gulf countries do not reflect Islamic notion of justice, human equality, compassion and humanism. Yet, he claims that many Islamic moral values and ethical principles are reflected in the behaviours and manners of people in Sweden and many European countries.

In Sweden, he argues people are not discriminated based on colour, race or ethnicity rather all are treated equally based on the same human origin and humanism. Yet, in the Gulf countries, people are discriminated based on their colour, ethnicity, nationality and which countries they come from. In Sweden, immigrants get residency after living four years and yet, in the gulf countries immigrants never get residency even if they live decades. In Sweden, immigrants get Swedish nationality if they marry Swedish girls and yet, in the gulf countries immigrants must wait for six years to get marriage documents if they are married to the Gulf nationals. His contention is people in Sweden or for that in many European countries live by Islam and yet, Muslims in many gulf countries do not live by Islamic teaching, rather they live with non- Islamic practices, although they claim that they are Muslims. For instance, many people in the gulf countries treat migrant workers from third world countries very badly and sometime exploit them and treat them inhumanly. They force them to work 24 hours for seven days a week and yet, in Sweden, immigrants are treated equally with equal pay and human respect. In short, Abdullah al-Duwais agree with Hossien Askari in saying that many western countries more "Islamic" in application of some fundamental moral and ethical values of Islam than many so-called Muslim countries. Therefore, it can be concluded that many western values are identical to Islamic values and people in the west countries practice more Islamic moral and ethical values than Muslims in their countries. What does this disparity between Islamic faiths and actions among Muslim community tell us? Muslim communities believe in some theological dogmas such as the faith in the next life, rewards and punishments on the day of Judgment, yet, the influence of this faith does not reflect in their daily life. yet, many people in Europe do not believe in any religion and yet, they behave well, and they treat people with humanism and good manners. Many atheists and humanists question the role of religion in nurturing human behaviours and manners. They contend to develop good manners and good

attitude among human beings, childhood education and trainings are more important rather than religions.

Moreover, bad behaviours, and manners of Muslim communities specially, Muslim political leaders send bad impression and negative picture about Islamic teaching. Today, 6 billion non-Muslims observe and monitor the behaviours and attitudes of the Muslim communities and Muslim political leaders through different social media networks. 99% of them do not read Islamic literatures and religious texts to know about Islam. They do not read the Holy Qur'an or Hadith literature to know about Islam, but they interact with Muslim communities and see how Muslim communities behave. They learn about the manners, behaviours and attitudes of Muslim community through their interaction with Muslim communities all over the world. If Muslim communities and specially, political leaders fail to characterise Islamic ethics and moral in their life, it would give a bad impression about religion of Islam. If all these religious talks, sermons, commandments and orders do not make any change in the attitudes, manners and behaviours of the Muslim communities and the political leaders, many non-Muslims could logically conclude that something is wrong with their religion or religious books, or religious teachings. They could argue that something is wrong with the Qura'n and Hadith. Moreover, they will hesitate to read about Islam and keep away from Islamic teaching. Today, Muslim communities and Muslim leaders do not represent Islamic teaching in many countries as result of this failure, Non-Muslim communities cannot see the beauty and social values of Islamic teaching in practical applications.

5) Maqāsid and human development

What is the connection between the general philosophy of Islamic law and the human resource development? Many studies have been done comparing the basic themes of the general philosophy of Islamic law with that of the modern concept of human resource development. There is an intriguing connection between the general philosophy of Islamic law and the human resource development. The general philosophy of Islamic law is designed to protect the five universal principles of Islamic law. It is revealed to secure the welfare and wellbeing of the entire humanity. It is designed to protect the physical, mental, spiritual, intellectual, financial wellbeing of individuals and communities. The human resource development report was initially compiled by Pakistani economist Mahbud ul-Haq in 1990. Human development has been defined by different economists. It is different from economic development and economic growth. Human development is a holistic approach for the wellbeing of individuals and nations. It takes welfare and wellbeing of people at the centre of policy making. The central theme of human development concept is people should be the centre of all development. It means all developmental initiatives should be around the welfare of people and their interest. It is all about enlarging and expanding people's choice and people's capabilities in life. "it went far beyond narrowly defined economic development to cover the full flourishing of all human choices. It emphasized the need to put people-their needs, their aspirations and their capabilities-at the centre of the development effort. And the need to assert the unacceptability of any biases or discrimination, whether by class, gender, race, nationality, religion, community or generation. …. Human development is the process of enlarging people's choices-not just choice among different detergents, television channels or car models but the choices that are created by expanding human capabilities and functioning-what people do and can do in their lives. At all levels of development a few capabilities are essential for human development, without which many choices in life would not be available. These capabilities are to lead long and healthy lives, to be knowledgeable and to have access to the resources needed for a decent standard of living- and these are reflected in the human development index. But many additional choices are valued by people. These include political, social, economic and cultural freedom, a sense of community, opportunities for being creative and productive, and self-respect and human rights. Yet, human development is more than just

achieving these capabilities; it is also the process of pursuing them in a way that is equitable, participatory, productive and sustainable" (Human Development Report 1999.p28).

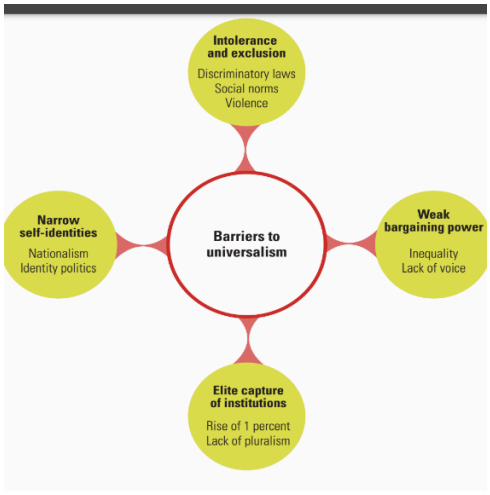
HDR 2016 defines a comprehensive approach to human development as "Human development is a process of enlarging people's choices. But human development is also the objective, so it is both a process and an outcome. Human development implies that people must influence the process that shape their lives. In all this, economic growth is an important means to human development, but not the end. Human development is the development of people through building human capabilities. By the people through active participation in the processes that shape their lives and for the people by improving their lives. It is broader than other approaches, such as the human resource approach, the basic needs approach, and human welfare approach" (HDR. 2016. P 2). The human development approaches aim at developing human capabilities and skills. Moreover, human development aims at creating equal opportunities for all people without any discrimination. HDR 1990 notes that "The real wealth of a nation is its people. And the purpose of development is to create an enabling environment for people to enjoy long, healthy and creative life. This simple but powerful truth is too often forgotten in the pursuit of material and financial wealth". (HDR 1999. P5). How do we measure Human Development? HDR 2016 gives us the following measurement method. "The composite Human Development Index (HDI) integrate three basic dimensions of human development. Life expectancy at birth reflects the ability to lead a long and healthy life. Mean years of schooling and expected years of schooling reflect the abilities to acquire knowledge. And gross national income per capita reflects the ability to achieve a decent standard of living. The Human Development index is a composite statistic to gauge life expectancy, education, and per capita income indicators of countries. These composite indicators are used to rank countries into four tiers of human development. To rank with higher level of human development index a country must score higher ranking in all composite of human development indicators. health, education, gender equality, per capital income. The health dimension is gauged with life expectancy at birth. The education dimension is gauged by means of years of learning for both children and adults. The living standard is measured by national per capita income.

The Human development is measured by combination of all these indices. The human development of countries is ranked according to higher level of score they have achieved in all these indices. Norway is ranking number in the human development index according to 2016 and 2017 human development reports. In fact, the vision of human development is idealistic. It is ambitious vision. It is created with some inclusive ethical and moral values to protect and promote human interest universally for the entire humanity. HDR 2016 notes "Human development is all about human freedoms, freedom to realize the full potential of every human life, not just of a few, nor of most, but of all lives in every corner of the world-now and in the future. Such universalism gives the human development approach its uniqueness" (UDR 2016. P5). Nevertheless, it could be argued that the economic and financial policies of many western countries work against this principle of universalism of human development. Many poor countries are struggling to pay back loans and interest that they have borrowed from rich nations. The high interest rate and taxes imposed on poor countries make these countries poorer in every aspects of human development. Moreover, wrong foreign policies of some developed nations make this world vulnerable for conflicts. UN is supposed to act as a guardian of human development in very corner of the world and yet, it is under influence of some developed nations. Many UN resolutions are manipulated in support of some developed nations to meet their geopolitical interest. Today, in the name of war on terror and protecting the national interest of some developed countries, some western nations have violated the human rights of millions of people in many Muslim countries. There is no doubt that many developed countries

are acting against the universal principle of human development. The capitalistic economic policies always exploit poor and vulnerable nations. The limitless human greed of some developed nations urges them to act in this way. The HDR 2016 "raises two fundamental questions. Who has been left out in progress in human development and how and why did that happen. It emphasizes that poor, marginalized, and vulnerable groups-including ethnic minorities, indigenous peoples, refuges and migrants are left being left further behind. The barriers to universalism include, among others, deprivations, social norms and values, and prejudice and intolerance. The Report also clearly identifies the mutually reinforcing gender barriers that deny many women the opportunities and empowerment necessary to realize the full potential of their lives" (HDR 2016 p.5). In addition to these barriers for the universal concept of human development, the geopolitical interest, capitalistic economic policies, human greed, wrong foreign policies and wrong political leadership all these are barriers for human development in many countries in the third world. The economic, political, financial, and foreign policies are designed to protect the national interest of some selected developed nations. It is argued that some measures are required to protect the universalism of human development. This includes protection of "human right, human security, voice, and autonomy, collective capabilities, and the interdependence of choices are key for the human development of those currently left out. All these are needed to ensure human development is for everyone. The basic message of HDR 2016 is

- Universalism is key to human development, and human development for everyone is attainable.
- Various groups of people still suffer from basic deprivations of and face substantial barriers to overcoming them.
- Human development for everyone calls for refocusing some analytical issues and assessment perspectives.
- Policy options exist and, if implemented, would contribute to achieving human development for everyone.
- A reformed global governance, with fairer multilateralism would help attain human development for everyone**. (Source: HDR 2016. P15).**

These ideals of universalism are very much identical with Islamic concept of universal brotherhood of humanity. The general philosophy of Islamic law aims at protecting the welfare of humanity at large, The general philosophy of Islamic law takes into consideration the broader human interest. The general philosophy of Islamic law is an inclusive concept that aim at protecting human dignity of all human beings beyond cultural, religious and ethnic limits and limitations. The general philosophy of Islamic law guarantees the religious freedom, and it also protect the rights of non-Muslim communities who live within the Muslim community in the Muslim countries. In that sense, the Islamic concept of human development includes welfare and interest of all humanity. The Human development report 2016 identifies some of barriers to universalism of human development. Why cannot the global community apply the concept of the human development to the entire human family? What are the barriers for the application of the human development equally to all humanity? According to HDR 2016 the following are some of the barriers that hinders the application of the human development universally.



(Source: HDR 2016).

I would argue there is no scarcity of natural and human resources in the world, but most of the natural resources of world are accumulated in the hand of a few developed nations. The rich and powerful countries control natural and human resource of the world. As result of this, the poor nations are suffering. Ideally, caring for those who are left out of human development programs is an excellent idea. Poor, weak, disable, handicap, wick and woman all need support to develop their human potentials. Yet, today, billions of poor people are marginalised in many third world countries. For instance, in India alone millions of minorities are marginalised in education, employment and equal human rights. So, millions of internally displaced people and refugees are marginalised by their own government and international communities. Modern day slavery and people trafficking are widespread in the modern world. The central theme of Islamic social welfare is all about looking after these weak people in the society. Of course, many western countries have principles of inclusion and equal opportunities in their policy in employment, education and service sectors. Yet, when it comes to foreign policies, many western countries give preference to their national interest over universalism of human brotherhood. (Source: HDR 2016). Mahbud ul-Haq may not have known the ideals of the general philosophy of Islamic law and yet, these modern ideas of human development are nothing but what the general philosophy of Islamic law aims at promoting. The welfare of human being is the central theme of the human development program. The general philosophy of Islamic law too aims at promoting and protecting the welfare of human being. The notion of wellbeing in Islam has wider and deeper implication and meaning. It includes, the spiritual, mental, physical and material wellbeing of human beings. So, the measurement of human development in Islam should include all these elements. The economic growth is one dimension of human development in Islam. The true success of human soul is not merely measured with man's material success and salvation in this world rather his eternal salvation is measured with his success in his next life. So, the Islamic index of human development includes the spiritual development as one of indicators of human development.

Some Muslim economists and academics contend the HDI created by UNDP is not enough to gauge the human development of Muslim countries. They find some shortcomings in HDI. They argue HDI is created to measure the material development and economic development of the countries and it does not include the concepts of social justice and spiritual and religious wellbeing of people. They argue that HDI is not a holistic approach to gauge human development. Omer Chapra and MB Hendrie Anto have written extensively highlighting the limits and shortcomings of the western concepts of human development. "The existing Human Development Index (HDI) published by UNDP might be the most comprehensive

indicator but it is not fully compatible and sufficient for measuring human development in Islamic perspective. The underlying theory and concept to develop HDI is not based on *MAQĀSID AL-SHARIʿAH.* Measuring human development level of Muslim countries would be more appropriate by using a specific Islamic Human development Index (IHDI)". "MB Hendrie Anto. P. 69). MB Hendrie Anto further argues that "The objective of economic development in Islamic perspective is to achieve a comprehensive and holistic welfare both in the world and the hereafter(al-akheerah). It is called (falāh)". He argues based on this perception of Islamic economic or human development, the conventional indicator of economic development or human development of UNHR is insufficient to measure the level of economic and human development in the Muslim countries. His Islamic Human Development Index includes both material and spiritual development of the Muslim communities. Ideally, IHDI looks as a promising measurement tool to gauge the human development of the Muslim countries yet, practically, many empirical researches indicate that the Muslim world is falling behind many countries in human development. I do not have any problems in developing the human development indices based on *MAQĀSID AL-SHARIʿAH,* but as of today, the Muslim world is not practically implementing the ideals and principles of the general philosophy of Islamic law in human and economic development areas. Of course, recently the religiosity of the Muslim community has dramatically increased in many parts of the Muslim world. We notice that many Islamic groups and movement work with devotion to enhance the spiritual and religious awareness of the Muslim community.

MB. H. Anto the religiosity index should be one of indices to measure the human development indices of the Muslim world and yet, there are many questions about the quality of the Muslim religiosity and spirituality. He argues that religiosity index "should cover the fundamental practice of Islamic teaching, for instance, number or percentage of people performing hajj, performing al salath (in the mosque), paying zakh, infaq, adaqah, and waqf, doing saum, etc which are called (*ibadah mahdah).* In addition to these, religiosity index ideally should show the real behaviour of society concerning Islamic values and norm. The latest basically is *ibadah ghoiru mahdah*. In the absence of these data, however, we can take a certain indicator as proxy. While not being exactly the most appropriate measure, Corruption Perception Index (CPI) could serve as proxy as Islamic society must away from corruption, deception, and any kinds of abuse of powers." We see a dramatic increase in religious activities of the Muslim world today. More people go to hajj than ever before, more people pray now than ever before, more people fast today than ever before.

That is all fine and yet, most corrupt countries are Muslim countries comparatively with many countries. People are oppressed in many Muslim countries. People do not have democratic rights in many Muslim countries. There is no good justice system in many Muslim countries, there is no rule of law in many Muslim countries, there is no any good system to distribute wealth in many Muslim countries. There is no any good world class university in any Muslim countries. There is no good governance in any Muslim countries. There must be some inherent connection between growth of religious activities and development of ethical standard of life? yet, we do not see any change. What matters is the quality of religiosity not the quantity of people who follow religion today.

Hossein Askari and S Rahman George Washington University argue that Non-Muslim countries are more Islamic than Muslim countries in many social values and principles. Their contention is very simple. They contend that Islamic teachings are enshrined in the Holy Qura'n and teachings of the prophet. These teaching are better represented and applied in Non-Muslim western countries than many Muslim countries. They strongly believe that many Muslim countries failed to incorporate and integrate the social values of Islamic faith in many areas such as politics, business, law and society. Both these Muslim economists have created Islamicty index to measure and gauge the human development of the Muslim countries. They

argue that " if a country, society, or community displays characteristics such as unelected, corrupt, oppressive, and unjust rulers, inequality before the law, unequal opportunities for human development, absence of freedom of choice, (including that of religion) , opulence alongside poverty, force, and aggression as the instruments of conflict resolution as opposed to dialogue and reconciliation, and above all, the prevalence of justice of any kind, it is prima facies evidence that it is not an Islamic community"……to what extent do self-declared countries actually behave like Islamic countries i.e. following Islamic economic teachings as laid out in the Quran and practiced by the Prophet?" In other words, are these countries truly Islamic or are they Islamic in label only? "How Islamic are Islamic countries or what is their degree of "Islamicity?" We, therefore, attempt to discern if Islamic principles are conducive to (a) free markets and strong economic performance, (b) good government governance and rule of law, (c) societies with well-formed human and civil rights and equality, and (d) cordial relations and meaningful contributions to the global community, or are they, in fact, a deterrent. If non-Islamic countries, such as the United States, Germany, or Japan, have performed well under laws, regulations and practices that are in conformity with the Islamic framework, then logic would dictate that Islam is not a deterrent to good economic, political, legal, and social and development. (Scheherazade. S. Rahman & Hossein Askari, 2010. P13)

They examine the "impact of religion on economic, political, or social performance or the impact of economic, political, or social performance on religion can be examined, one must first ascertain the extent of adherence of a country to its professed religion" and have broaden the index with an expanded definition of Islamicity to more than just economic Islamicity.They investigate 208 countries. These countries have been grouped into various sub-categories as High, Upper-Middle, Lower-Middle, and Low-Income Countries, OECD Countries, Non-OECD Countries, Persian Gulf Countries, OIC Countries, and Non-OECD Non-OIC. The Islamicity Index, according to them, is made up of the following four indices with some different measurements.

Economic IslamicityIndex (EI).

"The E1 index attempts to rank the self-declared Islamic nations as to the degee that their policies, achievements and realities are in accordance with a set of Islamic economic principels. Essence of Islamic economic principles can be embodied into three fundamental goals. a) achievement of economic justice and achievement of sustained economic growth, b) broad-based prosperity and job creation and c adoption of Islamic economic and financial practices. Table 1 details these goals into their more specific objectives and the table II describes the various measurements, variables and proxies for the Economic Islamcity index.". Scheherazade. S. Rahman & Hossein Askari, 2010. P17)

(Source: Isalmcity)

Table 1: The economic Islamicity Index's 12 fundamental Islamic Economic principles.

1) Equal economic opportunities for all members of society & economic freedom
2) Economic equity.
3) Personal prosperity rights and sancity of contracts.
4) Job creation for all that can and want to work & equal availability of employment
5) Equal availability of education
6) Poverty prevention and reduction, basic need fulfilment of food, shelter clothing and the rest alms giving for charity.
7) Taxation to meet the unfulfilled needs of society & to address social issues generally
8) Appropriate management of natural and depletable resources to benefit all members of current and future generations.
9) Abolition of corrupt practices
10) Establishment of supportive financial system
11) Financial practices that includes of abolition of interest and
12) The effectiveness of the state in achieving the above (general economic prosperity

(Source: Islamicity index 2010)

Table II (Economic Islamicity index (E1)

Area		Subcategory
a	Economic opportunities and economic freedom	A) Gender equality indicaters B) Other non-discriminatroy indicators C) Labour market indicators D) Ease of doing business indicators E) Economic freedom indicators F) Business and market freedom indicator
b	Property rights and the sancticty of the contracts	A) Property and contract rights
c	Job creation and equal access to employment	A) Equal employment and job creation
d	Equal access to education	A) Education index indicator B) Education public expenditure indicator C) Education equality indicator D) Education effectiveness indicator
e	Poverty and basic human need	A) Poverty effectiveness indicator B) Provision of heath care indicator C) Alms charity indicator
f	Economic equality	N/A
g	Taxation and social welfare	A) Fiscal freedom indicator B) Tax level indicator C) Taxation level indicator D) Freedom from government indicator
i	Management of natural and depletable resources	A) Quality economic spending B) Saving indicator
j	Corruption	A) Transparency international indicator B) Freedom from corruption indicator
k	Supportive financial system	A) Investment freedom: financial freedom B) Banking service indicator C) Fianancail marker and Risk indicator
l	Islamic financial system (Financial practices that include the abolition of interest)	A) Absence of indicator
m	Overall sate effectiveness in achieving economic prosperity (General economic prosperity)	A) Micro economic indicator B) Economic development sources indicator C) Degree of globalization and trade indicator D) General prosperity indicator

(Source: Islamicity index 2010)

No wonder that many Islamic countries have utterly failed in economic index according to above mentioned four diagrams. Many Islamic countries are rich in natural and human resources. With discovery oil and gas, it is expected that many Muslim countries will do better in economic development. Yet, most of oil rich Arab countries rely on oil and gas for their revenues. They failed to convert oil and gas wealth into any productive economic development. They have become consumer societies rather than wealth producing nations. It is expected the demand for oil and gas will decrease dramatically with discovery of alternative for oil and gas. It is expected by 2030 the demand for oil and gas will go down dramatically and yet, oil producing Arab nations seem to have no any strategic plan to convert oil money into a long-term investment or economic projects. Moreover, what more pathetic is how oil and gas money has been managed and controlled by few elite families. According to Islamic teaching, oil and gas are public wealth. The revenues of public wealth should be managed and shared in accordance Islamic teaching. No group or family could claim monopoly over public wealth in Islam. Yet, in all gulf countries, oil and gas wealth has been monopolised by some families since it was discovered in late 1930s. As result of this, wealth is not being distributed equally in

many gulf countries. Islamic concept of wealth distribution is explained in this Islamcity document in this following way.

"The goals of Islam for the society are the welfare of all its members and socioeconomic justice. All members of an Islamic society must be given the same opportunities to advance; in other words, a level playing field, including access to the natural resources provided by Allah. For those for whom there is no work and for those that cannot work, society must afford the minimum required for a dignified life: shelter, food, healthcare and education. The rights of future generations must be preserved. Thus, Islam advocates an environment where behaviour is moulded to support the goals of an Islamic society: societal welfare and socioeconomic justice, with the goal of making humankind one, confirming the Unity of Allah's creation. It is with the Unity of Creation as the goal that the Quran advocates risk sharing as the foundation of finance to enhance trust" (Ibid, p18). Moreover, Islamic finance and economic policies articulate the public money and public wealth must be handled with due care. Isalm prohibits wasting public wealth and public money. yet, many gulf countries have been wasting their public wealth in accumulating weapons and arms that are not to be used for decades. It is reported that Saudi alone have big contract agreement with many western countries to buy arms and weapons for billions of dollars. In fact, Saudi has been accumulating weapons since 1970s. Most of these weapons they bought in 1970's, 1980's and 1990's would have been outdated by now with modern technological advancement in arm production industries. Moreover, many gulf countries do not protect the rights of the migrant workforces who work for them many years. They treat them differently. The Saudi nationals get more salaries and more rights than their migrant communities. Gulf governments do not meet many basic rights of workers. Migrant communities are denied many basic rights. All this are against Islamic teaching. Islamcity report finds that

"A truly Islamic economic system is a market based system, but with entrenched Islamic behaviour and goals (objectives/rules/institutions) attributed to consumers, producers and to government (authorities), and with institutions and scaffolding that very much resembles the modern view of development as developed by Amartya Sen. Based on the Islamic vision, we expect the Islamic solution (if authentically implemented) to differ in the following important ways from the conventional economic system: greater degree of justice in all aspects of economic management, higher moral standard, honesty and trust exhibited in the marketplace and in all economic transactions, poverty eradication, a more even distribution of wealth and income, no hoarding of wealth, less opulence in consumption, no exploitive speculation, risk sharing as opposed to debt contracts, better social infrastructure and provision of social services, better treatment of workers, higher education expenditures relative to GDP, higher savings and investment rates, higher degree of environmental preservation, and vigilantly supervised markets".(Ibid12).

According to Islamicity's economic index, many Muslim countries have failed to attain economic goals of Islamic teaching. Many factors could be attributed to this failure. Lack of good political leadership is one of the main factors for economic failure of the Muslim countries. It is reported that the second Caliph Omer ibn al-Khatab introduced the principle of the separation of judiciary from political authorities. He did not allow any political leaders interfering in the legal verdicts of the judiciary. This was done to maintain the independence and integrity of judiciary in Islam. Yet, soon after the ruin of the Caliph Omar, family rule, nepotism, and despotism dominated Islamic politics until modern time. Muslim rulers not only controlled the judiciary, but also entire apparatus of Muslim governments came under control of the Muslim rulers since the time of the second Caliph. Even today, the Muslim rulers are not willing to free judiciary from political influences in many Muslim countries. As result of this outdated political hegemony, many Muslim countries find it hard to maintain justice and integrity of law and order. Islamic city index finds this is one of the reasons why Muslim

countries cannot make any meaningful economic and human development in many Muslim countries.

Table III: Legal and government Islamcity Index (LGI)

"This indext is an attempt to capture the two key areas of the legal and governance environment of a country. In doing so it measures degree of effectiveness and competence of government governance and legal integrity (including degree of military inerfrence) Table III describes the various measurements, variables and proxies for the legal and Governnace Islamcity index" (Ibid. p 15).

Area		**Subcategory**	**Measurement prevy**
A	**Governance**	**A) Government Governance**	Voice and accountability indicator
			Poliitcal stability and absence of violence indicator
			Government effectiveness indicator
			Regularity Quality Indicator
			Rule of law indicator
			Control of courrption Indicator
B	**Legal integrity indicator**	A) Legal and judiciary inergrity indicator	Judicial independence -the judiciary in independent and not subject to interference by government or parties in dispute
			Impartial courts_A trusted legal fiarwork exists for private business to chellenge the legality of government actions or regulations.
			Integrity of legal system
		A) Military indeference indicator	Military interference on rule of law and the political process index.

(Source: Islamcity index 2010)

Historical accounts tell us soon after the ruin of the second Caliph Omer ibn al-Khatab, the Muslim politics went into some sort of political anarchy and family ruling. Islamic history tells us that the Muslim politicians and policy makers did not devise any democratic system to elect political leaders. Rather family rule and tribal political alliance dominated the Muslim politics since the formative periods of Islamic history and even today some Arab political leaders want to continue such political system in this modern world of geopolitics. Many Muslim political leaders do not want to give political freedom for public to participate in political engagements. In this way, the basic political rights are denied for millions of Muslims in many countries. Islamcity index highlights the suppression of political will in many Muslim countries. As result of this, political party thought and political practices, voting system, election systems, parliamentary debating tradition did not grow in many Arab countries. Many Muslim countries violate the basic human and political rights of publicIslam encourages inter community relations with all humanity. Islamcity report encourages Muslim community to cooperate and contribute human development globally. It encourages to protect natural resources and environment. Yet, it finds many Muslim countries are falling behind in many indices in areas of international relations. Rather, it could be argued that many Muslim countries have got some sort of conflict with the neighbouring countries. Moreover, Muslim countries make little contribution to protect natural and environmental resources. The finding of Islamcity report reveals some shocking revelation about the status of human development in many Muslim countries. According to 2017 Islamcity index, New Land, Netherland, Sweden, Ireland, Switzerland, Denmark, Canada, Australia, Luxembourg, Finland round up the first 10". (Islam city ranking 2017)

Table V: International Relation Islamicity index (IRI)

"This indext is an attempt to capture a country's relationship to the global community with respect to several key areas of environmental contribution, globalization, military engagement, and overall country risk. Table V describes the various measurements, variables and proxies for a country's relationship to the global community as embodied in our international relations Islamicity Index". (Ibid. p16)

Area		Subcategory	Measurement prevy
	Environmental performance Indext		
		A) Environmental index	Environmental Health Air quality Water resources Productive Natural Resources
			Biodiversity and Habitat sustainable Energy.
B	**Globalization Index.**		
		A) Economic Globalization Indicator	Globalization Index
			Restrictions
		B) Social globalization indicator	Personal contact
			Information flows
			Cultrual proximity
		C) Political Globalization Indicator	Political Globalization Index.
C	**Military/ wars**		
		A) Proportion of military spending Indicator	(military expenditures % of GDP/Total armed forces and amed forces index
		B) Military spending indidcator	military expenditures % of GDP/military personal % of total labor force.
D			
		A country Risk	Overall country Risk Index.

(Source: Islamcity index 2010)

We are living in this modern age of globalization and geopolitics and Muslim countries must have experts on these areas to direct Muslim rulers to take right decisions on local, regional and international issues. Unfortunately, Muslim experts on geopolitics and international diplomacy are incompetent today than any time in Islamic history. Moreoer, dictatorial Muslim rules do not listen to advice of Muslim experts on these areas of politics. As a result of this, Muslim countries have paid a huge price.

Table VI: Human and political Rights Islamicity Index (HPI).

"This index represents an attempt to measure the degree of human and political rights in 208 coutnries. It uses specific measurements for civil and political rights, women's rights, other rights, political rights and genocide prevention, which can be found in more detail". (Ibid. 19)

Area		**Subcategory**	Measurement proxy
	Civil and political rights		

		A) Civil rights indicator	Freedom index
		B) Political right indicator	Freedom index
B	**Women's rights**		
		A. Women Righs	Proportation of seats held by women in national parliament (%)
			UN HDI seats in lower house or single house held women (as %of total)
			UN HDI seats in parliament held by women (% of tatol)
			UN HDI seats in upper house or senate held by women (as % of total)
			UN HDI women in government in ministerial level (as % of total)
			UN HDI the year women received Rights to vote.
C	**Other rights**		
		A military service policy indicator	Use of concripts to obtain military personal
D	**Political rights**		
		Poliitcal risk	Political risk: PRC Group. Country Risk
E	**Genocide prevention**		
		A) Genocide prevention	UN HDI international convention on the prevention and punishment of the crime of genocide

(Source: Islamcity index 2010)

Many Muslim countries are lagging far behind many developed countries in human right and women right protection. Opposition political parties are persecuted for just expressing their political views. Journalists or acacemic who speak about injustice in Muslim countries are persecuted in many Muslim countries today. All sort of human right abuse take place in Muslim countries today than any other countries. This shows Islamic teaching are take apply in many Muslim countries in protection of human rights.

They conclude that "The so-called and self-declared Islamic countries have not by-and-large adhered to Islamic principles. The average ranking of Islamic countries is 133 for the group of 56 Islamic countries. Islamic countries did not fare very well in an index that measures the degree of economic Islamicity. The highest ranked Islamic country is Malaysia (ranked 33rd), followed in order by Kuwait, Kazakhstan, Brunei, Bahrain, United Arab Emirates, and Turkey in his survey. It is argued that "respect for human rights, social and economic justice, hard work, equal opportunities for all to develop, absence of corruption, absence of waste and hoarding, ethical business practices, well-functioning markets, a legitimate political authority, should result in flourishing economies. These teachings, not in the actual practice of those that are labelled as Muslims, should be the basis for judging a society's pretentions of Islamcity" (Ibid, p.20) so, based on this principle many Muslim countries are not truly applying Islamic principles in many areas of human development. Islamcity finds that "Islamic countries are not as Islamic in their practice as one might expect, instead it appears that the most of developed countries tend to place higher on our preliminary Islamcity index" (Ibid, p20)

They contend that many Muslim countries use religion as a political instrument to control public. "We must emphasise that many countries that profess Islam and are called Islamic are unjust, corrupt, and underdeveloped, and are in fact not "Islamic" by any stretch of the

imagination". They argue that "the lack of economic, financial, political, legal, and social development can be attributed to age- old of problems of developing countries, such as inefficient institutions, bad economic policies, corruption, underdeveloped rule of law, and equity, economic and social systems, failing woman, and children, and other traditional developing country diseases. It is, in fact, the shortcoming of the governments and their respective policies, not religion, that account for the dismal economic, financial, political, social developments and progress in the Middle East, (even though it is blessed with oil).Some western academics and economists have blamed religion for the economic backwardness of some countries that follow religions of Roman Cathartics and Islam. They argue countries that follow these two religions are least developed nations in the world. Their contention is the Jews, Protestants, and Confucians are on the top of development pyramid while Catholic, orthodox and Muslim communities get 4th, 5th and 6th places in development index. The reason for this economic and developmental backwardness is that they follow teaching of Churches and mosques which encourage them to renounce all worldly material pleasures and concentrate on their spiritual and religious life. This was the contention of Xavier Couplet and yet, this contention has been challenged by many Muslim economists. (Hassan Jabi.p110) For instance, Malaysia and Turkey follow religion of Islam and yet, they rapidly developing. Moreover, Singapore and Japan follow Buddhist teaching and yet, they are developing rapidly.

It has been generally believed that the western model of development is the supreme model for economic development and progress. Yet, this perception has been challenged by rapid development of China today. China is still a communist country with its authoritarian leader. It has been ruled by authoritarian leaders. yet, it managed to overcome its economic problems with its development policies. Today, "China's leaders today argue that the country does not need to become a western-style democracy to maintain its current level of success. "Socialism with Chinese characteristics" they claim, will continue to make the country competitive. Hahm. Chaibong, (2018. P182). It can be contended that the "so -called China model offers an alternative path of political and economic development". (Ibid, 184). China, South Korea, Singapore, Malaysia, Turkey, Tailand and many other Asian countries are developing rapidly today with their good political leadership. All these countries have got good political leaders who are dedicated for the development of their nations. In many Arab and Muslim countries despite the richness of human and natural resources they cannot develop their nations due to poor political leadership. Many Arab and Muslim political leaders have been conned and fooled by the leaders of developed countries. yet, the leaders of these developing Asian countries cannot be fooled or conned. Many Arab leaders have sacrificed their national interest for the geopolitical interest of the developed nations. These Asian countries managed to achieve these economic developments through series of economic reform, hard work and dedication of their working forces. Many industrialization programs and policies help these nations to produce high value goods such as automobiles, IT products, computer software, technical items, electronic items, cars, steels and many other items. Yet, Muslim countries such as Egypt, Syria, Palestine, Iraq and Iran are rich in human resources and they could produce all these value goods, moreover oil rich gulf countries could invest their wealth on these industrialization program to create economic growth in the regions and yet, politicians in Gulf countries do not have such a long-term development program for the region.

Many Muslim economists strongly argue that there is no point in blaming Islam for the failure of Muslim politicians and Muslim policy makers. It is not religion that made Muslim communities to fail in economic and human development rather it is wrong policies of Muslim governments in many Muslim countries It is the Muslim dictatorial rulers with their wrong un-Islamic ethical and moral policies have destroyed the economies of the Muslim countries. They maintain with substantiated scientific evidence that many western countries are in fact, apply Islamic principles of economic and human development.They argue that many western

countries promote "free markets and good economic governance, economic systems, and policies that encourage economic, social justice, legal systems and governance that are fair to all members of society and which include global standards of human and political rights, and lastly, but equally important, promote and foster better international relations with global community". All these good practices and economic and social values are prescribed by Islamic law yet, the Muslim countries do not practice them. In that sense, many western countries are more Islamic than many Muslim countries in the areas of economic and human development.

One could argue that such a contention is very much relative or subjective argument. To say that Non-Muslim western countries are more Islamic than Muslim countries seems little bit contentious. Of course, many Islamic social values are more practised in some western countries than Muslim country as noted by this report and yet, it does not mean western countries are more Islamic in any complete sense or in any comprehensive sense. Islam is a complete way of life: Its basic teachings consist of basic three areas of divine guidance: around theology, Islamic law and social values and social transaction. It would be wrong to say that western countries are more Islamic in the application of Islamic law and Islamic theology and yet, it is relatively true that western countries are more Islamic in the application of some social values that enshrined in the teaching of Qura'n: social justice system, social welfare system, freedom of expression, protection of human dignity, rules of law, equality, human rights, animal rights, women rights, and some other areas of social values are compatible with many of Islamic teaching and yet, there are some many political, economic and social traditions of western civilization are incompatible with basic Islamic teachings. Hence, it would be wrong to generalise this claim. Western civilization contrasts Islamic civilization in many issues. And yet, it is true that most of Muslim countries do not apply Islamic social values as stipulated in Qura'n and prophetic traditions while many western countries have just social justice system and social order as enshrined in Islamic teachings. A clear-cut disparity between theory and practice is very much clear in application of social values in Muslim countries. Islamic principles of social values are enshrined in the Holy texts of the Qura'n and prophetic traditions yet, the application of those social values Muslim communities are lagging far behind.

The Islamic concept of development differs from western concept of development. Western countries and companies are exploiting poor countries through their development projects. They sell their skills in science and technology to make profits and yet, Islamic notion of development aim at helping to humanity. The Qur'an narrates the story of Dhu'l-Qarnayn to illustrate the Islamic notion of social service and development. We said, *Dhu'l Qarnayan, Gog and Magog* are ruining this land. Will you build a barrier between them and us if we pay you a tribute? He answered, the power my Lord has given me better than any tribute, but if you lend me your strength, I will put up a fortification between you and them: bring me lumps of iron. And then, when he had filled the gap between the two mountainsides (he said) work your bellows! and then, when he had made it glow like fire, he said. Bring me molten metal to pour over it, their enemies could not scale the barriers, nor could they piece it, and he said, this is a mercy from my Lord. But when my Lord's promise is fulfilled, He will race this barrier to the ground. My Lord's promise always comes true Quran: 18:94-99.

Today, humanity may have invented many scientific and technological developments and yet, human skills and knowledge have been used to exploit poor nations. The moral and ethical values we get from this story is that human talent and skills are divine gifts and man is graced with those gifts in order to test him if he is using those skills of divine gifts in the service of humanity. Islam encourages Muslim community to help humanity in all circumstance. Islam Muslim community to help poor and needy. It encourages them to work for the benefit of humanity without expecting any return. Yet, in this modern world it would be difficult to

provide any voluntary service of this kind of a major engineering project. Yet, what we learn from the story of *Dhu'l Qarnayan,* is that when God bless a man or a community with any skills, they must be grateful to God and share those skills of divine gift with wider humanity. Today, the Muslim countries do not follow these Islamic ethical and moral values in their service to humanity.

6) Maqāsid and Muslim extremism.

What is the relevance of the general philosophy of Islamic law to the subject matter of the Muslim extremism? How could one assess the growth of Muslim extremism in view of the general philosophy of Islamic law? Islam stands for peace and harmony in humanity and yet, the actions and behaviours of some radical Muslims exhibit violence and extremism. The actions of those radicals go against the basic teaching of the general philosophy of Islamic law. Islamic law demands that peace must prevail in all conditions and war is an exceptional event in Islam. Yet, these radicals want to wage war with non-Muslim communities as if waging war is a general rule in Islam. This is a wrong perception of Islamic rules on inter-community relations. Moreover, it would be wrong to generalise this issue. Not all Muslims are extremists as often depicted by media. Some internal and external factors or causes motivate extremism and terrorism among Muslim youths. What do we mean by internal factors that inspire extremism and terrorism among Muslims? We mean that many factors within Muslim communities inspire some sort of extremism within the minds of some radical Muslims: factors such as lack of comprehensive understanding of Islamic theological and legal principles and terms. Terms such as *jihad, Kufr, ahlul-zimmah,* abode of Islam and many similar terms have been misunderstood by many radical Muslim youth. Moreover, some liberalists have been interpreting Islam in a literal sense without any contextual and historical consideration. Moreover, classical Islamic legal thought was developed in medieval age within middle age historical social setting and still some Muslim jurists and scholars follows four legal school of thought words to words without any due consideration for social and political developments that have been taken places within last few centuries. The rigid application of Islamic legal thought has creased chaotic situation when dealing with many international issues. Moreover, some literalist and traditionalist Muslims scholars have grossly neglected the general philosophy of Islamic law when they apply texts of Quran and Hadith in modern social conditions. These rigid approaches have indeed, motivated and inspired many Muslims youths to blindly follow the path of extremism and terrorism. Thus, main cause of extremism and terrorism emerge from lack of understating and misunderstanding of Islamic texts.

1) De-contextualization of Islamic texts:

Some Muslims radical and as well as some Islamic scholars read Islamic texts from the Holy Quran and Prophetic traditions in an out of context way. Consequently, they come to some erroneous conclusion in many issues. This is very much common in Islamic legal and theological thought. Many classical and modern scholars have done this mistake. Especially, when they are providing interpretation to some religious texts that deal with Non-Muslim communities. Islamic teachings were revealed to the prophet Muhammad throughout 23 years of period in His historical context. Though most of Islamic teaching has international dimension and implication and yet certain aspects of Islamic texts are historically time bounded texts. The divine revelation addressed the Prophet with issues, challenges and problems of His time as well as with issues of humanity at large. To understand some of these texts one must read them in a historical context. Otherwise, our understanding of those texts would be incomplete and sometimes we could reach into a wrong conclusion. A few examples from Islamic texts should clarify this point. Consider for instance the following texts of the Holy Quran: "Then, when the sacred months have passed, slay the idolaters, wherever you find them, and take them captive and besiege them and prepare for them each ambush" (The Quran 9:5).

Many Muslim and Non-Muslim people have wrongly quoted this Quranic verse out of historical context. This is not a general injunction for all times and all ages. Rather it was an injunction for time and people at a battle fields in the time of prophet. This is a specific injunction to that time. If someone read this verse out of context, he/she may come to some erroneous conclusion. Moreover, this verse must be read in conjunction with the verses before it and after it. This verse is addressing those pagan Arabs who persecuted early Muslim with constant hostilities and enmity. The verse deals with those pagan Arabs who attempted to expel Muslims and revert them to paganism: The Quran says that "They would persist in fighting you until they turn you back from your religion if they could" 2:217. These pagans repeatedly broke their treatises and Muslims were also ordered to treat them in the same way or fight them or expel them because they treated Muslims very badly. They also tried to expel them and convert them into paganism. Some western scholars and even Muslim scholars who say that this verse has abrogated other verses on war. They have singled out this verse "Kill the polytheists" to allude to Islamic attitude to war. This is really done out of context without any consideration to the circumstances in which this verse was revealed. (A. Haleem. P.63. 1993). Similarly, many verses that speak about inter-community relationship should be understood and interpreted in conjunction with teaching of many other verses. Sometimes, some Muslim radicals and literalists do not read the texts of the Holy Quran in its contexts and consequently they could come to wrong conclusions when they deal with Non-Muslim issues and problems.

2) Blind adherence to classical Islamic legal thought.

Classical Islamic legal scholars expressed their legal verdicts and opinions in their historical context. Some of their opinions and verdicts may be viable today and some may not be viable to our modern social conditions. Yet, unfortunately, some modern Islamic scholars and radicals imitate classical Islamic scholars' opinions without any consideration to our modern conditions and consequently, they come to some erroneous conclusions. This may be one of main causes of radicalization in the Muslim world. Because, Muslim youths admire the opinions of the classical Islamic scholar out of respect for their knowledge and authority in Islamic law. Sometimes, Muslim radicals do not see the validity and compatibilities of classical legal thought to our modern conditions. For instance, many classical jurists maintained that Muslim rulers must maintain a strict hostile attitude with non-Muslim nations. This was the legal position of many classical Islamic legal scholars. It can be said that war between empires was a way of life in the medieval time. Empires fought many wars for the protection of its regimes. Muslims too remained in a state of constant wars to protect Islam in medieval age. Consider for instance, Imam al-Shafi' analogy on foreign relationships between Muslim empire and Non-Muslim nations. Imam Shafi advised Muslim rulers to attack *Mushrikun* in their countries at least once a year, if not more often. Moreover, he argued that Muslim rulers must not accept a truce for more than ten years. He came to such a conclusion based on his analogy to the prophetic method of dealing with Non-Muslim nations. The Prophet engaged with his enemy in battles at least once a year and did not accept a truce for more than ten years. (Al-Shafi,.1903. p.91). Such an analogical reasoning may have been viable during his time because, the social context of his time was not that much different from that of Prophet's time. However, no Muslim ruler will accept such an analogical reason in our modern condition of warfare and international relationship. If Muslim extremists still accept this kind of analogical reasoning today in our modern world, such a position would be a blind adherence to unrealistic classical Islamic legal thought. That is why it is imperative to review classical Islamic legal thought in the contexts of modern conditions rather than blindly following what our predecessors wrote and said during their life time. Similarly, other imams of Islamic legal school of thought also maintained some rigid positions when it comes to dealing with Non-Muslim relationship. Imam Malik, Imam Ahmad and Imam Abu Hnaifa all these three leading Imam and their disciples had some strange ideas about Muslim interaction and business

transaction with Non-Muslim nations. Some of these Muslim jurists maintained that Muslim rulers must not sell weapons to Non-Muslim nations and even some did not permit business transactions with Non-Muslim nations during their times. These opinions may have been suitable for them during their time, but world has dramatically changed today in our modern times. No logical or reasonable stateman would accept such opinions in our modern world. Yet, some Muslim extremists still rely on these types of legal verdicts without any consideration to the time and space factors of change in our modern world. This blind following and adherence to some aspect of classical legal thought might have been one of the main reasons that encourage radicalism and extremism among Muslim youth today. One moderate Muslim legal jurist consult comments on this classical position of Muslim and Non-Muslim relationship saying that "The position of the classical jurists that war is the permanent basis for international relations is not an authority that is binding on anyone. It has no support from the Quran and the Sunnah. It is merely a decision (ruling) of temporary effect" (al-Zuhaili.p130). However, radicals and extremists still maintain the classical position on this issue and consequently they believe that they could attack non-Muslim nations at will. The defects of some aspects of classical Islamic legal thought has not been yet clearly explained to Muslim youth and Muslim people. Therefore, the problem of terrorism and extremism is the problem of understanding and comprehension.

3) Literalism.

Muslim extremists constantly adhere to literalism. They have the tendency to follow words to words interpretation of Islamic texts and consequently, they have failed to appreciate changing social conditions and inner dimensions of texts. For instance, when they read the text like this "Do not take unbelievers as your friends" they would take its literal meaning without considering its contextual meaning. Islam has given religious freedom for people to believe or not believe. There are many kinds of people in the world today. Some are atheists, and some are believers, and some are humanists, and some are following different religions. Some non-Muslims are getting on well with Muslims and some are not, some are friendly, and some are not, some hate Islam and Muslims and some are not, some non-Muslims know about Islam and some are not. Unless we differentiate between these people it would be wrong to perceive that every unbeliever is the enemy of Muslims. It is interesting to note that some contemporary Islamic jurists still offer a literal meaning for the following text of Quran: Quran 8:66 reads "O. prophet! Rouse the believers to the fight. If there are twenty among you, patient and preserving, they will vanquish two hundred, if a hundred, they will vanquish a thousand of the unbelievers, for these are a people without understanding…. If a thousand, they will vanquish two thousand, with the leave of Allah". Based on the literal and numeral meaning of this text Sayyid Sabiq says that under the section "fleeing from double the Number of Enemies" that if enemy number is double or less then fleeing from the battle field is not allowed" (S. Sabiq: Vol. Xi. p 127). This ratio of fighting numbers with Non-Muslims can be valid if other elements of modern weapons, skills, techniques and equipment are equal to what enemies have got. Today, the broader meaning of power includes all element of human life, military, technological, economic moral and psychological powers. This kind of mere literal meaning would not be viable today and it could lead us into some erroneous conclusions.

4) Failure to understand the higher objectives and priorities of Islamic law.

Islamic law is instituted to protect five fundamental elements; namely one's life, offspring, wealth, religious freedom and human dignity. According to some classical Islamic jurists these are five higher objectives of Islamic law. Protection of human life is one of the higher objectives of Islamic law. The sacredness of human life should be protected. This is the basic teaching of Islamic law. Quran and Traditions have repeatedly command Muslims to save human life and protect humanity from destruction. In this sense, suicide attacks on innocent children, women, elderly and vulnerable people do not have any religious sanction or

permission. These attacks are against basic teaching of Islam. Yet, Islamic extremists do not understand this higher objective of Islamic law. Islamic teachings and tenets of Islamic law do not promote destruction of wealth, natural resource and human life. Yet, due to lack of comprehensive understanding of higher objectives of Islamic law, these fanatics engage in these kinds of terrorism activities. Maintaining peace and social harmony is one main priorities of Islamic law. Yet, these radicals do not read it from the perspective of the general philosophy of Islamic law.

5) Distorted meaning of Jihad:

The concept of Jihad has been wrongly understood by many Muslim and Non-Muslims. This term has been used negatively in academic and non-academic writing. The term jihad has a broader meaning in Islamic law. It is not merely fighting rather it is a struggle against forces of moral corruption and spiritual bankruptcy. This term has many connotations and meanings. It could be interpreted in many ways. It could be interpreted to mean one's socio-political, economic and religious struggle in the life. Helping poor is one form of jihad, earning a good living is another form of Jihad, uplifting one's spiritual well-being is one more form of jihad and helping vulnerable people in the society is one more kind of jihad according the texts of the Quran and Tradition. Yet, the term jihad has been negatively used to mean to waging war against unbelievers. This is taken out of context. This is a cut and paste approach to text of Quran and tradition. This kind of understanding has caused a lot of confusion in Muslim minds. Quran has used the term Jihad more than hundred times in many places and it has used it in different meanings. Some time to mean of striving for good causes of protecting rights of weak in the society. It makes distinction between physical fighting and moral struggle to protect rights of weak in the society. Quran use the term Qital to mean physical fighting. Imam Ibn Qayyim identifies 20 kinds of Jihad when he discusses the subject matter of Jihad. Most of these kinds of jihad are some things to do with good causes. Prophet tells his companions that one of the greatest forms of Jihad is to struggle against one's own desire and craving. Any good deed that benefits man can be classified as a form of *Jihad.* Yet, fighting psychically is one of the best forms of Jihad in some exceptional cases according to Quran. Nonetheless, it is conditional and restricted one in certain circumstances.

Peace is the basis of Islamic relationship between countries and people. War is a temporary contingency that becomes necessary at certain times and under certain conditions. Quran has discouraged war between people. It is a work of devil that creates enmity among people: "Satan wishes to saw enmity and hatred " 5: 91 and it is Satan who divides people into warring factions "He is able to divide you into discordant factions and make you taste the might of each other" 6:65. If it is the case, what is the justification for war? War may become necessary only to stop evil from trumping in a way that would corrupt the earth: 2:251. Moreover, changing people's religion is not a cause for waging a war because Islam gives religious freedom; "there is no compulsion in religion" (2: 256). All the prophetic wars were in one way or another under taken in self-defense or counter an imminent attack. For more than 10 years Muslims were persecuted and yet permission was not given to fight back. Only after they were forced out of their home and their town and were subjected to sever torture the permission was given to fight back "permission is given to those who fight because they have been wronged, those who have been driven from their homes unjustly (22;39-41). This is the concept of war in Islam, yet radicals do not consider the comprehensive meaning of war in Islam. As aresult of this narrow-minded understanding of this term, a lot of Muslims youth have been encouraged to participate in fighting in the name of religions for some political reasons. Muslim youth are misled in many insurgency wars in Afghan, Afghan and other Muslim countries due to misunderstanding of this term. They may have assumed that they are fighting in the path of Allah for a good cause yet, these youths have been exploited by politicians and extremists. The Islamic notion of Jihad has been misused not only by Muslim people alone. American and Western nations too used

this Islamic concept to persuade Mujahidin to fight against former Soviet Unions. It was this Islamic concept that encouraged Mujahedeen to fight and expel Soviet Union from Afghanistan. Why do Taliban and other radical groups in Afghanistan, Iran and other Muslim countries ban women from voting, driving and working? Why do Taliban destroy Buddhists statues? Why do they kill innocent tourists and journalists? Why do they ban women from going school and university? Because, they interpret Islamic law within boundaries of their legal school way from the general philosophy of Islamic laws. They do not read international problems in the light of overall guidance of the Quran and traditions rather they read these issues from their own religious perspectives. Sometime, the legal opinions of their legal school are outdated and not viable today. Therefore, it can be said that lack of comprehensive understanding of the general philosophy of Islamic law has encouraged Muslim youth to take arms in the name of religion.

All above mentioned factors contributed to the growth of extremism within Muslim communities. Therefore, it is the duty and responsibility of Muslim intellectuals to explain these facts to our youths so that they could rectify their thought and actions. Failure of Islamic institutes in Europe to guide Muslim youths is another important factor that contributes extremism among Muslim youths. Our Islamic institutes, colleges and mosques still have imported Islamic scholars from sub-continent and Islamic countries. They are taught and trained on old style Islamic learning often within the boundaries of their theological and legal schools of thought. They do not understand western culture, way of life and mentality of people here. They cannot grasp intercultural issues within this country as a result they cannot properly guide children born in this country according their needs in this new social environment. These imported scholars have failed to read the mentality, needs and challenges of new generation in these countries. One writes Muslim describe this failure as "Religious leadership has also been weak. The imams in mainstream mosques are not central, if relevant at all, to the leadership of Muslims, never mind being responsible for radicalizing of the young" (T.Abbas, 2005 p xiv.).It would be wrong to accuse imam of radicalizing the young rather it may be that some Islamic groups radicalize the youths in this country in the pretext of freedom of speech, democracy and human rights. The problem is not confined to imported Islamic scholars and imams rather all teaching methods, teaching materials and teaching resources of Muslims institutes and mosques must be reviewed and changed considering modern needs of this society. Otherwise, extremists' ideas and indoctrination could filter through these institutions unknowingly. Because, these scholars teach the classical legal thought does not always have relevancy to the modern world. With all respects to all our classical Islamic scholars, it can be said some of their thought are not relevant today in our modern times. To know all these dramatic changes, we should have a profound understanding of the general philosophy of Islamic law to relate Islamic teaching in modern conditions.

7) Maqāsid and the politics of the Muslim world.

What is the connection between the general philosophy of Islamic law and the politics of the modern Muslim world? To implement and apply much of the general philosophy of Islamic law a good governance is imperative in this modern world. Politics relates to every aspect of individual and collective life of humanity. Today politicians have immense power. The decisions they take affect all aspect of human life: individuals and communities. There is no harm in saying that something terribly went wrong in Muslim politics. The Muslim politics went wrong from the early period of Islamic history. Even some say during the four Caliphs' time, the Muslim politics took a precarious turn. There is no point in denying the historical facts that took place in early period of Muslim history. It has been argued that that Islamic political thought is very much premature and elementary. It is contented that Islamic political thought did not grow in its natural course. Rather it stagnated and Muslim politicians did not allow Muslim scholars to develop any good political mechanism in Islamic history. This is a

contentious subject matter. One school of thought argues that the western political thought has its own antiquity and its historical root that deeply rooted in Greek and Ramon philosophical and legal thought. It argues that the human experience of Romans in public administration, consultation of public affairs and application of laws since Roman time had given birth to modern day democracy and system of political thought in western civilization. It was rather an evolutionary process. According to al-Shanqiti and al-Marzooqi, some of modern architects of Islamic political thought, the Islamic political thought has had some historical, social and cultural setbacks in its evolutionary process. According to three leading Muslim thinkers of modern time namely Allama Iqbal, Sheikh Al- Shanhoori and Malik bin Nanabi Islamic political thought is still in the process of evolution.Iqbal in his book of reconstruction of religious thought in Islam argued that Islamic political thought is in its early stage of foetus while Sheikh Shanhoor had argued that Islamic political thought is its infancy in its process of evolution. Malik Bin Nabi has contended that Islamic political system has born out of totalitarian and Authoritarian political environment in Muslim history. As such Islamic political thought was not given the leverage to grow, thrive and flourish since the time of righteous caliphs. (Al- Shanqiti, 2015. pp 25-45)

It is not surprised to note that Arabs in pre-Islamic time did not have any good systems of governance. All what they had was tribal system in which some tribal leaders controlled his clans and made their decisions at their own discretion as they wished, while all other nations around Arabian Peninsula had some system of governance. Great Persian and Roman Empires are two classic examples. Yet, Prophet and his companions set some political precedents with divine guidance. Still today, the Muslim community looks at the political precedents of prophet and his companions as role model. But all those noble political values of prophet and his companions are lost in the annals of Muslim history. In defining the Islamic policy of good governance Ibn Aqeel notes that "It is a system of public administration by which people will be closer to prosperity and far away from corruption (Ibn al-qayyim). What is the political philosophy? Western political scientists have given different definitions to the western political philosophies. For some "it is the study of fundamental questions about the state, government, politics, liberty, justice and the enforcement of legal code by authority. It is ethics applied to a group of people and discussed how a society should be set up and how one should act within a society. Individual rights (such as right to life, liberty, property, the pursuit of happiness, free speech, self-defence, etc.) state explicitly the requirement for a person to benefit rather than suffer from living in a society. Political philosophy asks questions like "what is a government? Why are governments needed? what makes a government legitimate? What rights and freedoms should government protect? What duties do citizens owe to a legitimate government, if any? When may a government be legitimately overthrown, if ever?" So, political philosophy defines what sort of government we install and what ethics and moral mechanism government should follow in its policies. It is ethics of social organization, applied to across society, rather than between individuals." (Mel. Thomson, 2107, p.2). It has been argued that studies in Islamic politics did not grow as they grew in Islamic theology, Islamic jurisprudence and other fields of Islamic studies. Classical and modern Islamic scholars have done extensive studies in many Islamic sciences and Yet, studies in Islamic politics has been a neglected area of research. Muslim scholars paid very little attention to this area of studies as they did in many other areas of studies. It may be because, a hostile resentment prevailed between Islamic scholars and political leaders from the formative period of Islamic history. Imam Ibn Qayyim noted that a creative political thinking in was stagnated during his time. Islamic jurist consultants failed to guide political leadership and consequently Islamic rulers and leaders were compelled to legislate laws outside *Islamic shari'ah* perimeters. Thus, Ibn Qayyim puts the responsibilities upon the shoulders of Islamic scholars for their failure in creative political thinking and guiding Muslim politicians. (Sheikh al-Qaradawi's, p. 3). The

stagnation in creative political thinking continued until modern time. The works of Imam Mawardi, Imam Ibn Taymiyah and Ibn Qayyim on Islamic political theories and principles were totally not put into practice in Islamic politics and governance. In pre-modern Islamic period, Jamal Din Afghani, Muhammad Abdu, Rashid Rida and some other Islamic scholars did try to revitalise Islamic politics and indeed, tried to establish Islamic political order in the world and yet, they failed in their political program. In modern time, Maulana Maududi, Sayed Qutub and some other have tried to reconstruct Islamic politics based on Islamic political principles and yet, they too failed to create an Islamic political system. Today, Islamic world is in a political crisis and many Islamic scholars do not engage in politics or political studies for fear of repercussion. Due to this historical resentment and demarcation between Islamic scholars and political leaders today Muslim politics grew into a chaotic situation.

Muslim scholars failed to create a pragmatic political thinking and system throughout Islamic history. Muslim politicians inherited some bad historical precedents since the time of formative period of Islamic history. Moreover, Muslim political leadership throughout Islamic history grew void of Islamic values and Islamic political ethics and morals. Muslim rulers since the formative time of Islamic history begun to persecute, torture and punish Islamic scholars. This trend continued in Islam since very yearly Islamic history until modern time. Islamic scholars who spoke against any Muslim ruler are heavily punished and many were put into death by Muslim rulers. Unfortunately, even in this modern free world, this hostile resentment between Islamic scholars and political leaders continues. Until some sort of mutual understanding and reconciliation take place between Muslim scholars and Muslim political leaders this political unrest will continue in Muslim world. Some crafty Muslim scholars even today support Muslim political dictators for their personal gains. This is very much self-evident in Islamic history. Many Muslim scholars support dictatorial rulers such as Assad and al Sisi. These types of Muslim scholars strongly believe that politics and Islam have a demarcation. They strongly believe that politics has nothing to do with Islam. They believe that Islamic political concept of consultation is nothing, but a symbolic political gesture. It is not a religious duty of a Muslim politician to consult with experts in politics. It is his right to do so to enlighten his mind and heart and yet, he could throw away any ideas he gets from consultants as he wishes. It is entirely at his discretion to consider opinions of any expert in politics or not. After all it is, he who appoints an assembly of experts and sacks them as and when he wants. (al- Qaradawi. P3). Stagnation in politics and political creative thinking is further deepened in Muslim world today. Today there are some Muslim groups who claim that there is no any political pluralism and multi-party politics in Islamic legal system. There are some clerics who claim that there is no voting or election system in Islam to select a political leader for the Muslim community. Moreover, there are some people who claim that there is no parliamentary system in Islam and they do not believe in sending public representatives into parliament with majority votes in any election. These people reject the ideas of limiting the terms of Muslim politicians in power. (al- Qaradawi.P3). Islamic political thinking has been stagnated in this modern world to this extent Yet, modern politics with all its different political ideologies and concepts have dramatic changes in the world. Islamic politics is still lagging far behind in creativity and innovation. Consequently, Muslims around the world suffer greatly. Politics and religion are two different entities in different cultures. Most major world religions do not consider politics as an integral part of their religious system and faith. Yet, Islam is only religion that considers politics as an integral part of Islamic faith and religion.

Unlike Christianity, there is no demarcation between politics and religion in Islam. Prophet Muhammad is a political and religious leader at the same time. His successors had been providing religious and political leadership at once. There is no such separation in Islam between political and religious affairs. Theoretically, politics is part of Islam and yet, from the formative period of Islam, some sort of conflict started between religious and political

leadership in Islamic history. Political leadership and religious leadership begun to function as different entities. Today's Muslim politics is a continuation early politics of early generations of Muslims specially that of Umayyad and Abbasid politics. No doubt Umayyad and Abbasid set some bad examples in politics and still today, Arab rulers could not come out of those bad examples of Muslim politics. The Nepotism, family hegemony and family inheritance intruded in Muslim politics since this time. Some Muslim rulers strongly believe there is no harm in ruling people for good. They believe they can rule over people until they die. They do not see what is going on around them in modern day politics. This mind set of Muslim politicians ought to be changed. we have 53 Muslim countries today. Consider the political systems and situation of Muslim countries except a few countries like Malaysia, there is no any good political system in many Muslim countries. Moreover, countries like Japan or South Korea or India or some other third world countries have some good political systems to select and elect rulers. Yet, Islamic world is ruled today by incompetent rulers. Politics today can enrich a nation or destroy a nation. unfortunately, today politics is gradually destroying Muslim nations one by one; sometime physically as in Iraq, Afghanistan, Syria and Somalia but many other Muslim countries are indirectly being destroyed due to political incorrectness. yet, Muslim clerics, academics, scholars and leaders are silent about it. Some are so scared to speak out about it and some are deliberately avoiding politics for fear of their material gains. Some scholars are brave to enough to speak out about this. yet, they have been marginalised.

Muslim political leaders behave heedlessly or recklessly. They are ineptitude and powerless in today's international arena which is dominated by two super powers in this world. Syria is sandwiched between geopolitical Interest of Russia and USA and yet, 53 Muslim countries could not do anything to stop the genocide in Syria. Neither UN nor human right commissions could take any meaningful action to stop mass killing of innocent people in Syria. No time in 1400 years of the Muslim history, the Muslim world has been humiliated as it has been now. All this begs one big question. Why Muslim political leaders are powerless in this modern world despite the fact they have enormous wealth and oil reserves? The weakness of Muslim politicians has been hugely exploited by external force to do whatever they want in Muslim countries. Today we are living in a modern world and this modern world demands some charismatic political leaders in Muslim countries to compete with international political system. The Modern world demands some qualifications, qualities and insight from Muslim political leaders to understand the world around them otherwise, Muslim political leaders can be politically and diplomatically be deceived by shrewd and crafty political leaders of modern world. One contemporary Islamic scholar says the political crisis is one of the main crises of Islamic civilization throughout Islamic history. From very early period of Islamic history, the relation between political and religious leadership had been a confrontational and hostile in Islam. one could argue that political rivalry from the time of righteous caliphs' era. and yet, soon after the time of Omar ibn Abul Aziz the hostility became wider between political and religious authorities in Islam. Muslim religious leadership challenged the political leaderships for their dictatorial grip, nepotism, aggression and injustice. On the other hand, political leadership begun to persecute the religious leadership harshly and some time, religious leaders were tortured, beaten up and put into jail into many years. Sometime religious leaders were brutally killed. Imam Ahmed Ibn Hambal, Imam Ibn Tayymah and many of classical Islamic scholars were persecuted by rulers of their time for speaking against the rulers of their time. This confrontational and hostile relation between rulers and religious leaders continues in Islamic history even now. Saddam Hussein, Qaddafi, Sisi and many other Muslim rulers have killed many intellectuals in the Muslim world. The negative impacts and implications of such a hostile relation between Islamic scholars and political leaders have been huge and immense. Imam Al-Mawardi, Imam Ibn Taymiah and many more scholars have written extensively on the duties and responsibilities of rulers towards public and yet, Muslim rulers have not been

educated and trained on Islamic ethics of leadership. Until some sort of good reconciliation process started between pious religious leadership and political leadership across Muslim countries, Muslim communities will pay a huge price for the continuous failure of Muslim political leaders across the globe.

It is argued that the first four Islamic caliphs were elected democratically and yet, this democratic system of electing political leaders ceased after the death of all these four caliphs. The political history of Islam was dominated with dictators and tyrants. There is no point in blaming western political systems for the failure of the Muslim political leaders, in a sharp contrast to the Muslim politics, the western politics evolved and progressed from empires into democratic systems since the time of Romans. In Islam there is no place for Kingdom, Sultan, kings and queens. These are nothing but political innovation as sheikh Abul Salam Yaseen says. He says political bida are more dangerous than ritualistic bida. Political leadership of prophets is not new to Islam. Prophets not only gave religious leadership in prayers, but they also gave political leadership in guiding their nations. Our Prophet gave an excellent political leadership alongside his religious leadership. Yet, what happened in Muslim political history is that a huge gap widened between religious leadership and political leadership soon after the time of righteous caliph. Today, Muslim communities have a rigid dichotomy between politics and religion in Islam. Politicians and religious leaders rarely meet, rarely consult, rarely discuss on affairs of Ummah. The pathetic condition of the Muslim world is attributed to these three factors.

a) Political aggression.

There is no doubt ineptitude of Muslim leaders is very much obvious on all fronts. The political weakness of the Muslim leaders around the world is very much obvious and yet, the Muslim world cannot do anything to change it. Islam puts some conditions on leaders of this ummah. One of the first conditions is that they should not seek position and seat of power. Today most leaders in Muslim world are dictators who grabbed the power by force against wishes of people. People do not like most of them and are cursing them many years. Yet, they want to hang on to power. One can simply notice the differences in political skills and abilities of Muslim leaders and Non-Muslim leaders in international arenas. Politically Muslim public are suppressed in many parts of the Muslim world. The political injustice has created many problems for the Muslim communities in the world. Many Muslim political leaders do not have qualifications and leadership skills to guide the Muslim world in this complicated digital world. As result of their lack leadership skills, many of them took the Muslim world into the edge of destruction. The Political change is an imperative current issue for the Muslim world today. yet, the Muslim world is nowhere near to make any change in politics. Many radical reforms take place around the world in the field of politics. Many Muslim political leaders behave with medieval mindset in this modern age and Muslim politics has reached the breaking point. Most of Muslim nations go through a period of political disasters. That is why, a good governance is very much important to apply the ideals of the general philosophy of Islamic law. Because to put the good ideals of the general philosophy of Islamic law into practice, Muslim world badly needs good political leaders.

2.. Failure to distribute wealth equally:

second reason why Muslims suffer today is that the Muslim world has got a huge amount of wealth. Most of them are natural resources. Allah blessed them with it, yet, it has not been properly managed and distributed. This is against all Quranic injunctions and Hadith commandments. Wealth is not distributed well in Muslim countries. A few people control 90% of wealth in Muslim countries while Millions around them suffer from abject poverty and unemployment. While people in Somalia, Egypt and Yemen are starving to death and suffer a lot from poverty, oil rich Gulf nations spend billions on luxuries and waste billions. A few rich

people enjoy 90% of Muslim wealth in Muslim countries today. A few rulers and their relatives in Gulf enjoy 90% of oil and gas incomes. This is despite the fact Islam encourages wealth distribution than any religions in the world. if Institutions of Zakath, Saqaqath, Waqf, and Islamic Wills are properly instituted millions of Muslims around the world would have benefited. Allah blessed Arabs in gulf with two great blessing. Allah sent his final messenger among Arabs with his final revelation. This is a divine grace and blessing on Arabs. Secondly, Alalh blessed the Arab land with oil and gas to grace them with worldly bounties. Yet, they utterly failed to make use of the oil wealth to develop their countries. More than 50% of oil money is spent on imports from many developed nations. It is expected that once oil money is dried out, many gulf countries will suffer economically. In fact, they are acting against the ideals of the general philosophy of Islamic law in distribution of wealth.

3) Third reason is external interference in Muslim countries.

Many countries got rid of the colonial hegemony on them and yet, Muslim countries are unable to get rid of external political influence upon them. Today, economy and wealth of many Muslim countries are entirely under control of external force. so, there is no real freedom for Muslims in their countries. We live in the world of global village and no longer Muslim politicians can hide their political dirty tricks and enslave people politically in this modern world. It is very much clear for any discerning student of geopolitics; Muslim politicians have been used to protect national interest of some developed nations. The political leaders of the developed countries managed to con the Muslim political leaders because many Muslim political leaders are incompetent and many of them do not have political and diplomatic skills to deal with highly skilful politicians in many developed nations. Western countries are flourishing in political debates and democratic values and political ideals. They have developed some political systems to elect and select political leaders in this modern world and yet, Muslim countries have not learned any good from the western political models. Islamic political institutes, universities, schools and mosques should make political awareness in the Muslim countries. The Muslim public should be educated in politics. People in the western countries know their political rights and yet, the public in many Muslim countries do not have a say in politics. Above all, Muslim politicians must be educated in politics before they go to politics. Political decisions in western countries are made by highly qualified civil servants. Western political leaders have a pool of highly skilled civil servants to advise them in any local or international issues. Unlike Muslim countries, political leaders in western countries make decisions in accordance with experts' advice. Muslim political leaders are not politically matured enough to seek expert's advice in the national interest of their countries. Muslims are still in a primitive stage in political sciences and politics. The Muslim world is far behind in political studies and political thought. We spend more time on the study of theological and dogmatic issues and yet, we fail to do enough research on social sciences such as politics, economics and other relevant areas. The Muslim politics is the source of many problems in Muslim countries. It should be the number one priority of the Muslim world to reform its politics. Many Muslim countries have become battle fields for the geopolitics of superpowers. As result of this, many Muslim countries lost their sovereignty and political freedom. For instance, look at the situation of Afghanistan, Iraq and Syria. These countries have been under control of external political powers for many years now and they find it difficult to make any political decision without consulting their political masters. Today, the Muslim communities suffer in many Muslim countries for these three reasons we have outlined here. To apply and implement the ideals and moral values of the general philosophy of Islamic law, the capable political authorities is imperative for the Muslim world. The religion of Islam is rich with its theological, economic, political and moral principles and doctrines and yet, the application of these Islamic religious ideologies and principles needs skilful political leaders in this modern world. Today, the Muslim world lacks such capable leaders. It can be argued that working to

establish a good political system in the Muslim world is part and parcel of the general philosophy of Islamic law. This is because, a good political system is imperative to apply the ideals of the general philosophy of Islamic law in this modern world.

Chapter 5: The Muslim world and development of institutions:

Why Muslim countries are left behind many countries in development? This has been a puzzling question for many Muslim academics. A century ago, a group of Muslim intellectuals went to some western countries to find out why Muslim countries were falling behind western nations in development. This question has been raised by people like Afghani, M. Abdu, Rashid Rida and by many others. Some people say that Muslim countries do not follow the religion of Islam as they should be following. This argument is debatable one. Today, more Muslims are praying, more Muslims are going to hajj, and more Muslims are giving money to charities. In fact, it can be argued that today Muslims are more religious than any time in the past. However, we can see more corruption, more fraud and more deception among Muslim communities today than any time in the past. This tells us that there is something wrong in Muslim communities' application of religious teaching. It can be argued that some thing went wrong in Muslims' understanding of religion of Islam.

1) Today, millions of Muslims only follow the outward rituals of Islam. They are concerned about how to keep their beards, how to wear and how to eat and yet, the essential message of Islam is absent from Muslim communities today. Islam promotes kindness, compassion, love, mercy, ethics of hardworking, helping others, doing good for all humanity, respecting all humanity, looking after the planet earth, protecting environment, cooperating each other in good, contributing for nation building process, building peace, enhancing harmony, promoting justice, protecting human rights, promoting equality, and contributing in all aspects of development and yet, many youths in Muslim community do not follow these teachings of Islam rather they are keen in dogmatic and theological arguments and they are keen in following the rituals of Islam rather than the central themes of Islamic teaching. This disparity in understanding the core teaching of Islam may be one of the reasons to see Muslim countries are falling behind other nations in development.

2) It has been repeatedly argued that Muslim countries are falling behind other nations because they are subject to recolonization today by western countries. It has been an old parlance among some Muslim academics to say that Muslim countries are left behind in development because they were colonised by many western countries. They argued that western countries exploited the Muslim countries for a long period of time. That is why Muslim countries compete with other nations in development. For some extent there is some truth in this argument and yet, Muslim countries should be blaming others for their failure. Today, India, and other Asian countries are developing rapidly despite of the fact they have been colonised. It is true that some Arab countries come under a total political hegemony of some western countries. It is true that some Arab leaders cannot make their own decision freely without consulting their western masters. Yet, this is not an excuse for Muslim countries not to improve their development.

3). It has been argued that many western countries went through the process of agricultural, industrial and scientific revolutions. That made them to develop so rapidly and more quickly. It is argued that western countries benefited from those intellectual and industrial revolution to build their countries. Yet, Muslim communities did not go through such a process of intellectual and industrial revolutions to develop their countries. It can be said there is some

truth in this argument and yet, countries such as India, and Japan, China and many other Asian countries did not go through these processes of industrialization and agricultural revolutions in the past and yet, they managed to compete western nation through their education, hard work, and dedication. Yet, Many Muslim countries do not have such devotion and hark working ethics.

4) Another reason is that Muslim politicians, policy makers and intellectuals do not have true patriotism to their countries and their nations. Pan Arab union was established to demonstrate Arab nationalism and yet, it did not work. Many Arab political leaders use their powers and influence to control their grips on power. They work for their personal interest at the expense of the national interest of their countries. In fact, Arab leaders have been fooled by western political leaders many times. Arab leaders use foreign military powers to subjugate any political revolt against their rule. This happened many times in Arab politics. They use colonial powers to crush any political demonstration against their rule. For instance, in the name of national interest US gives protection for Arab rulers to control their political power. The unconditional support of western countries for Arab rulers to control political powers in the Arab world has been identified one of the main reasons why the Arab world is falling behind. Because Muslim academics, civil servants and professionals are not allowed to make decision freely on the interest of their countries.

5) Another reason why the Arab and Muslim countries are falling behind other nations in development is that many Arab and Muslim countries do not allocate enough money for education in their national budgets. While many western countries are allocating a huge of amount of money for education and research, many Muslim countries pay little attention for research, innovation and invention. Even after discovery of oil and gas many Arab countries do not have any strategic plans to develop their nations. It is true that they spend billions of dollars in education and they send thousands of students to western universities for higher education and yet, the quality of education in many Arab countries are poor and all these efforts have little impact on development of Arab countries. It has been said that there is no originality or productivity in research activities of many Muslim students today. It has been claimed that universities in Arab and Muslim countries produce hundreds of PhDs in different fields and yet, there is little creativity in their research findings. Students in countries such as Japan, China South Korea and western countries have creativity and productivity in their research activities. Yet, students in many Muslim countries have develop a habit of copy cutting rather than producing knowledge in their research. Today, many Muslim countries have become consumer centres for western products and technologies. Technicians and professionals in Muslim countries are nowhere near to their counter parts in invention and creativity.

6) Above all, Muslim countries have been ruled for centuries by dictators, family oligarchies, and military juntas. Muslim communities have not enjoyed democratic traditions and the rules of law. Many Muslim countries have not had constitutions for their country. As result of this, political instability and chaotic conditions continued in Islamic history from the formative period of Islam until modern time. There has been no any good political system in many Muslim countries. Sometime tribalism and Arab family traditions had a control over politics for many centuries. Still Arab countries find it difficult to come out of this old fashion politics in this modern age. This is another reason why many Muslim and Arab countries cannot enhance development.

7) Ahmad Assid has identified some factors that contributed to the backwardness of Muslim countries. He argues that Wahhabism has contributed to the decline of Muslim countries. He accused Saudi clerics of spreading Wahhabism across the Muslim world. He argues that since oil is discovered in Saudi, it has been spending a lot of money to spread their ideology across the Muslim countries. He claims that this money would have been spent on useful projects such as establishing Educational institutes and universities. He argues that as result of Wahhabism extremism spread in Muslim countries. Instead of building up a civilization, education and economies of Muslim countries they spent money on this ideology.

8) Ahmed Assid argues that establishment of the state of Israel among Muslim countries is another reason why some Muslim countries in Middle East were falling behind in development. His argument is that countries in the middle East are engaged in war with Israel for 70 years. As result of this time, energy and wealth of Muslim countries are wasted in this war. So, they could not develop their countries. Palestine, Jordan, Egypt, Lebanon and Syria suffered a lot as result of this war.

9) He argues that Islamic movement such as Muslim brotherhood and Jamathi-Islami engaged in negative criticism of western civilization. They began to criticise western capitalistic economy, politics and other western concepts. Instead of benefiting from positive aspects of western civilization they began negative campaign to reject all what come from west. As result of this, they failed to benefit from western education and research methods. Rather than educating Muslim communities they spent their times and energy on spiritual development alone. Rather they failed to develop science, technology and education. They made religious renaissance rather than political, educational, economic and technological renaissance. They failed to promote the rule of law, democratic traditions and human values.

10) Moreover, the contribution of Muslim ladies has been minimal for many centuries in Islamic history. Some classical Muslim jurists declared that only men should hold higher posts in office such as judges. They claimed that Muslim ladies should dedicated their lives for housekeeping. They should not take up public work. As result of this, half human resource has been wasted in many Muslim countries for many centuries.

11) Another important reason for the decline of the Muslim world is that Muslim scholars made a demarcation between worldly knowledge and religious knowledge. They separated religious sciences from physical sciences. They argued that human reason is relative, and they limited the role of human reason. They demanded that human reason must work within the limits of revelation. They argued that reason must follow the dictates of revelation. Yet, Ibn Rushd or Averroes attempted to reconstruct Islamic philosophical thought on basis of rational and textual evidence and yet, his ideas did not get currency among Muslim communities.

12) It has been contented that western countries succeeded in politics because they made a separation between politics and religion. This separation between church and politics gave political leaders in the western countries freedom to rule their countries free of religious control. Yet, in Islam politics and religion are entwined and inseparable. Muslim rulers have been using religion to control their power and religious principles and doctrines have been used to manipulated dictatorial rulers in Islam. In the name of religion Muslim rulers enslaved Muslim population and even today, Muslims are enslaved in Muslim countries in the name of Islam. People are made to obey rulers whether they like them or not. Muslim rulers enjoyed unlimited control over their population in the name of Islam. As result of this people are not

given freedom to express their political opinions in Muslim countries. People lost their freedom and liberty. In this way, creative thinking was controlled by Muslim rulers in Islam. This has been one more reason for the decline of Islamic civilization.

Ahmad Assid is a secularist Arab writer and his knowledge of Islam is very much sallow. His contention is that some divine texts are revealed in a historical context and they do not have any relevancy to the modern time. He argues that those texts must be abandoned. It is claimed that Ahmad Assid is "standing for liberty, learned society, progressiveness, civilised country, enlighten free thinking, and humanity in its true sense, and simultaneously standing against medieval aspect including……. Narrow-mindedness, backwardness (Ahamed.Z. 2016.p1). Although we agree with some of his argument and his secular notion of development is not viable to the Muslim world. According to Ahmad Assid, the religion of Islam stands between Muslim world and its development. But it can be argued that moral, ethical and religious teaching of Islam encourage humanity to discover, invent and cultivate this world for the benefit of humanity. The general philosophy of Islamic law proposes the Islamic notion of development with Islamic ethos and Islamic values. Although, today western countries are economically and materially developed, today more people are suffering poverty, injustice and discrimination. Even in the western world less than 1% population possesses 99% wealth according to some statistics. More than 40.000 houses are repossessed in England alone each year. Many families suffer from a lot of demotic violence and social problems. So, it would be wrong to think that modern western civilization has created a utopian life on earth rather it has created unequal world. Today, wealth is accumulated in the hands of a few companies and countries. While billions of people suffer from poverty and unemployment a handful western nations enjoy material benefits. This unequal world is created by this so-called capitalistic world. A few rich countries control the wealth through their greed and desire at the expense of poor countries. Because the geopolitical interest of developed nations is greater than the welfare millions of people in poor countries. This is the consequence of ignoring divine guidance in human life. Once humanity is deprived of divine guidance, human greed and human desire dominate human life. That is what we see now in the western world. It has been dominated, controlled and ruined by materialism and greed. The general philosophy of Islamic law stands against this injustice and greed.

The Muslim world is blessed with the divine guidance and flexible Islamic legal principles. The classical Muslim jurists created the ideals of the general philosophy of Islamic law to guide the Muslim community in all areas of social, political, religious educational and economic development. The human development is the basic aim of creating the ideals of the general philosophy of Islamic law. How do we apply those ideals in this complicated world? What are the best methods to put those ideals into practical application in the modern world? Why social, ethical, moral, educational, economic and religious ideals of the general philosophy of Islamic law are no longer applied in many Muslim countries? Mere existence of rich ideals of Islamic law in text books and legal manuals is not enough, the Muslim world must have some mechanisms, institutional means, organizations, experts and professionals to put those ideals into practical application in the modern world. It has been argued that the Muslim world has failed to create reliable institutions, organizations and civil societies to give practical application to Islamic ideals. Unlike in the past, today, Muslims are more educated, more knowledgeable in politics and public administration and yet, today, dictatorial political leaders in the Muslim world do not want to see radical political and administrative reforms for

fear of their political powers. Muslim political leaders want to keep their people under their political control and hegemony. This political conflict between Muslim political leaders and people slow down nation building process in many Muslim countries. There is no cooperation between people and political leaders in many Muslim countries. As result of this, Muslim scholars are not given leverage and freedom to apply Islamic principles and values in public life. I will compare the development of institutions and social organizations both in Western and Islamic civilizations to critically evaluate why the ideals of the general philosophy of Islamic law were marginalised in the Muslim world. Some social scientists and economists argue that one of the secrets for the rapid development of western civilization is that it invented different vibrant socio-economic and political institutions to support development process of western nations: It has been claimed that these political, financial, administrative , judicial, military , educational , religious and charitable institutions have helped western nations for their rapid development and progress for the last 500 hundreds years. On the contrary, the Muslim world has failed to establish these vibrant intuitions for the last five hundred years. The problem with the Muslim world is that it has all ingredients of natural and human resources for development and progress and yet, it does not devise cohesive and comprehensive institutions and system to usher Muslim communities into development and progress.

The fundamental Islamic teachings were revealed to the prophet Muhammed in the 6th century in Makkah through angel Gabriel. The Muslim community was formed and established on the basic of Islamic teachings. In the formative period of Islam, human life was simple and rudimentary. In Arabia there were no political parties, social institutions, or educational institutions in pre-Islamic history except a nomadic way life. People in pre- Islamic Arabia had a tribal life structure. Certain tribes and clans controlled socio-political and religious life of people. Unlike Arabia, Roman and Persian empires had some political, economic and social intuitions to regulate and organise human life in some systematic ways. Historical evidence and reports tell us that many differences prevailed in the social, political and economic structures of communities in Arabia, Persia and other parts of the world. During the periods of righteous Caliphs, the religion of Islam spread into many parts of Persian and Roman empire. Egypt, Spain, Persia, and many parts of the Roman Empire were conquered during the formative period of Islam. Muslim dynasties ruled over many parts of the Muslim world. The Muslim rulers established Muslim rule in Spain, Egypt, India and in many parts of the world. It was documented that Muslim intellectuals invented many scientific and technological innovations during Muslim Spain rule and the Islamic golden age of Abbasid Caliphate. It was documented that the Muslim empires established many educational institutes, colleges, universities, military institutes, hospitals, charities and endorsements. The Ottoman empire introduced some reformative measures to update its educational, military and religious institutions. Many legal reformations were introduced in ottoman empire to meet social changes. Yet, all these changes and new reformative ideas introduced by intellectuals and politicians in different parts of Muslim empires in different periods in Islamic history did not match the institutional developments that Western countries made. The institutional development and public administrative skills ceased in the Muslim by 1500 hundred years. Yet, with industrial revolutions, the western world made rapid development, but the Muslim world could not catch up with them in development and progress. For the last 500 hundred years, Europe went through some radical changes in devolvement. Niall Ferguson asks this question. “Why, after around 1500, did Western civilization-as found in the quarrelsome petty states of Western Eurasia and their colonies of settlement in the New world -fare so much better than other civilizations? N. Ferguson quoting some historians argues that human organizations

have two patterns. What they identify as "natural state or limited access pattern" and "open access pattern" human organizations. The former is characterised by
--a slow-growing economy,
--Relatively few non-state organizations,
-- a small and quite centralised government, operating without the consent of the governed, and
--- social relationships organised along personal and dynastic lines.
The latter is characterised by
--a faster -growing-economy
-- a rich and vibrant civil society with lots of organizations
-- a bigger, more decentralized government; and
--- social relationships government by impersonal forces like the rule of law, involving secure property rights, fairness and (at least in theory) equality" (Niall Ferguson 2014, pp24-25).
These social, political and legal reformation processes went through European nations gradually and yet steadily until modern times since 1500. These changes did not take place overnight. Europe engaged in long religious and political conflicts from dark ages to until modern time and yet, they managed to come out of all these conflict after ww2. Why and how? Niall Ferguson notes that "Between the Conquest and the Glorious Revolution, England went from being a 'fragile' natural state to be a 'basic' one and then a 'mature one', characterised by an' extensive sets of intuitions governing, regulating, and enforcing property rights in land capable of supporting impersonal exchange among elites. The rule of law for elites was one the three 'doorstep' conditions, prior to the transition to an open-access system, the others being the emergence of 'perpetually lived organizations in the public and private spheres and consolidated control of the military. ……. The decisive breakthrough to open access came with the American and French revolutions, which saw the spread of incorporation in various forms, and the legitimation of open competition in both the economic and political spheres. The components of a modern political order are identified as "a strong and capable state, the state's subordination to a rule of law and government accountability to all citizens" (Ibid 2014, p26). It is argued that Europe pioneered in political reform, application of rule of law, and bringing elected government into accountability. It succeeded in establishing a strong and accountable government. The reason for the success of western Europe is noted by some academics. "The reason that Britain is richer than Egypt is because in 1688…England… had a revolution that transformed the politics and thus, the economics of the nation. People fought for and won more political rights and used them to expand their economic opportunities. The result was a fundamentally different political and economic trajectory, culminating in the Industrial revolutions" (Daron Acemonglu and James.A. Robinsion, 2012, p.4).

Niall Ferguson argues that the key components of western civilization are "democracy, capitalism, the rule of law and civil society". He argues that these components are like interconnected political, economic, legal and social black boxes. He argues that "inside these political, economic, legal and social black boxes are highly complex sets of interlocking institutions. Like the circuit boards inside your computer or your smart phone, it is these institutions that make the gadget work. And if it stopes working, it is probably because of a defect in the institutional wiring. You cannot understand what is wrong just by looking at the shiny casing. You need to look inside…. The simple point is that institutions are to humans what hives are to bees. They are the structures within which we organize ourselves as groups. You know when are inside one, just as a bee knows when it is in the hives. Institutions have boundaries, often walls. And, crucially, they have rules. (Niall Ferguson,2014 pp.11-12). What he means by institutions here are the political institutions such as the British parliament in Westminster and the American Congress. When he speaks about the democracy and rule of law, he speaks about the practical application of the democratic traditions. Today, the term democracy has been misused by many in third world countries. Many politicians have used it

to grab political powers in many countries. Mere slogans and ballot boxes do not reflect the genuine democratic tradition rather there must be a transparent and systemic method to elect the representatives without any deception.

Niall Ferguson argues that "When we talk about 'democracy' we are in fact referring to a number of different interlocking institutions. People sticking pieces of paper into ballot boxes, yet Their elected representatives making speeches and voting in a large assembly hall, yes. But those things alone do not automatically give you democracy. Outwardly, the legislators of countries like Russia and Venezuela are elected, but neither qualifies as a true democracy in the eyes of impartial observers……. Just as important as the act of the putting crossed or stamped papers in ballot boxes are the institutions- usually parties- that nominate candidates for election. Just as important as the parties are the officials-civil servants, judges, or ombudsmen-whose responsibility it is to ensure that the elections are fair. And then it matters hugely how the legislature itself actually operates. A body of elected representatives can be anything from a wholly sovereign entity, as the British Parliament was until European law began to encroach on it, to an impotent rubber stamp, like the old Supreme Soviet. Its members can stoutly uphold the interests of their constituents (including those who voted against them), or they can be in hock to the vested interests that financed their election campaigns. (Ibid, pp 12-13).

It is argued that many non-western countries have adopted the western model of human development and progress. Niall Ferguson argued that "China has belatedly followed a number of other East Asian countries- the first was Japan- in downloading most (not all) of what I have called the "killer applications of Western civilization: economic competition, the scientific revolution, modern medicine, the consumer society and the work ethic" (Niall Ferguson 2014, 35). There is no doubt that western civilization dominated and influenced the humanity for the last 200 hundred years. Kishore Mahbubani (2018) argues that "the West used its military and technological prowess to conquer and dominate the planet. Modern science and technology were harnessed to create powerful weapons. By the end of the nineteenth century, western power exploded into every parts of the planet. Virtually every society on Earth-including the two previously greatest economic powers, China and India (Which had almost half of the world's GDP in 1820)-was subjugated by the west. Every other human civilization had no choice but to bend before western power" (Kishore Mahbubani 2018, p 20). But this is dramatically changed today. Today, this world is controlled with supper human skills, knowledge, digital technology and Artificial intelligence. Therefore, claiming a monopoly by any segment of human race over any branch of knowledge and science would not be fitting in this modern world. Knowledge exchange and transfer took place ever since humanity began to live on earth. Moreover, today knowledge exchange unavoidable by any nations. Yet, Niall Ferguson argues that "Copying the Western model of industrialization and urbanization tends to work if your entrepreneurs have the right incentives, your labour force is basically healthy, literate and numerate, and your bureaucracy is reasonably efficient" (Ibid. pp35-36). It took a few decades for the rest of the world or for many countries such as China and India to adopt western model of development. Kishore Mahbubani argues that "It took a few decades, but the rest of the world eventually figured out how they could replicate Western success stories in economic growth, health, education, and so forth" (Kishore Mahbubani, 2018, p 21)

Nevertheless, describing "the notion of industrialization and urbanization" as a western and non-western model is not appropriate in this modern time. Today, the entire humanity experiences a huge explosion of information and knowledge exchange unprecedented in the history of human civilization. Countries such as China and Japan represent a model of human industrialization and human development far better than many western countries. Therefore, no western country could claim a monopoly for material successes and development now. It has become a universal social phenomenon. Today, it

would not be appropriate to claim that the western model of development is one and only model for human development in civilization. With the Chinese and Indian civilizational awakening, Francis Fukuyama's finding that "the universalization of Western liberal democracy as the final from of human government" become a false predication. Kishore Mahbubani argues that western political leaders are deceived by the writing of some people like Francis Fukuyama and others. They convinced the western political leaders that the western civilization has reached its peaks in human development and they make them believe that western civilization will dominate the world for ever through its liberal ideologies. Kishore Mahbubani argues that "western rulers fell in love with his essay and began to believe that their societies had reached the top of the metaphorical Mount Everest of human development and would not be dislodged" (Ibid. p. 21). The rapid development in China, India and many other countries in the East tells us that today the notion of development is not confined merely in western countries alone. Moreover, today many countries compete western countries in technological, scientific and economic development and It is expected China and India will overtake US by 2030 in development. It is not impossible for the Muslim world to compete the rest of the world in development and progress with its huge natural and human resources. Yet, it needs some radical political, social, economic and educational structural changes to catch up with the phases of development and progress. With modern digital technological advancement and facilities, the Muslim world is catching up with the rest of the world in education and development yet, it is dictatorial political leaders who stand between Muslim youths and their human development.

In his famous book "The long divergence: How Islamic law held back the Middle East" Timur Kuran, argues that the Europe or western countries came out from the dark ages gradually and established modern economic institutions, organizations, companies, corporations, banks, big trading companies such as East Indian companies, stock market and share markets. These institutions accumulated greater wealth and capital and survived for long times to enhance the development and progress of the western nations. On other hand, he argues that certain elements of Islamic law make assets and properties fragmented and make accumulation of wealth and capital harder. He blames Islamic law for the economic stagnation of Middle East and Muslim nations. It was historically documented that Arabs and Muslim traders engaged in silk road and sea trade in the middle ages. They competed their European counterparts in sea and land trade in the most part of middle ages. Yet, Timur Kuran argues that "around the year 1000, commercial life in the two regions did not differ palpably……. As the institutional complex of the West gave rise to progressively more advanced commercial and financial institutions than that of the Middle East produced organizational stagnation within those sectors beyond direct state control. The institutions under which Middle Easterners borrowed, invested, and produced did not spawn more advanced institutions, they did not galvanise structural transformation that enabled those functions to be performed more efficiently……. The Middle East fell behind the West because it was late in adopting key institutions of the modern economy. These include laws, regulations, and organizational forms that enabled economic activities now taken for granted in all but the most impoverished parts of the globe: the mobilization of productive resources on a huge scale within long-lasting private enterprises in the provision of social services through durable entities capable of transformation" (T. Kuran. 2011. P.5)

"At the start of the second millennium Middle Eastern merchants and investors pooled labour and capital within partnerships essentially identical to those used by coeval European merchants. But partners were subject to inheritance rules that had two relevant effects. On the one hand, these rules tended to break up successful businesses after the founder's death. On the other, they incentivized resource pooling within small and short-lived partnerships. The inducements in question came from Quran-based inheritance rules. These required the division

of an estate among all members of the deceased person's immediate family and parents, and, under certain conditions, more distant relatives as well. Under Islamic law, the immediate family could include up to four wives; ordinarily each additional wife raised the number of inheriting children, fragmenting the estate even further in relation to the nuclear family. The most successful merchants and investors tended to have more wives than average performers, which compounded the danger of fragmentation for large estates. One outcome is that few major businesses outlived their owners. In the West, by contrast, less egalitarian inheritance systems enabled large commercial enterprises to survive and expand for generations. Another outcome is that merchants and investors sought to minimize the probability of getting entangled in estate settlements involving the heirs of deceased partners. By law, a partnership ended at the withdrawal, incapacitation, or death of any partner. Merchants and investors thus kept their partnerships small in membership and short in order to avoid costly business interruptions. Indeed, as the West saw the emergence of large and long-living commercial companies, no such development took place in the Middle East". He argues that commercial partnership and enterprises were formed under Islamic partnership law… A typical Islamic partnership was formed between two or three-person partnership usually. Basically, with a small number of partners. The largest partnership was with 23 people in the 17th century. Why Islamic partnership remained small throughout Islamic history until modern time? Islamic Partnerships can be dissolved at will by either party". (Ibid 2011. pp.5-9).

He argues that inheritance law created incentives to keep partnership small. He argues that the distribution of wealth under Islamic inheritance law fragments the family wealth. Moreover, he argues in this modern financial market, the prohibition of interest makes it difficult for the Muslim business communities to borrow money or lend money on credit. So, function and development of banking system is difficult under Islamic law. Moreover, the institution of waqf is regulated by individuals and there is no any mechanism in Islamic law to develop into corporative system or into any form of big financial companies. Kuran argues that certain legal institutions are responsible for the economic stagnation of the Middle East. The Islamic laws of inheritance, polygamy, prohibition of riba (interest) both lending and borrowing, rigid waqf provision and death punishment for apostasy are some of Islamic law that paved the way for the economic under-development of the Middle East world. "Ever since the economic rise of the West, the question of whether non-Western religions are ill-suited to economic efficiency and growth has attracted academic scrutiny. Special attention has been paid to the economic effects of Islam, the world's second largest religion after Christianity. Many negative claims are found in scholarly works. One reads, for instance, that Islam instils in its adherents' beliefs harmful to economic advancement. It is said also that Islam discourages human capital formation, limits experimentation and innovation, promotes hostility to commerce, and distorts markets by facilitating authoritarian governance. A very common view is that Islam's financial rules are incompatible with modern economic life" (Timur Kuran, 2018, p.1). To argue that non-western religions and civilizations are ill-suited to economic growth and development is not a valid argument at all. Today, we see many countries such as Japan, South Korea, China, India and Russia are rapidly developing. Even it is expected that China and India will exceed the US in their GDP by 2030. To claim Islam discourages commercial business activities is an unsound argument. There is no sacred book on earth that encourages business transaction and business activities as the Holy Qur'an does. There is no legal system in any other religion except Islam to regulate business transactions as Islamic law does.

A cursory reading into any Islamic legal manuals would reveal that a greater part of legal writing has been devoted to commercial laws and business activities in Islam. The religion of Islam did not reveal into an agrarian society rather it was revealed in Makkah which was regarded as a centre of business activities in the 6th century in Arabia. The Qur'an and the prophetic traditions set hundreds of rules and regulations for the business activities. It could be

argued that the Muslim world did not introduce some innovative ideas in cooperative business activities. The Muslim world engaged in business activities in sea and land long before European renaissance and yet, it failed to develop innovative cooperative and company business enterprises as the West did in the past. There is nothing wrong with Islamic teaching on business and trade, but the wrongness is with the Muslim mind that failed to introduce innovation in the Muslim trade and business activities. Like many other areas such as politics, public administration, and education the trading and business sector did not develop in the Muslim world. The Muslim world has been doing business in old traditional fashion until modern European company and cooperative systems were developed. Once again T. Kuran blames the religion of Islam for the poor economic performance of the Muslim countries. "The question of whether Islam affects economic performance is important for several reasons. Muslim-majority countries are appreciably poorer than the world's economically advanced countries, even the rest of the world. The average per capita income at purchasing power parity of the 57-member Organization of Islamic Cooperation was $10,015 in 2014; it was $17,500 for the world's remaining countries, and (excepting its one Muslim-majority member) $42,216 for the OECD, the club of economically advanced countries. Muslim-majority countries lag also in terms of other basic indices of economic performance, such as life expectancy and adult literacy" (Ibid 2018, p 1). It is true that many Muslim countries are suffering from economic and financial difficulties. All statistics tell us the economy of the Muslim world except some gulf countries is declining. Yet, it would be wrong to blame Islam for this economic dawn of the Muslim world. It is not because of the fact Muslim communities follow the religion of Islam that Muslim suffer from economic dawn fall. The Muslim world has more natural and human resources than many countries in the developing world. The oil and natural gas the gulf countries have got enough to develop the entire Muslim world within a few decades. Singapore and Japan do not have such natural and manpower and yet, they managed to become some strong economies in the world. It is the quality of human skills, financial management and good political leadership that heled these countries to increase their economic growth.

"It is not correct to say that the existence of commercial institutions like business corporations and banks caused the development of the West, and their absence in the Middle East resulted in the decline of the region. In fact, these economic institutions were effects of some other stronger factors. They may have enforced and reinforced themselves later. What were those factors? Scientific discoveries, use of machines, and improvements in production techniques and changes in composition of crops, rapid increase in production, availability of surplus product for trading purpose, invention of printing press, discovery of a new world that provided new markets, establishment of colonies as a source of raw material and ready market for finished products, and a newly discovered all water route of European trade through the Cape of the Good Hope are some of the important factors that boosted Western economies, and directly or indirectly helped them establish corporations, maritime trading companies and banks" ((Abdul Azim Islahi 2011, pp 255-256). I agree that, the Muslim world did not experience these industrial, technological and scientific revolutions in the past and yet, today in this modern world with discovery of oil and gas many Arab and Muslim countries could have devised efficient institutions to speed up development and progress.The Muslim world failed to develop efficient political, economic, legal, administrative, financial, educational institutions even after the discovery of oil and gas. It is proudly proclaimed that the Muslim world pioneered the establishment of educational institutions and the invention of many innovative technologies. But Muslims failed to further enhance them until Europeans made modern inventions and development. We have failed to develop efficient institutions to check and

balance Muslim political leaders since the formative period of Islam. We have failed to develop efficient public admirative institutions to serve public in efficient ways. We have failed to develop efficient academic institutions to provide modern education in innovative ways. We have failed to strengthen our public institutions. That is why we see corruption and chaotic conditions in many Muslim world today. Unless, we develop these efficient public institutions the application of the ideals of the general philosophy of Islamic law will be superficial and minimal.

T. Kuran reads Islamic traditions and Islamic law merely from materialistic pure economic perspectives to blame the religion of Islam for the economic decline of the Muslim world. It would be wrong to gauge the Islamic teaching with the failure of the Muslims in economic development. It is Muslims who failed to rightly understand Islamic teaching and develop them to meet the modern-day needs. Islam encourage innovation and development and yet, Muslim failed to develop financial institutions and companies. Thus, the fault is in the Muslim mind not with Islamic economic teaching. Yet, T. Kuran deliberately misinterprets Islamic teaching to blame Islam for the failure of Muslims. Moreover, the Islamic world view is different from the western materialistic world view. The Islamic perception of the world view is that this world life is a testing for man. Muslim communities do not merely struggle to enhance material development in this world rather they strive to succeed in their eternal life in the next life. So, the meaning of success for Muslim communities differs from the western definition of success. Muslim communities may look materially poor, but they are spiritually richer than many western nations. The notion of Islamic development is different western notion of development. The notion of Islamic development is a wholistic one. It takes the entire human life into account when it defines the notion of development. The spiritual, moral, ethical development of Muslim communities is an integral part of Islamic notion of development. In additional to all aspects of material development, Islam put a strong emphasis of moral, ethical and spiritual development of man.

T. Kuran argues that the Muslim countries have failed to replicate western institutional models in fiancé, politics, education and public administration. Yet, today, we find that China, Japan, Malaysia, South Korean, Singapore and many other third world countries are fast growing in economy and human development. They did not replicate the western model of democracy and capitalism. Francis Fukuyama (1989) in his book (The End of History and the Last Mans National interest) claimed that the ideological evolution of the universalization of western liberal democracy is the eternal form of a good governance for humanity. He is wrong in his argument. Now, it looks western democracy and liberal ideas are mocked by China's state capitalism with its communist political ideas. Of course, we do not agree with human right violation and dictatorial politics of China and yet, it has challenged western capitalistic economic world order. Today, china, Japan and many other countries are developing efficient financial, economic and political institutions than many western countries. There is no harm in seeking wisdom from any one or from any country. Today, we are living in this virtual world. Unlike in the past, today knowledge transfer and knowledge exchange take place instantly every seconds and minutes. Countries learn from one another in all sort of ways from different ideas, concepts, social and development models. Therefore, there is no harm for Muslim countries in developing political, educational, economic intuitions in any model if they are in line with Islamic moral and ethical values. That are what Muslim countries must do now to develop Muslim world. Recently elected Pakistani Prime Minister Imran Khan argues "The reason why countries are poor, it is not because of lack of resources. The reason why countries are poor, because corrupt elites destroy state institutions… "My concern is to strengthen the state institutions. The stronger the state institutions the lesser the corruption" (Imran Khan. 2018.p 2).

Today, Muslim countries like Turkey, Kuwait, Dubai, Qatar, and Malaysia are focusing in institutional development. They are trying to put their politics right, they are trying to put their economic intuitions free from corruption and fraud. They are updating their educational institutions and they are updating public administrative departments. We cannot apply the ideals of the general philosophy of Islamic law without these efficient public institutions. It can be said the Muslim world is gradually progressing in this direction to update its institutions and departments. Yet, the political dictators in the Muslim world are trying to block all these institutional developments and political reforms. All what I see is that some political elites in Arab and Muslim word oppose all these reformative ideas for fear of their political grip on power and yet, today, Muslim public realise that corrupt politicians are destroying their lives. So, I would argue that these political dictators no longer survive in Muslim countries. Their political life span is being shorted day by day. T. Kuran is praising the intuitional development in western countries. He states that western countries managed to develop cooperative banks, financial institutions, and business companies of all kinds. Yet, it is true that western countries have developed many political, legal, financial, administrative and social institutions such as UN, world bank, IMF, ICC, and many other local and international institutions. They have indeed developed some democratic traditions, protected human rights and maintained rule of law, promoted unconditional justice and protected human dignity and yet, most of these are used to achieve political objectives of some developed nations.

Today, we have more human right commissions than any item in human history and yet, more human beings are killed today than any time in human history. Today we have more charitable organizations and yet, today more people die out of hunger and starvation than any time in the past. What all these political, economic and social organizations and institutions have given to humanity. 1% of rich enjoy 80% of world wealth. The gap between rich and poor is increasing dramatically each year. This is a capitalistic gift to humanity and yet, academics such as t. Kuran boosts about the institutional development of western civilization. I would strongly argue that when Islamic ethical and moral values are taken away from any economic or public intuitions, we could see exploitation, fraud, and corruption. That is what we see today in gambling industries, share market industries and stock exchange industries. Take for instance, the murder of Jamal Khashoggi in a broad day light in Turkey. It is very much clear that Saudi government orchestrated this murder and yet, to protect economic interest of some western countries they protect Saudi political establishment. This is done by western countries against all international norm and moral principles. Today, institutional corruption is widespread in many western countries and yet, they claim they are guardians of democratic values and traditions.

A contemporary Arab and Muslim political leaders do not follow Islamic moral and ethical values in politics. Except some leaders almost all Muslim rulers follow dictatorial political principles against the will of their people. Yet, Turkey and some other Muslim countries are trying their best to apply Islamic political principles. Turkey tries to make a balance between Islamic and western values in politics. Yet, most Muslim politicians are using Islam for their political grip on power and they act against basic teaching of Islam. Therefore, the institutional reform of Muslim politics is imperative today to apply the ideals of the general philosophy of Islamic law. All medieval ideas of classical Muslim scholars on general philosophy of Islamic law cannot be copied word to word in this modern social context of our digital technological world. That is why strengthening institutional development is imperative

to apply the ideals of the general philosophy of Islamic law in modern time. Yet, the union of international Muslim scholars have some excellent strategies and plans to guide Muslim world into a right direction. However, some so called Muslim political leaders are blocking them from doing some constructive religious reformation in the Muslim world. Yet, against all odd, the Muslim world is gradually coming out of destructive path. Yet, some Muslim politicians distract the nation building process in many Muslim countries. It will take decades to see any meaningful political reform in Muslim countries. Until such a time, application of the ideals of the general philosophy of Islamic law will limited in some aspects of religious rituals and rights of Islam

Conclusion:

This study confirms that the "science" of general philosophy of Islamic law went through different phases of growth and development in Islamic legal history. Like many other Islamic sciences, the general philosophy of Islamic law was developed by classical Islamic scholars to facilitate the understanding and application of Islamic law in most appropriate and applicable manners. This study also confirms that original ideas of the general philosophy of Islamic law were deeply rooted in the primary sources of Islamic law. Hence, it establishes that the science of general philosophy of Islamic law is an Islamic science and it is not an alien science as often argued by some schools of thought. This study further confirms that the study of the general philosophy of Islamic law has dramatically grown from an inductive legal theory into a fully-fledged independent branch of Islamic sciences. Yet, there are some Muslim scholars who still think that the science of the general philosophy of Islamic law is part and parcel of the Islamic legal methodology (*Usūl al-Fiqh).* yet, this study found that the arguments of those who declared the independency of the science of the general philosophy of Islamic law overweight the arguments of those who say that the science of the general philosophy of Islamic law is part and parcel of the Islamic legal methodology (*Usūl al-Fiqh*). Moreover, it could be said such an argument is not useful and beneficial. It does not matter if this science is part and parcel of the Islamic legal methodology (*Usūl al-Fiqh*) or not. All what matters is how the ideals of the Islamic legal philosophy have been put into practice.

This study also study confirms that a comprehensive understanding of the science of *Maqāsid al- Sharī'ah* is an appropriate alternative approach to the *Sharī'ah* overriding difficulties in the application of supplementary legal doctrines of *Usūl al-Fiqh.* Moreover, this study affirms the richness of source materials of Islamic law but questions the methods of understanding them. This research confirms that Muslim approaches to the divine texts should be re-examined in the light of the general philosophy of Islamic law. It further reveals that copying the classical ideas and interpretations of divine texts are not always viable today's circumstances. Moreover, this study further establishes that scholars such as al-Juwaini, al-Ghazāli and others classified the elements of the doctrines of *maqāsid* in their historical and social contexts. Their interpretation, classification, and understanding of the doctrines of *maqāsid* is confined to their social and historical contexts. They contrived the tenets of *maqāsid* based on punishment laws in Islam. However, our study affirms that confining the tenets of *maqāsid* under five headings is not always enough to modern times. Since these taxonomies were introduced into Islamic legal thought in medieval times, social structures, and lifestyles have dramatically changed. Therefore, naturally, meanings, connotations and implications of the technical meanings of these taxonomies should expand in the context of modern times. Our research reiterates the need for re-interpretation of *maqāsid.*

The introductory chapter of this study unveils some aspects of the marginal nature of classical interpretations to the scriptural texts of the Qur'an and the Sunnah. It is concluded that some areas of classical interpretations are not necessarily always viable for modern conditions. The

arguments for reviewing the methodological understanding of the legal theory of *fiqh* (*Usūl al-Fiqh*) are justified from the perspectives of the modern Islamic scholars. Hence, our research concludes that the nature of social changes, the deficiencies of the conventional *Usūl* and the need for a better understanding of the priorities justify the importance of understanding the general philosophy of Islamic law. Tracing the origin and development of the doctrines of *maqāsid* we find that, neither the Qur'an nor the Sunnah define the doctrines of *maqāsid* in a technical sense. Moreover, we discover that although the classical Islamic scholars tried to understand the general philosophy of law, none of them defined it in a technical sense. This does not mean that we devalue their contributions to the study of the general philosophy of Islamic law in any sense. Furthermore, we find that it is the works of modern Islamic scholars, which define the doctrines of *maqāsid* in a technical sense. In addition to this, in tracing the origin of the general philosophy of Islamic law, we understand that the classical Islamic scholars adapted the various methods of legal interpretation in their attempt to learn the general philosophy of Islamic law. Our reading of the classical materials in Islamic law suggests that two different approaches namely the literal and rational trends dominated the legal interpretations of the texts in the classical period. The former trend, adhering to the apparent meanings of the texts, ignored the underlying rationale, wisdom and logic of the texts. The latter trend not only read the literal meanings of the texts but also examined the underlying rationale of divine commands in each text of the Qur'an and Sunnah. Hence, it can be said very convincingly that the origin and development of the doctrine of *maqāsid* was inherently related to the legacy of the intellectual contributions of those who initiated the rational investigation into the body of the divine texts. Moreover, our research reveals that the concepts of *maslaha* and *istihsān* and all other subsidiary sources of Islamic law are in one way or another means of rational enquiry into the general philosophy of Islamic law. Although some leading classical jurists questioned the authority and validity of some of the subsidiary sources of Islamic law, we find that most the classical scholars maintained that the adaptability of law to changing conditions partially depends on these supplementary sources. Therefore, unless we properly understand the nature, origin and development of these sources, our knowledge of the general philosophy of Islamic law will remain confined to the apparent meaning of the texts.

In our reading of the historical period and the biographical account of al-Shātibī's life we understand that al-Shātibī's legal theories are very much influenced by the socio-religious, economic and political circumstances of his times. He found the failure of Islamic law in meeting needs and demands of society during his period. al-Shātibī maintained that an excessive hardship and difficulties imposed by certain *Sufis* in the application of law is one reason for this failure and another was that certain jurists were excessively involved in choosing very lenient opinions to suit their own gains. al-Shātibi makes a staunch criticism of these two groups in his theological treatise of *I'tisām*.We find that the theoretical foundation for the general philosophy of Islamic law in a systematic way began with the works classical Muslim scholars and yet, it was al-Imām al-Shātibī who introduced an inducive reading into the primary sources of Islam to develop the general philosophy of Islamic law in any logical and cohesive order. This study finds that al-Shātibi introduced some logical legal theories and legal maxims to Islamic legal thought. al-Shātibī proposed some methodological and rational approaches to unify and harmonise various contrasting approaches to the legal interpretation. Moreover, he consistently argues throughout his writings that methodological and comprehensive approaches to the texts are needed in the light of social changes and demands of life. What concerned him most was not lack of source materials of Islamic law but rather the quality of Muslim understanding of the scriptural texts. The innovative aspect of al-Shātibī's legal thought centres on the fact that he did not copy or subordinate his predecessors' contributions fully in his legal theories neither did he summarise their views and perceptions in his writing. Thus, our research confirms the originality of al-Shātibī's legal philosophy. Unlike other legal

theorists al-Shātibi had made rare references to the works of his predecessors except to articulate an argument or to criticise a viewpoint. We have noticed that al-Shātibi did not follow the conventional methodology in writing his legal compendium of *al-Muwāfaqāt,* neither did he follow the traditional methods of dealing with the subject matter of legal theories. Almost all-classical legal works follow a pattern of presenting legal theories often starting with the Qur'an and ending with the supplementary sources of law in hierarchical order. We have recognised that al-Shātibī did not follow such conventional method to present his legal philosophy, but rather he wrote these works after long intellectual reflection and studious reading into the general and universal principles of the Qur'an and the Sunnah as an innovative addition to the legal studies. He made an inductive reading into entire corpus of Islamic law and created his legal theories and concept. It is this collective reading of the entire body of Islamic text gives more academic credit to his legal theories. He did not come up with any legal theories based on single textual evidence rather he collected all textual evidences to produce his legal concepts. The authenticity and soundness of his legal theories depend on this constructive approach. No previous Islamic scholar followed his method of collective reading into the corpus to produce legal concepts.

This collective reading method into the corpus of Islamic source is badly needed in this modern time. It has been debated the re-examination of the entire body of Islamic texts in a systematic manner with collective and constructive intellectual effort is much needed in this modern time than ever before in Islamic legal history. Inductive readings into the primary sources of Islamic law is needed to address the challenges of modern time and provide cohesive and comprehensive answers to the modern challenges of humanity. Nevertheless, our study finds that al-Shātibī's contributions were not appropriately acknowledged and recognised by his successors more specially; the method of induction and doctrines of *maqāsid* did not gain much attention until modern times. No scholar has attempted to further enhance and develop the legal concepts of this great scholars. His books have been read widely today and yet, his legal ideas are not yet, further developed. Compared to the classical approach to the general philosophy of law by the scholars who preceded al-Shātibi one can notice an unparalleled transition and shift in al-Shātibī's legal theories. Our study affirms that al-Shātibi has undoubtedly revolutionised the theories of (*Usūl al-Fiqh*) by the method of induction and integral approach. Indeed, this is a new chapter in the history of Islamic legal thought. The method of induction may have been in use before the time of al-Shātibī, however, it was he who utilised this method in a sophisticated way in the legal interpretation as our study has confirmed. The integral approach to the texts of the Qur'an was a common practice among the scholars of Qur'anic commentary before the time of al-Shātibī, as we have noted in our study. Al-Shātibī, has meticulously applied this method in his approach to legal interpretation. This is once again a novel approach to the text and no one has preceded him in this sense. Our research on the contribution of classical scholarship to the legal theories before the time of al-Shātibī, clearly demonstrated the nature and genus of classical legal theories in their inception stage and process of development. More specifically, the general philosophy of Islamic law had not gained currency before the time of al-Shātibī. He demands a holistic approach to the divine texts in legal interpretation rather than treating them individually and separately. According to al-Shātibī's legal theory of integral approach to the Qur'an, either a single verse of the Qur'an or a part of it cannot be fully understood without cross reference to other verses and parts and the contextual circumstances of revelation. Moreover, without such an approach the comprehensive understanding of the divine intention in revealing His law would be a difficult task. In addition to this, the knowledge of the linguistic conventions of the prophetic times is also an important element to fully comprehend the divine intentions. The use of language and its connotations and implications may differ from time to time, therefore, unless one is very familiar with the language usage of the time of revelation one may misunderstand the meanings

of the texts with his own usage. Thus, we can convincingly conclude that al-Shātibī's approach to the general philosophy of Islamic law is original and unique.

al-Shātibī differs from his predecessors in expounding the general philosophy of Islamic law in another way. Whilst he was explaining the structure of the general philosophy of law, he divides the structure of *maqāsid* into three following the footsteps of al-Juwaini and al-Ghazāli. However, we noted that al-Shātibī, expands the dimension and scope of the general philosophy of Islamic law by dividing it into two broad categories: the first is pertaining to the intentions of (*maqāsid)* of lawgiver in revealing his law and the second is concerning the intentions of the *Mukallaf* who a legally sound and capable person is to fulfil the requirements of law. The relationship between the intentions of God and the intentions of His servants is that the intentions of a servant in implementing any divine command should always be in accordance with the intentions of the lawgiver. The logical conclusion of such an argument is that man cannot misinterpret or misuse the divine laws for any other purposes according to his own whims and wishes and the primacy and superiority of divine guidance over human intellect is maintained in al-Shātibī's legal philosophy of Islamic law in a sense that human reason should always follow the lead of divine guidance. Thus, the rational enquiries and conclusions should go in line with the general philosophy of Islamic law. Thus, he was not reluctant to incorporate and integrate the supplementary sources of Islamic law if the theory and application of these sources were in line with the general philosophy of Islamic law. It should be said in these concluding remarks that the philosophical and theoretical foundations of al-Shātibī's legal theories are so solid and different from other legal theorists in many ways as we explained in our discussion.

What draws the attention of the modern Islamic scholars to his legal thought are the pragmatic and realistic aspects of his legal theory, which demand legal changes in accordance with social changes. However, it can be said that al-Shātibī was not completely free from the grip of traditional influence. Like all other legal theorists, al-Shātibi also confines the essential elements (*darūriyyāt*) of *maqāsid* into five rudiments and treats them as if it is the duties and responsibilities of the individuals to preserve these essential elements of the general philosophy of Islamic law. Thus, al- al-Shātibī, fails to explain clearly the roles and the responsibilities of the political authorities and the societies in preserving these elements of *maqāsid.* Any attempt to re-construct the scope of *maqāsid* in the modern world should give due consideration to these social changes. Otherwise, *maqāsid* doctrines will remain a philosophical and theoretical subject without any relevance to the modern world. Our reading of the works of modern Islamic scholarship highlights the intellectual enterprise of modern Islamic scholars who endeavour to relate social changes to the general philosophy of Islamic law. It can be said from our previous analysis that subject of *maqāsid* is still in the process of evolution and progression and by nature of the subject matter it will remain open ended. The priorities, needs and demands of societies will change in every century and age. Thus, the doctrines of *maqāsid* will expand to incorporate all these changes. The priorities and needs of the Muslim societies should be the determining and influential factor in our reading of the general philosophy of Islamic law. Moreover, this study further finds although some modern scholars have attempted to define the doctrines of *maqāsid* no one has defined its scope in the light of modern developments. Al-Qaradāwi, 'Attiyah, Al-'alwāni, Sardar, Raisuni, Auda, M.I. Kamal and many others have demanded expansion of the scope of *maqāsid* doctrines incorporating modern scientific, technological, economic, environmental, educational and human rights issues. However, we find that no one has come up with concrete ideas how to expand the scope of maqāsid doctrines. This study finds that the artificial intelligence and digital technology will bring some dramatic changes for human life by 2050. Modernity and technology will bring many social, scientific, technological changes for humanity. Like any other communities, the Muslim community too will be influenced and affected with these dramatic changes. All these changes will demand

legal changes in Islamic law. it is the duty of contemporary Islamic scholars to engage in the task of evaluating the scope and structure of *maqāsid* in view of all modern developments in systematic methods and make legal changes accordingly. Otherwise, the application of Islamic law will be gradually marginalised and the relevancy of Islamic law to modern life will be relegated.

More importantly, we find many Muslim economists, social scientists, and academics are concerned about the pathetic conditions of the Muslim communities in education, economy, politics and other fields. They have come up with many projects and programs to uplift the standard of the Muslim communities. We find that most of these Muslim intellectuals do not have Islamic educational background and yet, they come up with some social projects and programs that are identical with ideals and principles of the general philosophy of Islamic law. Among all projects and programs that aim at promoting human socio-economic, political and human development of the Muslim countries, the projects of Jasim Sultan, Tariq Suwaidan, Ibrahim al-Bulehi, Hossein Ashakari, Tariq Ramadan, and Omer Chapra are some of more effective projects and programs that aim at promoting creative intellectual attitude changes in the Muslim world. All these programs and project aim at promoting attitude changes in Muslim minds. These academic believe that real changes could come to the Muslim world only through intellectual attitudes and mind set changes. Our study finds that Hossein Askari's Islam city program and similar other projects of the Muslim academics are identical with the ideals and ethical principles of the general philosophy of Islamic law. We find that Islam city indices give practical dimensions to the ideals and principles of the general philosophy of Islamic law. Islam city indices gauge the socio-economic, educational, political and human development of the Muslim countries from Islamic perspectives. In that sense, Islam city indices practically apply the general philosophy of Islamic law as a strategic developmental tool to measure and evaluate all aspects of development of the Muslim communities in the world.

We also find the ideas of late Mahbub ul Haq on human development are identical with many ideals and principles of the general philosophy of Islamic law. UNDP's human development program is designed to measure human development and promote socio-economic, educational status and living standard of people in many countries. Although, UNDP's methods of human development measurement differ from Islamic perspectives, many elements of human development indices are identical with Islamic concepts of human development introduced by Islam city indices. Therefore, promoting human development programs of UNDP is not antithesis to the ideals of the general philosophy of Islamic law. Moreover, this study also finds that the doctrines of the general philosophy of Islamic law has been thoroughly analysed, elaborated, and studied by different Islamic scholars today. Yet, most of these studies are done by individual Islamic scholars without any collaboration between them to develop the ideals of general philosophy of Islamic law into any systematic developmental methodology. We find that the ideals and principles of the general philosophy of Islamic law has been analysed from different perspectives from political, social, economic, ethical, educational and developmental perspectives. However, the ideals of the general philosophy of Islamic law to be materialised in practical application, the Muslim countries need honest, hardworking, and dedicated political leaders. As we noted many times, today, politics controls entire human life. From Askari, to al-Bulehi, all Muslim academics want the Muslim world comes out of these socio-economic and pollical chaotic conditions. Yet, many Muslim political leaders do not have political will to support any reformative ideas in many Muslim countries. It can be said that today, the Muslim countries encounter all these problems because many Muslim counties are ruled by ineptitude political leaders.

It can be argued that the long-lasting reformation of Muslim community should start with intellectual, spiritual reformation of the Muslim community. The Muslim community must change its attitudes, mind sets, mentality, and thinking patterns. This cannot be done

overnight. The Muslim community should have long term strategic plan to change the Muslim mind. That should start with teaching of infant, children and youth. It needs some philosophical change in learning and teaching styles in Muslim countries. It is through education that Muslim countries could implement the ideals of the general philosophy of Islamic law in public and private life. For Muslim countries to come out of these pathetic conditions, they need some methodological and pedagogical changes in education. Muslim countries have been adopting outdated educational policies for a long time. Muslim Children are often thought how to copy information, how to memorise information, how to write information, but they are rarely thought how to analyse information, how to invent, how to discover and how to be creative in their learning.

Teachers in western countries stimulate creative thinking in the minds of children through different teaching pedagogies and techniques. Yet, teachers in many Muslim countries follow outdated text book-based teaching. Often, teaching in Muslim countries is a teacher - centred teaching and yet, teaching in many western countries is a student-centred teaching. This study finds that the modern educational theories of Dewey, Piaget and Vygotsky helped to make dramatic changes in teaching methodologies in many western countries. yet, teaching and learning methodologies in Muslim countries are still outdated and students are not being taught how to be creative, inventive, and innovative. Yet, teaching pedagogies and techniques in many western countries stimulate creative and innovative thinking in the minds of students. One of the main promises of the general philosophy of Islamic law is to enhance education and yet, education in many Muslim countries is falling behind all nations. There is no harm in applying the modern educational theories of Dewey, Piaget, Vygotsky and many other education theories of western educationalists to stimulate creative and innovative thinking in the minds of Muslim children in the Muslim countries. Many western countries through their best education policies and strategies managed to educate their student communities with high level creative thinking, common sense and IQs. The concept of learning in many western countries is all about producing new knowledge and creative something new not merely accumulating information. Yet, education policies and strategies of many Muslim countries still focus on reading books to accumulate information. The ideals, principles and doctrines of the general philosophy of Islamic law cannot be implemented in illiterate, uncivilized and uncultured societies. schools in western countries managed to make a difference in children's attitudes, behaviours, minds and common sense. This is done through good education policies and strategies. Rational, logical and creative student communities are produced today by western education policies, techniques and strategies, yet, what we see in Muslim countries is outdated teaching and learning pedagogies and methodologies. The promise of the general philosophy of Islamic law is not designed just to encourage education development but it should also include all appropriate educational pedagogies as well. This study agrees with the conclusion of Hossein Askari who argues that western countries are more Islamic in application of some Islamic teaching than many Muslim countries. Askar argues some western countries are more Islamic in upholding Islamic values of social justice, and social welfare, protecting human rights, promoting education, protecting health and safety, protecting freedom of expression and maintaining law and order than many Muslim countries.

We also learn that Ibn Ashur, and Allal Fasi in their definitions for the general philosophy of Islamic law include that systematising worldly affairs, establishing public administration, maintaining law and order, enhancing human development are part and parcel of the ideals of the general philosophy of Islamic law. yet, Muslim countries have utterly failed in all this. One of distinguishing characters of working culture and protocol of western civilization is many western countries have brilliantly worldly affairs in all walks of life. Human life has been systemically organised. From birth to death human life has been systemically organised and well planned in many western countries. Government and private

departments have been well systematically and methodologically administrated and managed. This systemization and organization of human life as Ibn Ashur and Allal Fasi argue is an integral part of Islamic teaching and yet, Muslims have utterly failed on this. yet, Qur'an repeatedly tells us that Allah has created this universe in a systematic order. All planets run in their path in this huge universe without any collusion. Sun rises on time and sets on time. Moon comes out night according to well-designed physical law of this universe. All other natural and physical laws run routinely in this universe without any disruption in this universe. Likewise, human life in this world should go in a systematic order.

Many western countries have managed to develop some good system to organise human life. The entire human life; private, social and public life has been well designed and planned in many western countries and yet, Muslim countries have failed on this. All this needs some high level of skill development in public administration and management. Islam expects from Muslims to excel in their public duties and yet, Muslim performance in political and civic administration is very poor. It is through high quality education; Muslim countries could do all this improvement in all walk of life. Our research finds that many modern Islamic scholars compare the basic tenets of *maqāsid* with modern concepts of human rights. Unquestionably, such a research is an interesting phenomenon in the general philosophy of Islamic law especially given the nature of modern developments in human right concepts. However, it should be noted that the meanings and connotations of the general philosophy of Islamic law and western concepts of human rights are not always identical. It is true that there are many indistinguishable elements inherent both in the themes of the general philosophy of Islamic law and the western concepts of human rights.

However, the dissimilarities between them are vivid as well. As we noted in our discussion, modern concepts of human rights are in many ways the product of western ideologies, beliefs, philosophies, cultures and traditions. To some extent these human rights concepts are secular in nature according to the critiques of UN's declaration on human rights. Such conceptual variations exist between human rights and the general philosophy of Islamic law and the western. Yet, there are so many identical moral values between the UN declaration of human right and Islamic concept of human rights. It can be concluded from our analysis; the general philosophy of Islamic law has been studied from different perspectives. Some scholars have studied it from purely philosophical and legal perspectives. Some others have studied it from human development perspectives and a few have studied it from human right perspectives. 'Attiyah, that he seems to be incorporating all aspects of social changes of modern times in his scheme of the general philosophy of Islamic law. He sees that enormous social changes have been taking place in the social, economic, political, scientific and technological fields. Hence, he sees that unless the general philosophy of Islamic law incorporates these social changes the flexible and functional nature of law will be dubious. That is why he remarks that advancement in the fields of science and technologies and literary and numeracy skills development and all forms of vocational and professional skills development and training and all forms of human resources developments are part and parcel of the general philosophy of Islamic law on the one hand, and on the other, he argues that all inimical things that hinder these developments and endanger human life, dignity, intellect and wealth should be averted. More significantly, cooperation, co-existence, and pluralism are inevitable parts of modern-day life hence resentment and antagonism are not a basis for the theory of international relation between Muslim nations and non-Muslim nations according to his understanding of the general philosophy of Islamic law. Hence, Muslim participation in international treaties, agreements, organisations such as UN and UNESCO and many other political, economic and humanitarian efforts is a not voluntary and optional but rather a religious duty and responsibility.

On the other hand, we find that al-Qaradāwi argues that is the responsibility of the entire Muslim *Ummah* to identify and enlists the most important priorities in a hierarchical order and give primacy to the most important and urgent needs and social issues of the *Ummah* at the expense of optional and supplementary duties. Otherwise, less important issues and trivial social problems will be given primacy over very important and urgent issues. This, according to goes against the basic principles of the general philosophy of Islamic law, which always sustains the laws of equivalence and laws of priorities in its legal sanctions and lack of understanding of these laws has created a chaotic situation in the legal interpretation of Islamic law in modern times. More importantly, al- al-Qaradāwi appeals to the Muslim intellectuals to understand the realities of the world we live in today and calls for a pragmatic approach to legal interpretation considering all the social developments of the modern world. Thus, he gives a new impetus to our understanding of the general philosophy of Islamic law in every sense. Moreover, Abdullah ibn Bayyah, Jasim Sultan, Tariq Ramadan, Al-Wani and many others argue that we must understand the divine texts and modern context of our modern society. We find they argue the contextual knowledge of modern society with its all social changes are important to apply divine texts into modern society. We further find that Islam city index project of Hussein Askari is one of the best ways to measure the application of the ideals of the general philosophy of Islamic law in practical life of Muslim public. We find that if this program is expanded into many Muslim countries, it could make a lot of improvement in economic, political, educational and living conditions of the Muslim countries. Given the nature of the subject matter, we can convincingly conclude that future study of the general philosophy of Islamic law remains open to further examination and scrutiny in line with social changes of future generations, which include social changes in the political, social, economic, scientific and technological developments.

Moreover, the meaning and implication of the notions of freedom, equality, human rights and social justice and code of law in national and international legal systems has dramatically changed in modern world. Hence, understanding the meaning of the general philosophy of Islamic law by mere strict adherence to texts would not be always feasible. Thus, successfully exploring the inherent nature of the relationship between social changes and the general philosophy of Islamic law depends on the quality of the intellectual skills of contemporary Muslim scholars as al-Shātibī successfully explored the intrinsic relationship between the social and legal changes with his deep understanding to general philosophy of Islamic law.This study further reveals that Islamic law does not lack any legal principles and legal doctrines. Islamic law is rich with so many flexible legal theories and legal principles and yet, it appears that Muslim countries do not have political will and political leadership with Islamic background knowledge to apply Islamic legal theories and legal doctrines. Moreover, it can be concluded that Muslim political leaders from formative periods of Islam until modern time did not fully cooperate and support Muslim jurists and Islamic scholars to apply the ideals of the general philosophy of Islamic law. As result of resentment between Muslim rulers and jurists, the cohesive ideals and principles of the general philosophy were not applied in many Muslim countries. For instance, Islamic legal philosophy demands to establish unconditional justice, equity and equality and yet, we notice that Muslim ruling dynasties favoured unqualified family members, relatives and trusted friends in public appointment over qualified professional people. This has been the case since for formative period of Islam till the present time. This favouritism, nepotism and political stratagem are applied in Muslim politics to protect the family ruling in many Muslim countries. Moreover, this research reveals that Islamic legal history produced many excellent legal experts such as Imam al- Juwaini, al-Shātibī and many others and yet, Muslim political leaders from mediaeval time to the present time did not allow to integrate the legal theories and principles of Muslim jurists in public affairs. As result of this, public and civic administrative laws did not grow in Islamic history.

Moreover, Muslim jurists and scholars are even today given academic freedom and liberty to make any meaningful changes in law, politics and public affairs. Moreover, this study finds that public interest of Muslims has been sacrificed to protect the political interest of many Muslim politicians in many Muslim countries.

All these factors have contributed to the marginalization of the ideals and principles of the general philosophy of Islamic law from public life in many Muslim countries. Besides all this, this study further reveals the science of general philosophy needs some methodological re-structuring and scaffolding considering all modern development. It has been argued that Islamic jurisprudence and Hadith literature need systematic re- organization in line with the major themes and broader outlines of the general philosophy of Islamic law. The subject matter of the general philosophy has been theoretically constructed by the classical Muslim jurists and many contemporary Muslim jurists have individually attempted to broaden and expand the ideals of the general philosophy of Islamic law. The research works and publication of IIIT, Al-Furqan foundation, CILE, and the works of many other Islamic centres in many parts of the Muslim world testify that a great deal of research activities are going on in the field of the general philosophy of Islamic law. yet, without any collaboration between these research centres. This research finds that today in this modern world, to expand and apply many aspects of the ideals of the general philosophy of Islamic law in public life, there must be some academic collaboration between Islamic experts and other specialists in fields of economics, politics, science and other areas of human sciences.

Moreover, civil societies should engage actively to apply the ideal of the general philosophy of Islamic law in practical life. so that they could monitor and check the function and transparency of governments in many Muslim countries. yet, this study finds the functions and role of civil societies in western countries are different from the functions and role of the civil societies in Muslim countries. Civil societies do not have the leverage and freedom to work freely in many Muslim countries. yet, civil societies in western countries are more powerful in western countries to control and check their governments. Yet, we conclude that a dramatic political reform is imperative for Muslim countries to apply the ideals of the general philosophy of Islamic law. The Muslim world is rich in human and yet, there is no systematic strategic educational mechanism and policies are not yet, designed in many Muslim countries as we see them in many developed nations like Japan and Europe. It can be concluded a good quality of good political, intellectual and religious leadership is imperative for the Muslim world to apply the ideals of the general philosophy of Islamic law. Working in collaboration and cooperation will be an unavoidable social reality in the world of digital technologies and artificial intelligence in coming years and therefore, the Muslim world should learn how to interact with wider humanity locally and internationally.

How does the general philosophy of Islamic law provide broader guidelines for Muslim minorities? Neither the classical Islamic scholars nor divine texts set clear cut guideline for the Muslim communities who live under non-Muslim polity. Yet, some classical Islamic scholars argued that Muslims who live under non-Muslim polity must have freedom to practice their faith and rituals. Moreover, they should have freedom to live as citizens with all rights. This includes to right to do business, right to participate in public life, right to contribute to national politics, right to contribute national economy and nation building process. Imam Mawardi called this land as an abode of Amana. Muslims should feel free to practice their faith. This means that they are secured to live in this land. Yet, Muslims will face many problems when they live under a non-Muslim polity. What if Muslim youths have been asked to work for national armies of Non- Muslim countries? This is in case a war breaks out between a Muslim

country and Non- Muslim country where Muslim community lives as a minority. Can Muslim youths go to war against their brothers in faith? What about if the political authority in non-Muslim countries do not give freedom to practice Islamic rituals as we see in Burma and China? What can they do in these critical situations? What alternatives Muslim communities have? Today, 1/3 of world Muslim population lives as minorities. In countries such as India, China, Burma, Sri Lanka and many other countries Muslim minorities face some serious challenges for their existence. We cannot find ready made solutions for these issues either in primary sources of Islam nor in classical Islamic heritages. It is entirely up to Muslim academics and jurists to read the prevailing political conditions of their countries and provide solutions within Islamic teaching considering their local conditions. Indeed, Islam provides some broader guidelines how to interact and how to live with people of other faiths. Islam always encourages coexistence and pluralism. It is also a moral duty of Muslim minorities to protect the liberty and freedom they enjoy in their countries. Today, UN convention on human right and religious freedom give protection for minority communities all over the world.

Therefore, Muslim minorities should know how to protect their religious freedom without assimilating their cultural and religious identity. Sura "the Cave" has given the Muslim minority communities some good examples how to live under a hostile environment. The Quran tells us the sleepers of cave were persecuted for their faith by their king and people. They feared for their lives, so they sheltered in the cave to protect their faith and life. According to the Quran they took all precautions to protect their faith and life. "One of you go to the city with your silver coins, find out where the best food is there, and bring some back. But be careful not let anyone know about you. If they found you out, they would stone you or force you to return to their religion you would never come to any good" (18;19& 20). In the same way today, Muslim minorities must take precaution when they live under non-Muslim polity and they must try to resolve all conflicts through the medium of dialogues. When all means of dialogues fail, the minority Muslim community must take precautionary steps to protect their faith and life. How they preach Islam, how they interact with Non-Muslims and how they expose their religious identity in a Non-Muslim polity all this will have some positive or negative impacts among other communities. So, Muslim minority communities must know all these consequences before they embark on any missionary or social works among Non-Muslim communities. Ustaz Mansoor has indeed made some good clarifications on the problems of Muslim minorities today. He argues that Muslim minorities must identify their problems in light of the general philosophy of Islamic law and they must find solutions to their problems in order of priorities. This can be done in view of the general philosophy of Islamic law. It is very much clear neither the Qur'an nor classical thought predicted the problems of minorities.

Ibn Bayyah has been calling Muslim jurists to read the geopolitics, social, economic, scientific and technological development of this digitalised global world in view of general philosophy of Islamic law. He contends that we live in a modern world that is different from classical Islamic social contexts. Today, we witness a huge social change in all aspects of life. To relate modern social developments with Islamic teaching we must do legal reasoning.

(الاجتهاد بتحقيق المناط :فقه الواقع والتوقع To do this intellectual exercise today Muslim jurists need the advice and guidance of many experts in many fields. Because, human life is complex and interrelated with so many complex human sciences. So, to provide Islamic answers to the

problems of modern digital world, Muslim jurists must consult experts on the field of modern such as geopolitics, economics, science, technology, psychology, finance, and other human sciences. Otherwise, Muslim jurists would not be able to come up with viable solutions for the problems of Muslim community in this modern world. How do they do this intellectual analogical reasoning exercise? He argues that Muslim jurists must identify universal teaching of Islam, universal objectives of Islamic law, and the greater public interest of Muslim community and humanity. Moreover, they must understand the priorities of Muslim community at this modern age. They must have skills to gauge the priorities in the areas external and internal challenges, social problems, family issues, financial and educational problems of Muslim communities, particularly, they must have skills to know the priorities of Muslim minorities. This will help Muslim governments to make appreciate and viable policies in all these issues. Moreover, Muslim jurists and scholars in non-Muslim countries must studies these challenges in order of priorities in light of general philosophy of Islamic law. The ethical and moral teachings of Islam are universal, and they do not change at any social circumstance. How do Muslim jurists make a correlation between universal teaching of Islam and particularities of Islam is a daunting challenge? Moreover, Muslim jurists must know the social convention of modern life. Today, civic rights, human rights, democratic rights, the rule of law, equality rights and minority rights are protected by universal laws. Muslim jurists must know these social conventions of modern times. Otherwise, they could issue religious verdicts on many issues that clash with universal conventions of modern time. The Muslim jurists must have a deep knowledge not only in Islamic sciences but also on human sciences to relate Islamic teaching to modern time. It can be convincingly said that many social changes are rapidly taking place in this modern world. Whether we like them or not, this modern digital world brings a lot of change in human life. So, it is a religious duty of Muslim jurists to understand them comprehensively and provide Islamic solutions and alternatively according to Islamic law. This study has highlighted some of those social changes and proposed some viable mechanisms and methodologies to address those modern development.

Appendix: 1 UN's Universal Declaration of Human Rights.

Articles:	**UN's Universal Declaration of Human Rights.**
1) Human dignity	All human beings are born free and equal in dignity and rights & are endowed with reason and conscience and should act towards one other in a spirit of brotherhood.
2) Everyone is entitled to all the rights and freedoms	without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made based on the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is be independent, trust, non-self-governing or under any other limitation of sovereignty
3) Everyone has the right to life	Liberty and security of people must be protected.
4 No one shall be held in slavery or servitude	slavery trade shall be prohibited in all their forms.
5) No one shall be subjected to torture	To any cruel, inhuman or degrading treatment or punishment.
6) Everyone has the right to recognition	everywhere as a person before the law.
7) All are equal before the law	entitled without any disclination to equal protection of the law. All are entitled equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
8) Everyone has the right to an effective remedy by the competent national tribunals	for acts violating the fundamental rights granted him by the constitution or by law.
9) No one shall be subjected to arbitrary arrest	To any form of detention or exile.
10 Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal,	in the determination of his rights and obligations and of any criminal charge against him.
11)Everyone charged with a penal offence has the right to be presumed innocent until proved guilty	according to law in a public trail at which he has had all the guarantees necessary for his defence. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall be heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
12) No one shall be subjected to arbitrary interference with his privacy, family, home	or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protections of law against such interference or attacks
13) Everyone has the right to freedom of movement	and residence within the border of each state. Everyone has the right to leave any country, including his own, and return to his country.
14) Everyone has the right to seek and enjoy in other countries from persecution.	This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.
15) Everyone has the right to a nationality.	No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

16) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to find a family	They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered only with the free and full consent of the intending spouse. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
17) Everyone has the right to own property	alone as well as in association with others. No one shall be arbitrarily deprived of his property.
18. Everyone has the right to freedom of thought, conscience and religion;	this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
19 Everyone has the right to freedom of opinion and expression	this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
20 Everyone has the right to freedom of peaceful assembly and association.	No one may be compelled to belong to an association.
21 Everyone has the right to take part in the government of his country,	Directly or through freely chosen representatives. Everyone has the right of equal access to public service of his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
22 Everyone, as a member of society, has the right to social security	is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality
23 Everyone has the right to work	to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and join trade unions for the protection of the interests.
24Everyone has the right to rest and leisure	including reasonable limitation of working hours and periodic holiday with pay.
25 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family	including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
26)Everyone has the right to education.	Education shall be free, at least in the elementary and fundamental stage. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. Education shall be directed to the full development of the human personality to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Parents have a prior right to choose the kind of education that shall be given to their children.
27) Everyone has the right freely to participate in the	to enjoy the arts and to share in scientific advancement and its benefits.

cultural life of the community	Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author
28) Everyone is entitled to a social and international order	in which the rights and freedom set forth in this Declaration can be fully realized.
29) Everyone has duties to the community	in which alone the free and full development of his personality is possible. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.
30) Nothing in the Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.	

Source: http://www.un.org/Overview/rights.html

Appendix: 2

Universal Islamic Declaration of Human Rights prepared by Islamic Council. U.K. 1981.
Source: http;//www.alhewar.com/ISLAMDECL. Html.

Articles:	
1) Right to Life.	a) Human life is sacred and inviolable, and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under authority of the law. b) Just as in life, so also after death, the sanctity of a person's body shall be inviable. It is the obligation of believers to see that a diseased person's body is handled with due solemnity

2) **Right to freedom**	Man is born free. No inroads shall be made on his right to liberty except the authority and in due process of the law. Every individual and every people have the inalienable right to freedom in all its forms-physical, cultural, economic and political – and shall be entitled to struggle by all available means against any infringement or abrogation of this right: and every oppressed individual or people has a legitimate claim to the support of other individuals and /or peoples in such a struggle.
3) Right to Equality and Protection Against Impermissible Discrimination	All persons are equal before the Law and are entitled to equal opportunities and protection of the Law. All persons shall be entitled to equal work. No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race origin, sex, or language.
4) **Right to Justice**	Every person has the right to be treated in accordance with the law, and only in accordance with the Law. Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self –defence against any charge that are preferred against him and to obtain fair adjudication before an independent judicial and tribunal in any dispute with public authorities or any other person. It is the right and duties of every person to defence the right of any other person and community in general (*Hisbah*) No person shall be discriminated against while seeking to defence private and public rights. It is the right and duty of every Muslim to refuse to obey any command, which is contrary to the Law, no matter by whom it may be issued.
5) **right to fair Trial.**	No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal. No person shall be awarded in accordance with the law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed. No act shall be considered a crime unless it is stipulated as such as in the clear wording of the Law. Every individual is responsible for his actions, responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.
6) **Right to protection Against Abuse of Power.**	Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be reasonably raised.
7) **Right to protection Against Torture.**	No person shall be subjected to torture in mind or body or degraded or threatened with injury either to himself or anyone related to one held dear by him, forcibly made to confess to the commission of a crime or forced to consent to act which is injurious to his interests

8) **Rights to protection of Honour and Reputation.**	Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail
9) **Right to Asylum**	Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex. Al- Masjid al-Harām (Sacred House of Allah) in Mecca is a sanctuary for all Muslims.
7) Rights of Minorities.	The Qur'ān ic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities. In a Muslims country religious minority shall have the choice to be governed in respect to their civil and personal matters by Islamic Law, or by their own laws.
11) **Right and Obligation to participate in the Conduct and management of Public Affairs.**	Subject to the Law, every individual in the community *(Ummah*) is entitled to assume public office. Process of free consultation *(Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle
12) **Right to Freedom of Belief, Thought and Speech.**	Every person has the right to express his thought and belief as long as he remains within the limits prescribed by the Law. No one, however, is entitled to discriminate falsehood or to circulate reports which may outrage public decency or to indulge in slander, innuendo or to cast defamatory aspersions on other persons. Pursuit of knowledge and search after truth is not only a right but a duty of every Muslims. It is the right and duty of every Muslims to protest and strive (within the limits set out by the law) against oppression even if it involves challenging the highest authority in the state. There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law. No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.
13) **Right to Freedom of religion.**	Every person has the right to freedom of conscience and worship in accordance with his religious beliefs
14) **Right to Free Association**	Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (*ma'roof*) and to prevent what is wrong (*munkar).* Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

15) **The Economic order and the rights**	In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as whole. All human beings are entitled to earn their living according to the Law. Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate. The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakāt, levied and collected in accordance with the Law. All means of production shall be utilised in the interest of the community (*Ummah)* and may not be neglected or misused. To promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the sue of coercion in the making of contract s and the publication of misleading advertisements. All economic activities are permitted provided they are not detrimental to the interests of the community (Ummah) and do not violate Islamic laws and values
16) Right to protections of property.	No property may be expropriated except in the public interest and payment of fair and adequate compensation
17) **Status and dignity of Workers.**	Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly but is also entitled to adequate rest and leisure.
18) **Right to Social Security.**	Every person has the right to food; shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.
19) **Right to find a family and related matters.**	Every child has the right to be maintained and properly brought up by its parents. It being forbidden that children are made to work at an early age or that any burden is put on them, which would arrest or harm their natural development. If parents are for some reason unable to discharge their obligation towards a child, it become the responsibility of the community to fulfil these obligations at public expense. Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children. Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (*Ummah*). Within the family, men and women are to share in their obligation and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives. No person may be married against his or her will. Or lose or suffer on account of marriage. Every person in entitled to marry, found a family and bring up children in conformity with his religion, traditions, and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

	Each of partners in a marriage is entitled to respect and consideration from other. Every husband is obligated to maintain his wife and children according to his means.
20) Rights of married women	Every married woman is entitled to: Live in the house in which her husband lives; Receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*Iddah*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights. Seek and obtain dissolution of marriage (*Khula'*) in accordance with terms of the Law. This right is in addition to her right to seek divorce through the courts. Inherent from her husband, her parents, her children and other relatives in accordance to the Law. Strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclose of which could prove detrimental to the interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.
21) Right to education.	Every person is entitled to receive education in accordance to his natural capabilities. Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.
22) Right of Privacy.	Every person is entitled to the protection of his privacy.
23) **Right to Freedom of Movement and Residence.**	Because the world of Islam is veritably *Ummah Islamiah*, every Muslim shall have the right to freely move in and out of any Muslim country. No one shall be forced to leave the country of his residence or be arbitrarily deported therefrom without recourse to due process of Law

Bibliography.A:

Abū Ishāq Ibrāhim al- Shātibī, (n.d) *Al-Muwāfaqāt fī Usūl al- Sharī'ah,* ed. Abdul Salām Abdul Shāfi' Muhammed, 4 Vols. Beirut: Darul Kutub al-'Ilmiyyah,

……, *Al-I'tisām*, Ed. Rashid Rida, (n.d) 2 Vols. (Riyadh: Maktabat al-Riyad al-Haditha

……., Al-Ifādāt wa al-Inshādāt, (1986) 2nd edition, Ed. Muhammad Abū Ajfān, (Beriut: Mu'assasat al-Risāla)

……Fatāwā al-Shātibī, (1985) 2nd edition, collected and edited, Muhammad Abū Ajfān, Tunis: Makatabat al-Kawākib

Ahmed Bābā, (1351. A.H) *Nayl al-Ibtihāj*, Cairo

Abū 'Abbās Ahmed. Al-Wansharisi, (1941). *Al-mi'yār al-mughrib wa al Jāmi' al- mu'rib 'an fatāwi 'Ulamā' ifrīqiyya wa al-Andalūs wa al-Maghrib*, Fas

Al-Asnawi. Jamāl Dīn,(1943) *Nihāyat al-Sul fī Sharahi Minhāj al-Wusūl,* Cairo: 'Ālam al-Kutub

Al-'Āmidi, Sayf al-Dīn 'Ali b. Muhammad, (1982) *Al-Ihkām fī Usūl al-ahkām*, 4 Vols. 2nd Edition, ed. 'Abd al-Razzāq 'Afīfi, Beruit: al-maktab al-Islami

Abdullāh, Al-'Āmiri al-Husayn. (1982). *Tūfī's refutation of traditional Muslim juristic source of law and his view on the priority of regard for human welfare as the highest legal source or principle,* A Ph.D. thesis, Ann. Arbor University Microfilms, Santa Barbara: University of California,

Abdelkader, Deina. (2000) . *Social Justice in Islam*, 1st edition, U.S. A: IIIT.

Abū Sulaymān, Abdul Hāmid. (1993). *Toward an Islamic Theory of international Relation*, 2st edition, U.S.A: IIIT.

……..., (1994) *Crisis in the Muslim Mind*, trans, Delorenzo. Y.T, 2ed Edition, U.S.A: IIIT,

Abu Fadl. Khaled. (2007) The Great theft: Wresting Islam from Extremists, U. S.A: Harper Collins.

Abdul Wahab Abu Sulaiman, (2015). *Turuqu al-khasf An- Maqāsid al-shari'ah, pp9-38. in (The objectives of Shari;ah: principles and concept; A collection of research articles for training course series)* London: al-Furqan Islamic Heritage Foundation,

'Attiyyah, Jamāl. (2000), *Nahwa taf'īl Maqāsid al-Shari'ah* , 1st Edition Damascus: Dār al-Fikr

Al-'alwānī, T.J. (2002) *Maqāsid al-Shari'ah* , 1st edition, Ed. Abdul Jabbār, *Al-Rifā'ī*, Damascus: Dār al-Fikr

……..., (2012) *Tatawwur al-Manhaj al Maqasidi inda al-Mu'sirin.* (A methodological development of the general philosophy of Law among modern scholars. USA: IIIT.

…… (2000) *Arabic Journal of Qadāyah al-Islāmiyyah al-Mu'āsirah*, e.d, al-Rifā'I Abdul Jabbār, Vols 9 and 10, Beirut .(pp 50-150)

……, (1994) Source *Methodology in Islamic Jurisprudenc*e, a new revised English Edition, U.S.A: IIIT publication

Abu Fadl.Khalid (2007) The great theft: Wrestling Islam from the extremists, USA: HarperCollins.

Auda J. *(2016), Maqāsid al-Shari'ah: A beginners' guide*, London: IIIT

…… *(* 2007*), Maqāsid al-Shari'ah:* as Philosophy of Islamic Law A Systems Approach. IIIT

…… (2008) *Maqāsid al-Shari'ah wal – Ijtihad; Purposes of and Reasoning in Islamic law.* : London: al-Furqan IHF

……, (2015). (*Tarikh Tatawwar Ilm al- Maqāsid) History of development of the science of the general philosophy of Islamic law: pp9-38. in (The objectives of Shari;ah: principles and concept; A collection of research articles for training course series)*, London: al-Furqan IHF

Abū Zahrah, Muhammad. (2001). *The Four Imāms: Their lives, works and Their Schools of Thought,* trans. Aisha Bewley, London: Dār al-Taqwah,

Al-'Adawi, Muhammad Ahmed, (1970). *Usūlun fī al-Bida' wa al-sunan*: A Study on al-*I'tisām,* 3th Edition

Ahamad Jaballah, (2014) The general philosophy of Islamic law in employment law and human rights *(Maqasid al-Shariah fi qawaneen al-Amal and wahuqooq al-Insan*) pp363-381, e.d. M. S. El-Awa: London: al-Furqan IHF

Abbood Salij, (n. d) Encyclopaedia of torture (Mawsu'atul -Azab). Volume 1, London: The Arab Encyclopaedia LTD

Ali, Shaheen Sardar, (1999) *Gender) Human rights in Islam and international law*, The Hague/ Landon: Kluwer International.

Al-'Ālim, Yūsuf, (1994). *al-Maqāsid al-'Āmmah li al-Sharī'ah Islāmiyyah*, 2nd Edition, U.S.A: IIIT publication,

Alan, Bryman (2016), Social research methods, 5th edition. UK: Oxford university press.

Abdul Rahman. Taha. (2002). Journal of al-Muslim al-Muasar. Volume 103, (pp 250-300)

Anto, Hendrie, MB.the journal of Islamic Economic Studies Vol. 19. No2, pp (69-95)

Ameer Ali, (1995). *Religo-Cultural Identity and Socio-Economic Development in the Muslim World,* The American Journal of Islamic Social Science, Vols.12. No 3, pp (331-346)

B

Baza, Abdul Noor, (2014*) Power exchange and a complete separation between executive powers: A comparative study in light of maqasid.* pp. 198-254. in (*taf'īl Maqāsid al-Shari'ah fi majal al-shiyasi:)* e.d by Mohamed, London: al-Furqan IHF

Al-Badawi, Yūsuf. *(*2000) .*Maqāsid al-Shari'ah 'inda Ibn Taymiah*, Jordan: Dār al-Nafā'is,

Brown, Jonathan (2014) *Misquoting Muhmmad: The challenge and choices of interpreting the prophet's legacy*. One world publication. UK.
Bagby. Ihsan, (1985). *The Issue of Maslaha in Classical Islamic Legal Theory*, International Journal of Islamic and Arabic Studies, Volume. 2, No, 2, pp.
Bernard Lewis, (2007). The Crisis of Islam: Holly War and Unholy Terror: Weidenfeld & Nicholson: UK
……..., (2002). What went wrong? Western Impact and Middle Eastern Response: Weidenfeld & Nicholson: UK
……, (1993). The Arabs in History. oxford university press.
…… (2005) Freedom and justice in the Middle East. Foreign affairs; volume 84: number 3; pp,
C
Caesar E. Farah (1994). Islam: beliefs and observances. New York,
Coulson, N. J. (1964). *A History of Islamic Law*, Edinburgh: Edinburgh Press,
Charles Melville & Ahmed 'Ubaydi, (1992) *Christian and Moors in Spain*, 711-501, Warminster: Aris & Phillips
Chapra, Omer, (2008) *The Islamic vision of development in the light of Maqasid al-Shariah*, USA: IIIT publication
Çizakça, Murat (2000), *Principles of Islamic Economics as Applied by the Ottoman State: Policies, Institutions and Consequences,* Paper submitted at the International Seminar on *'Islamic Approach to Market Regulations and Economic Stability,* convened in Teheran, Iran. 18-22 November 28 p.
D
Drāz, Abdullah. (n.d) Introduction *to the treatise* of *Muwāfaqāt*, 4 vols, Beirut: Dār al Kutub al-'Ilmiyyah
David, Vaus, (2001). *Research design in social research*: London: Sage publication
Daron Acemoglu and James Robinson, (2012) why nations fail: origin of power prosperity and poverty. New York
E
Esposito, John, (1974). *Muslim Family law in Egypt and Pakistan: A critical analysis of legal reform, its sources and methodological problems*, Ph.D. thesis, Temple University
Encyclopaedia of Islam, (1995) Maslaha, Leiden: E.J. Brill
F
Al-Fāsi, Allal, (1963) *Maqāsid al-Sharī'ah al-Islāmiyya wa makārimuhā*, Casablanca: Maktabat al-Wahda al-'Arabiyya
……..., (1966**)** *Difā'un 'an al-Shari'ah*, 1st Edition, Ribāt: Matābi' al-Risālah,
Fazlur Rahman (1995*) Islamic Methodology in History*, Islamabad: Islamic Research Institute,
Ferguson. N. (2014) *The Great Degeneration: How Institutions Decay and Economics dies*, London: Penguin publication
Faruqi, Isma'il, (1962) *Toward a New Methodology for Qur'ān ic Exeg*esis, Journal of Islamic Studies, 1 March, pp (189-99)
Fadhil Sulaiman, (2015) *Fiqh al-Awlawiyat:* laws of priority. pp. 126-148: *in (The objectives of al-Shari;ah: principels and concept; A collection of research articles for training course series)*, London: al-Furqan IHF
G
Ghazāli, *Abū Hāmid.* (1996) *Al-mustasfā fī 'ilm al-Usūl*, Beirut: Dār-al-Kutub al-'Ilmiyyah,
……, (1971). *Shifā' al-'alīl*, Baghdad: Dār al-Irshād,
……, (1980) *Mankhūl,* . Ed. Hasan Haitu, Damascus: Dār al-Fikr.
Gibb, H.A.R., (1962) *Muhammadanism*, UK: Oxford University Press
H
Habeck, Marry (2006) Knowing *the Enemy: Jihadist Ideology and the war on terror*, UK: Yale University press
Harvey, Patrick. 1990. *Islamic Spain*, 1250-1500, Chicago, London: University of Chicago Press,
Hallaq, Wael B. (1997) .*A History of Islamic Legal Theories*, 1st edition, Cambridge University Press
……, (2001) Authority, Continuity and Change in Islamic law Cambridge University Press
……, (1994) Law and Legal theory in Classical and Medieval Islam. London.
…… (1991). *Primacy of the Qurān in akl-Shātibī's legal theory*, in Wael B.Hallaq and Donald p. Little, eds, Islamic Studies Presented to Charles Adams, Leiden: E.J. Brill, , pp.69-90
……, (1995) *Law and Legal Theory in Classical and Medieval Islam*, Aldershot: Variorum
Hasan al-Shafi, (2014) *The general philosophy of Islamic law in modern legislation in (The activation of shariah objectives in the political sphere*), e.d M. S. El-Awa: London: al-Furqan IHF
Hassan Jabir. (2014), Multi political parties and power exchange: pp178-196.in (The activation of shariah objectives in the political sphere), e.d. M.S. El-Awa, London: al-Furqan IHF
……..., (2007) *A Maqasidi entry to development.* pp 78-110. A chapter in (purposes of the Islamic law and contemporary issues, London: al-Furqan IHF
……. (2015) *(The complexity of the connection between the legal methodology of Islamic law and universal principles of law) Iltibaz al-Ilaqa byna Usul-al-fiqh wal Maqasid -al-Kulliyah) pp55-62-. in (The objectives of*

Shari;ah: principles and concept; A collection of research articles for training course series), London: al-Furqan IHF
Hasbullah, Ali, (1976) *Usūl Tashrī‘ al-Islāmi,* Egypt: Dār al-Ma‘ārif,
Haleem, M.A, (2001). *Understanding the Qurān : Theme and Style*, 1st edition, London: IB Tauris. Publishes
Hasan, Ahmed (1986) *Analogical Reasoning in Islamic Jurisprudence.* Islamabad: Islamic Research Institute
Howard. R. Tuner, (2009) *Science in medieval Islam.* US: University of Texas press.
Hassān, Hāmid Husain. (1971) *Nadhariyyat al-Maslaha fī fiqh al-Islāmi*, Cairo: Dār al-Nahdat al-‘Arabiyah,
Al-Hasani, Ismā‘īl. (1995). *Nadhariyyat al-Maqāsid ‘Inda al-imām Muhhammad al Tāhir bin‘Āshūr,* 1st edition, U.S.A: IIIT
Hasan Kalifa. (1978).*Falsafat Maqāsid al-Tashrī’ fī al-fiqh al-Islāmi*, Vol: 1, Majallah al-Sharī‘ah wal-Qānūn, The University of United Arab Emirate.

I

Ibn ‘Abd al-Salām, ‘Izz al-Dīn, (1991) *Qawā‘id al-ahkām fī Masālih al-anām*, 2 vols. Beirut: Mu‘assasat al-Rayyān.
Ibn ‘Āshūr, Muhamad. Tahir (1998) *Maqāsid al-Shari‘ah al-Islāmiyyah,* ed. Muhammad Tāhir al-Mysāwi, 1st edition, Malaysia: Al-Basā’ir,
Ibn Bayyah. Abdullāh (2014) *Tanbeeh al-M’uraji’ al’ t’aseel al-Waqi’*: first edtion, , Jedda: Darul Tajdeed
Ibn Hazm, Muhammad. (1983), *Al-ihkām fī Usūl al-ahkām*, 2nd Edition, Beiruit: Dār al-Āfāq
Ibn Khaldun, ‘Abd al-Rahmān, (n.d) The *Muqaddima*, Cairo: Matba‘at al-Bahiyyah,
Ibn Qayyim al-Jawziyyah, Shams al-Dīn Muhammad b. Abū Bakr (n.d).. *I‘lām al-muwaqqi‘in ‘an rab al-‘ālamīn*, ed. S‘ad. Tāhā A.Rauf, 4 Vols, Beruit: Dār al-jīl,
……., (1961) Ibn Qayyim al-Jawziyyah, *al-Turuq al-Hikmiyyah fī al-Siyāsah al-Shara‘iyyah*, Coiro: al-Mu’assat al-‘Arabiyyah,
Ibn Rushd, Muhammad b. Ahmed (al-Hafīd). (1986). *Bidāyat al-mujtahid wa-nihāyat al-muqtasid*, 2 vols. (Beirut: Dār al-ma‘ārif.
Ibn Taymiah, Taqi al-Dīn. (n.d) *Majmū‘at Fatāwā,* Vols. 36, Rabāt: Maktabat al-Ma‘ārif,
Ibrahim El-Bayoumi Ghanem, (2017) The *problematic of defining the Ummah’s Major interests: A multidimensional critical view*, London: al-Furqan IHF
…… (2014) *Policy making in civic societies according to general guidelines of general philosophy of Islamic law,* pp. 293-346. in (The activation of shariah objectives in the political sphere) edited e.d. M. S. El-Awa: London: al-Furqan IHF
……..., (2007) *Civil society considering general philosophy of Islamic law,* pp. 113-152, in purposes of the Islamic law and contemporary Issues. e.d by J. Auda, London: al-Furqan IHF
Ibn al-Nadim, (1978) .*al-Fihrist*, Beiruit: *Dār al-Ma‘ārif li al-Tibā‘ah wa al- Nashr*,
Iqbal. M. (1982). *Reconstruction of religious thought in Islam,* Lahore.
Ian, Dey, (1993) Qualitative data Analysis, London: Routledge
Islahi, Abdul Azim (2012): *Book review: The long divergence: how Islamic law held back the Middle East by Timur Kuran.* Published in: Journal of King Abdelaziz University - Islamic Economics, Vol. 25, No. 2 (2012): pp. 253-261.
Margoliouth, *D.S.* (1916) *Recent Arabic Literature*, Journal of Royal Asiatic Society, London
Ibrahim El-Bayoumi Ghanem, 2015. *Maqāsid al-Zariah: pp. 71-124 in (The objectives of Shari;ah: principles and concept; A collection of research articles for training course series)*, London: al-Furqan IHF

J

Juwayni, Imām al-Haramayn, Abdul Mālik Abū al-Ma‘āli , (1980) *Al-Burhān fī Usūl al-fiqh*, e.d. ‘Abd al-‘Azīm Dib, 2 vols. Cairo: Dār al-Ansār
Al-Jawrushi, Salahudin. (1990). *Maqāsid al-Shari‘ah baina Ibn ‘Āshūr wa ‘Allāl Fāsi*, Journal of Itihād, Beiruit: Dār al-Ijtihād, Vol.9

K

Kamāli, Hāshim. (2001). Issue *in the Legal Theory of Usūl and Prospects for Reform*, Islamic Studies pp. 40: 1.
……., (1999). *The dignity of man*: *An Islamic Perspective*, Cambridge: Islamic Texts Society,
……., (1998) *Maqāsid al-Sharī‘ah*: *The objectives of Islamic law,* Newsletter of the Association of Muslims lawyers, The Islamic foundation’s legal Studies unit, Vol.3, issue, 1. Leicester,
…… (1994) *Tas‘īr or price control in Islamic law*, The American Journal of Islamic Social Science, Vol. 2, p (150-175)
……..., (1989). *Siyāsah al-Shara‘iyyah*, (The Policies of Islamic Government), International Islamic University Law Journal, Vol.1. No. pp (144-163)
……. (1993). *Shari‘ah as understood by the classical jurists,* an essay presented to the law Society Symposium “ *Toward a better understanding of the Shari‘ah* ”, International Islamic University, Malaysia,
Al-Kailānī, Abd al-Rahmān. (2000) *Qawā‘id al-Maqāsid ‘inda al-Imām al-Shātibī,* 1st Edition, Damascus: Dār al-fikr

Kuran. Timur. (2011) The long Divergence: *How Islamic law Held Back the Middle East,* US: Princeton University press
…… (2018). *Islam and Economic Performance: Historical and Contemporary Links, Journal of Economic Literature,* vol. 56, PP (1-83)
Keith. Punch, (2010) Developing *effective research proposal:* 2th edition: London: Sage publication,
Al-Khumlishy, Ahmed, (1988)... *Wijhat Nadrin*, Ribāt: Dār al Baydā,
Khallāf, Abdul Wahhāb (1350.A.H) , *Shiyāsah al-Shara'iyyah*, Cairo: Matba' al-*Salaffiyah*,
……..., (1955) *Masādir al-Thasrī' al-Islāmi fīmā lā Nassa fīhi,* Cairo: Dār al-Kitāb al-'Arabi,
……...,(1994) *Freedom of Expression in Islam,* Kaula Lumpur: Berita Publishing,
…… (1991). *Principles of Islamic Jurisprudence*, Revised Edition, Cambridge: Islamic Texts Society,
al_Khateeb, Firas, (2017) Lost Islamic history, London: Hurst & co
Al-Khalili, Jim, (2010) *Pathfinders: The Golden Age of Arabic Science*, UK: Pelican books
Kevin Drum, 2018. Welcome to the Digital revolution. Foreign affairs. Volume 97: Number 4, pp. (43-46)

L

Larrey, Philip, (2017). Connected world. UK: Penguin Random House

M

Mas'ūd, Khālid. (1977) *Islamic Legal Philosophy*: *A study of Abū Ishāq al-Shātibī's life and thought,* 1st edition, Pakistan: Islamic Research Institute
Mi'raj, Muhammad, (1979) *Shah Wali Allah's concept of the Shari'ah* , in Islamic Perspectives e.d by K. Ahmed and Z. Ansari, UK. The Islamic Foundation pp (335-343)
Makdisi. A. John. (1999). The Islamic origin of common law. North Carolina law review, volume 77, Number 5. pp (1635-1740)
Mawdudi, Abū A'la. (1960) *The Islamic law and Constitution*, Translated by K.Ahmed, Lahore: Islamic Publications
Michael Arnhem, (2017) A Practical Guide to your human rights and civil liberties. London: Straightforward publishing
Mazeen Muwaffaq Hashim, (2014) *Maqasid al-shariah: Madkhal Imrani.* UK: IIIT
Mohammad Kamal Imam (2011) *Maqasid al-shariah wa al-Dalee al-Irshadi*, London: al-Furqan IHF
……, (2011) *The public interest in the terms of purpose of Islamic law:* London: al-Furqan IHF
……, (2011) *Consequence of Acts in the Term of the Purpose of Islamic law.* London: al-Furqan IHF
Muhammad Ibn Muhammad Rafi'u. (2014) *(Maqasid perspective on application of maqasid in modern societies) pp. 681-772*. A chapter in A chapter *in (applying the objectives of Shari;ah: between fear and leniency A collection of research articles for training course series:* e.d. Raisūni, A, London: al-Furqan IHF
Mahmassāni, Subhi, (1946) *Falsafat al-Tashri' al-Islāmi fī al-Islām,* Beruit: Maktabt al-Khashaff,

N

Najjar. Abdul Majeed, (1995). *Maqāsid al-Shari'ah bi ab'adul jadeeda, Tunis: Darul al-gharb*
Nyazee, I. A. Khan (1994) Theories *of Islamic Law*, USA: IIIT
Nandan Nilekani (2018) Data to the people: India's Inclusive Internet: Foreign Affairs: volume: 97: number 5. P. 19
Noor al-Din Mukhtar al-Khadimi, (2014), Jurisprudence *of Islamic policy making (fiqh al-shiyasa al-shariyah)* pp. 18-54. in (The activation of shariah objectives in the political sphere) e.d. M.S. EL-Awwa, London: al-Furqan IHF

P

Paul Spicker, (2011) *Stigma and social welfare,* US: Croom Helm.
Paul Spicker, (2000) *welfare state: A general theory*, UK: Sage Publication

Q

Al-Qaradāwi, *Yūsuf, (*2000) *Kaifa Nata'āmalu ma'a al-Sunnah Nabaviayyah* Cairo: Dār al-Shurūq,
……..., (2000). *Kaifa nata'āmalu ma'a al-Qurān al-'azīm*, 2st Edition, Coiro: Dār al-Shurūq,
……..., (1973) *Sharī'at al-Islām: khulūduhā wa Salāhuhā li al-tatbīq fī kulli Zamān wa makān,* Beirut: Al-Maktab al-Islāmi,
……...,(1999) *Taisīr al-Fiqh*, (*fiqh al-'ilm*), Coiro: Maktabat Wahba
…….., (1994) *Fatāwā Mu'āsirah*, 3ed. Edition, 2 Vols. Egypt: Dār al-Wafā'
…… (1991). *Islamic awakening between rejection and extremism,* London: Zain International
……..., (2000) Yūsuf. *Fī fiqh al-Awlawiyyāt,* 4th edition, Coiro: Maktabat al-Madani
…… (2002), *Priorities of the Islamic Movement in the coming phase*, e.d by al-Banah.H, U.K: Awakening Publication
……. (1991) *Madkhalun Li Dirāsat al-Shari'ah al-Islāmiyyat*, 1s edition, Coiro: Maktabat al-Wahaba,
……, (2002) *Muslims minority and its legal problems., al-Majallat al-'Ilmiyyah, (Islamic journal for European Council of Research and iftā',*. Vol. 1, No, 1, pp. 28-74

Al-Qarāfī, Shahāb al-Dīn.(n.d) *Sharah Thankīh fī al-Fusūl*, 1st Edition, ed, Sa'd. Tāhā, Egypt: Maktabat al-Kulliyyāt al-Azhariyyah.

R

Rahman,Fazlur, (1965) *Islamic Methodology in History, Karachi*: Institute of Islamic Research

Al-Rāzi, Fakhr al-dīn, (1981). *al-Mahsūl fī 'Ilmi Usūl al-fiqh* 1st Edition, Vols 2. E.D. Fiyād, Al-'alwānī, K.S.A: Ibn Su'ūd University publication

Razik. Haniffa, (2010) A perspective on Islamic legal methodology in term of objectives of Islamic law: (A comparative analysis with special reference to English equity and Isthisan: Unpublished PhD thesis UK: University of Wales

Rahman. S. Scheherazade. Hossein Askari. (2010) How Islamic are Islamic countries? Global Economy Journal. Volume 10 Issue. 2 pp. (1-37)

Raisūni Ahmad, (1994) *Nadhariyyat al-Maqāsid 'Inda al-Imām al-Shātibī*, 4th edition, U.S.A: IIIT

……, (2012) *AL-Ummah Heyal -al-Asl.* Beirut: Arab network for research and publication.

……, (1998) *Islāmiyyat al-Ma'rifa*: A refereed Arabic quarterly, Vol.IV, No 13, U.S.A: IIIT

…… (2014) *The science of maqasid from its birth into a complete perfection*. *in (I'mal-al-maqasid; bayna al-tahayyab wal-tasaayb)* e.d. Raisūni, London: al-Furqan IHF

…… (2014) *The fundamental Rules of the science of Shariah objectives*, London: al-Furqan IHF

…….. (2014) The fundamental Rules of the science of Shariah objectives. London: al-Furqan IHF

Raymond Wacks, 2017, London, Oneworld publication.

Rida Rasheed (1956) *Yusr al-Islām wa Usūl-al Tashrī' al-'Āmmah,* Cairo: Matba'at Nahdat al-Misri,

…. .. (n.d) *Introduction to the treatise* of *'I'tisām*, 2 Vols. Riyād: Maktabat al-Riyād

Richard Koch & Chris Smith (2007) *Suicide of the West. London:* Continuum international publishing groups

Robert Franks (2017*) public law,* UK: straightforward publishing.

Ronald Skinner, (2016) *A Guide to understanding the law of contract*: UK: straightforward publishing

S

Al-Sābūnī, 'Abd al-Rahmān, Khalīfah babakr and Mahmūd Tantāwi. (1982) *Al-Madkhal al-fiqh wa al-Tārīkh al-Tashrī' al-Isāmi*. Cairo: Matba' Wahba,

Sabiq, S (198) *fiqh Sunnah,* .Vol.XI, Cairo: Darul Safwa

Sanu Qutb, Mustafa. (2002) *Maqāsid al-Shara'i fī al-Istismār, Journal of Muslim Mu 'āsir,* Vol 26, No, p. 103

Sardar, Zaidudin (1985) *Islamic Future: The Shape of Ideas to come*, New York: Manshell Publishing Limited

Saleem, M. El-'Awa,.(1993.) *Punishment in Islamic law*, Indianapolis: American trusts Publication,

……, 2006. Studies in the philosophy of Islamic law: London: al-Furqan IHF

……,(2014) The Jurisprudence of Shariah objectives and interest between Al-'Izz Ibn Abdul Salam and Abu Isahaq al-Shatibi. London: al-Furqan IHF

……, 2014 *Ta'lil wal-Maslaha indal al-Dhahiriyah:* Rationalization and public interest in litral school of legal thought. pp. 103-151. A chapter in A chapter *in (applying the objectives of Shari;ah: between fear and leniency A collection of research articles for training course series: I'mal-al-maqasid; bayna al-tahayyab wal-tasaayb) by* Raisuni, A, London: al-Furqan IHF

Said, Haleem, (2014) The general philosophy of Islamic law in politics and constitution: pp.773-838 A chapter *in (I'mal-al-maqasid; bayna al-tahayyab wal-tasaayb),* e.d. Raisuni Ahmed.London: al-Furqan IHF

Simon Askey & Ian McLeod, (2014) *studying law,* UK: Palgrave Macmillan

Schwab, Klaus, (2017*) The Fourth Industrial Revolution*, UK: Penguin Random House

Shamsudin, Mahdi, (2002) *Maqāsid al-Shari'ah* , 1st Edition, Ed. Abdul Jabbār, *Al-Rifā'i*, Damascus: Dār al-Fikr

Shāfi'i , Muhammad b. Idris (1969) .*Al-Risāla*, ed. Muhammad Sayyid Kilāni, Cairo: Mustafā Bābi al-Halabi

Al-Shanqiti. M. (2013*) political disagreement among Companions*. Tanweer publication.

T

Taj, 'Abd al-Rahmān (1953), *Al-Shiyāsah al-Shara'iyyah,* Coiro: Matab'ah Dār al-Ta'līf,

Tibi, Bassam, (1998) The Challenges of fundamentalism. US: University of California press.

Turābi, Hasan, (1993) *Tajdīd al-Fikr al-Islāmi,* Morocco: Dār al Qarāfi,

Turki, Abdul Mājid, (1990) *Shātibi wa al-Ijtihād wa thashrī' al-Mu'āsir,* Jounal of al-Ijtihād, Beiruit: Dār al-Ijtihād, Vol. 8, pp.150-15

Thomson, Mel, (2008) Political philosophy, London: Hodder Education

U

'Umar 'Abd Allah, (1981) *The nature of the ethical speculation in ash-Shātibī's thought*, *The journal of Maghrib Review*, Vol: 6, No.1 and 2, London

Al-'Ubaidi, Hammādi, (1996) .*Al-Shātibī wa-Maqāsid al-Shari'ah,* 1st edition, Bruit: Dār al Qutaibah

V

Vikor, k. (2005) Between God and Sultan, A History of Islamic law. London: Hurst &co

W

Wasfi Al-Ashur, (2014) Ahkam al-Shariah bayana Ta'abud wal_ta'lil) Rules of Islamic law between rationalization and submission) pp; 154-263. *in I'mal-al-maqasid; bayna al-tahayyab wal-tasaayb,* ed. Raisuni Ahmed. London: al-Furqan IHF
Al-Wakīli, Muhammad, (1997) *Fiqh al-Awlawiyyāt*, 1st edtion, U.A.S: IIIT
Wael ibn Sultan Al-Harisi, (2014) (A modern comparative study on the theory of maqasid. pp 839-902). A chapter *in* I'mal-*al-maqasid; bayna al-tahayyab wal-tasaayb)* ed. Raisuni Ahmed, London: al-Furqan IHF
Worthington, S, (2003) Equity, UK: Oxford University press
Y
Yousuf Al-Hamutu, (2014) *Maqasid-Shariah bayna Ashwaiyatul al-I;mal and fawiayat al-Tawleef*) The general philosophy of Islamic law between chaotic and systematic application. Pp. 345- *in (I'mal-al-maqasid; bayna al-tahayyab wal-tasaayb)* e.d Raisuni.A. London: al-Furqan IHF
Z
Al-Zuhayli, Wahbah, (1965) *Āthār al-Harb fī fiqh al-Islāmi: Dirāsatun Muqāranah,* 2nd Edition, Damascus: al-Maktabat al-Hadīthah,
Za'aiba, Issa din, (1996) *Maqasid al-'*Ammah *lil- Maqāsid al-shari'ah.*1st edition, Cairo: Darul Safwa
Zuhail.A, 2016, Amazigh world news, 21/02/2016. P1.
Lectures:
Shiekh Agār Mohamed (2001) Laws of equivalence in Islamic law, A collection of lectures given in Da'wā' Centre, Eastham, London.
Ustaz Manoor. M.A (2000) *Elements of humanism in Islamic Law*, A collection of lectures in Tamil Language, Colombo Sri-Lanka.
Prof Mohammad Fadl, (2017. As-Shatibi: The Reconciliation of the Fundamental of Islamic law: Great books Series Lecture: Islamic institute of Toronto

Electronic.

www.innovateus.net/innopedia/what-function-civic-society accessed on 09/08/2018.

www.bbc.co.uk/worldservice/people/highlights/010705_civil.shtml.Accessed on 09/08/2018.
http:// www2016 HDR Report the 2016 Human Development Report. Accessed on 7/7/2018.

http:// Arab human development Report 2009. Accessed on 7/7/2018. http://www.un.org/Overview/rights.htmlSource: http;//www.alhewar.com/ISLAMDECL.

https/www. Parliament.UK. living heritage. Accessed on 5/7/18.Office for Budget Responsibility: Economic and fiscal outlook Presented to Parliament by the Economic Secretary to the Treasury by Command of Her Majesty November 2015 : accessed.

www.lpbr.net/2012/06/long-divergence-how-islamic-law-held.html

https://www.unhcr.org/uk, accessed 12/12/2018 1951 refugee concention, commented by (PAUL WEIS: 1990: p.6,

Reviewed by Mark Rush, American University of Sharjah, U.A.E. pp.306- ... In The Long Divergence, **Timur Kuran** seeks to explain "why classical Islam's distinct ...
n 06/06/18.
https://www.youtube.com/watch?v=YvhGWknZozg.by A.Assid accesssed on 11/1/18
A. Assid (2012). We Need Secularism Now. Interview on Al-Arabiya TV. Retrieved from https://www.youtube.com/watch?v=M9_GvDDDndM&feature=player_embedded

www.sheikhagar.org; accessed on 2/7/2017
http;//www binbayyah.net; accessed on 5/5/18.

https://www.cilecenter.org/en/ accessed on 1/6/18
www.sahafah24.com: accessed on 10/4/2018
https://alquranopencollege.com/.: accessed on 01/ 05/ 2018 .

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About Author:

The religion of Islam has been misunderstood many, especially by the people who live in western countries. Yet, there are a few Islamic scholars in the western world who try to introduce Islam in its authentic and true format as it was revealed from God Almighty and implemented by the Prophet Muhammad (May Peace be upon him). We have great pleasure in publishing Dr SLM Rifai's (Naleemi) book on general philosophy of Islamic law.

Dr SLM Rifai (Naleemi) is an academic, author, lecturer. He learned Islamic sciences and Arabic language at Jamiah Naleemiah Islamiyah, Sri Lanka and completed his BA special degree in Arabic language at University of Peradeniya, Sri Lanka. He worked as a Lecturer in the Eastern university, Sri Lanka and awarded a commonwealth scholarship in 1991 to read for his PhD at SOAS, University of London. He successfully completed his MA and PhD in Islamic studies at SOAS and since he has been working as a free Lance writer and academic consultant.

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