THE CONCEPT OF *AL-MAṢLAḤA WA AL-NAṢṢ* WITH SPECIAL REFERENCE TO *KITĀB AL-BUYŪ^c* IN THE BOOK OF *BULŪGH AL-MARĀM*

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ABSTRACT

This study examines the concept of *al-Maṣlaḥa wa al-Naṣṣ* (Public Interest and Islamic legal text) with special reference to *Kitāb al-Buyūᶜ* (chapter on business transactions) in the book of *Bulūgh al-Marām.* The analysis moves from the connection formed between *al-Maṣlaḥa* and *al-Naṣṣ* by Muslim jurists to the investigation of the practical principles of *al-Maṣlaha* as those principles apply to *al-Buyūᶜ* , as encompassed in the *aḥādīth* of the Prophet s.a.w in *Kitāb al-Buyūᶜ*. It is for this reason that the book of *Bulūgh al-Marām* has been chosen by the present researcher; *Kitāb al-Buyūᶜ* represents the most explicit source of *aḥādīth* on which to draw for the practical principles discussed.

To this end, six chapters have been drawn up in three parts; that is, parts A, B and C. Part A is entitled 'The concept of *al-Maṣlaḥa wa al-Naṣṣ* in Islamic Jurisprudence', and consists of three chapters. The first deals with the definition and historical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ.* The second chapter extends this with the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ.* This conceptual section closes with the third chapter, which focuses on the significance of *Taᶜlīl al-Aḥkām* for the concept of *al-Maṣlaḥa wa al-Naṣṣ.* Part B examines the authenticity of the *Ḥadīth,* introduces the book of *Bulūgh al-Marām* and consists of two chapters, chapter four and chapter five. The fourth chapter discusses the main reference sources for the book of the *Ḥadīth,* while the fifth both introduces the book of *Bulūgh al-Marām* and analyses in detail each successive section.

The last part of this thesis is part C, which specifically examines the *aḥādīth.* Part C forms the heart of the thesis, building a specific methodology within the juristic framework of the concept of *al-Maṣlaḥa wa al-Naṣṣ* for the analysis of *al-Buyūᶜ* according to the practical principles drawn up from the 22 sub topics listed in *Kitāb al-Buyūᶜ* (chapter on business transactions) in the book of *Bulūgh al-Marām.* The thesis concludes that if these principles of public interest are applied to all business transactions in accordance with what is laid down in the *aḥādīth* of the Prophet s.a.w, then the public interest of humanity amongst Muslims will be preserved. It is for this reason, that the *aḥādīth* of the Prophet s.a.w are given to humanity as a universal living source on which to draw for their eternal well-being. Thus, it is hoped that using the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* as a new tool with which to analyse the *aḥādīth* of the Prophet s.a.w opens the door to further study in this field.

Declaration/Statements

DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any degree.

Statement 1

This thesis is the result of my own investigation, except where otherwise stated.
Other sources are acknowledged by footnotes giving explicit references.
A bibliography is appended.

Signed. ——

Statement 2

I hereby give consent for my thesis, if accepted to be available for photocopying and for inter-library loan, and for the summary to be made available to outside organisations.

Signe d.....

Date.....

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Finally, as the perfection and faultlessness only belong to Allah as the most perfect, therefore I admit that this thesis is subject to weaknesses because lack of knowledge, outlook and experience. Thus, any comment and suggestion that aims to improve this thesis is highly appreciated. However, to Allah s.w.t. I submit this humble work for my submission to Him.

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NOTES ON TRANSLITERATION

This work adopt the rules of transliteration used by *Encyclopedia of Islam,* with slight variations

Consonants

ء	(hamza)	’	ض	(ḍād)	ḍ
ب	(bā’)	b	ط	(ṭā’)	ṭ
ت	(ta’)	t	ظ	(ẓā’)	ẓ
ث	(thā’)	th	ع	(ᶜayn)	c
ج	(jīm)	j	غ	(ghayn)	gh
ح	(ḥā’)	ḥ	ف	(fā’)	f
خ	(khā’)	kh	ق	(qāf)	q
د	(dāl)	d	ك	(kāf)	k
ذ	(dhāl)	dh	ل	(lām)	l
ر	(rā’)	r	م	(mīm)	m
ز	(zay)	z	ن	(nūn)	n
س	(sīn)	s	و	(wāw)	w
ش	(shīn)	sh	هـ	(hā’)	h
ص	(ṣād)	ṣ	ي	(yā’)	y

Vowels

ـَـ	(*fatḥaḥ*)	a	long *fatḥaḥ*	ā
ـِـ	(*kasra*)	i	long *kasra*	ī
ـُـ	(*ḍammah*)	u	long *ḍammah*	ū

- *Tanwin* ـً ـٍ ـٌ is represented by *an, in, un* respectively.

- Transliteration will involve only Arabic words. Others will be written in *italics.*

Exceptions

- The names of well-known places, e.g. Mecca, Medina, Iraq.

- No macron over the last *i* in names.
- Authors and titles of non-Arabic books.

LIST OF ABBREVIATIONS

al-Ābādi, *ᶜAwn al-Maᶜbūd*	al-Ābādi, *ᶜAwn al-Maᶜbūd*
Abī Manṣūr, *Tahdhīb*	Abi Manṣūr Muḥammad b.Aḥmad al-Azhari, *Tahdhīb al-Lughah*
Abū Dawūd, *Sunan*	Abū Dawūd, *Sunan*
ᶜAbd.Al-Razzāq, *al-Muṣannaf*	ᶜAbd.Al-Razzāq, Abū b. Ḥumam al-Ṣanᶜani, *al-Muṣannaf*
ᶜAbd al-Ghafar, *Criticism*	ᶜAbd al-Ghafar, Shuaib Hasan, *Criticism of Ḥadīth Among Muslims with Reference to Sunan Ibn Mājah*
ᶜAbd al-Khāliq, *Ḥujjiyyat*	ᶜAbd al-Khāliq, ᶜAbd al-Ghānī, *Ḥujjiyyat al-Sunnah*
ᶜAbd. al-Majīd, *al-Madkhal*	ᶜAbd. al-Majīd Maḥmūd al-Maṭlūb, *al-Madkhal fī al-Taᶜrīf bi al-Fiqh al-Islāmī wa Ususihi wa Khaṣāiṣihi wa Maṣādirihi*
Abū Zahra, *Uṣūl*	Abū Zahra, Muḥammad, *Uṣūl al-Fiqh*
Abū Zahra, *Abū Ḥanīfa*	Abū Zahra Muḥammad, *Abū Ḥanīfa: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh*
Abū Zahra, *Mālik*	Abū Zahra Muḥammad, *Mālik: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh*
Abū Zahra, *al-Shāfiᶜī*	Abū Zahra Muḥammad, *al-Shāfiᶜī: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh*
Abū Zahra, *Ibn Ḥanbal*	Abū Zahra Muḥammad, *Ibn Ḥanbal: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh*
Abū Zahra, *Tārīkh*	Abū Zahra Muḥammad, *Tārīkh al-Madhāhib al-Islāmīyyah fī al-Siyāsah wa al-ᶜAqā'id wa al-Tārikh al-Madhāhib al-Fiqhiyyah*
Abū Zahw, *al-Ḥadīth*	Abū Zahw Muḥammad Muḥammad, *al-Ḥadīth wa al-Muḥaddithūn*
Aḥmad, *Musnad,*	Aḥmad b. Ḥanbal, *Musnad*
ᶜAli , *Al-Shāfiᶜī*	ᶜAli ᶜAbd. Karīm, *Al-Shāfiᶜī's Contribution to Ḥadīth an Annotated Translation of His Work Jimāᶜ al-ᶜIlm*
al-Āmidi, *Al-Iḥkām*	al-Āmidi, Sayf al-Dīn ᶜAlī b. Muḥammad, *Al-Iḥkām fī Uṣūl al-Aḥkām*

al-Āmidi, *Ghāyah*	al-Āmidi, Sayf al-Dīn ᶜAlī b. Muḥammad, *Ghāyah al-Marām fī ᶜilm al-Kalām*
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Anderson, *Islamic Law*	Anderson J.N.D., *Islamic Law in the Modern World*
al-Ashqār, *al-Sharīᶜa*	al-Ashqār, ᶜUmar Sulaiman, *al-Sharīᶜa al-Ilāhiyya la al-Qawānīn al-Waḍᶜīyya*
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al-Ashqār, *Tārīkh*	al-Ashqār, ᶜUmar Sulaiman, *Tārīkh al-Fiqh al-Islāmī*
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al-Bāji, *al-Muntaqā*	al-Bāji, Sulayman ibn Khalaf, *al-Muntaqā Sharḥ al-Muwaṭṭā'*
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Fyzee, *Outlines*	Fyzee, Asaf A.A., *Outlines of Muhammad Law*
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Hornby, *Oxford*	Hornby, A S, *Oxford Advanced Learner's Dictionary of Current English*
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Ibn Mājah, *Sunan*	Ibn Mājah, Muḥammad b. Yazīd, *Sunan Ibn Mājah*
Ibn Manẓūr, *Lisān*	Ibn Manẓūr, Muḥammad b. Mukarram ibn ᶜAli, *Lisān al-ᶜArāb*
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Ibn Qayyīm, *Aᶜlām*	Ibn Qayyīm al-Jawziyyah, Shams al-Dīn Abū ᶜAbd Alah b. Abī Bakr, *Aᶜlām al-Muwaqqiᶜīn ᶜan Rabb al-ᶜĀlamīn*
Ibn Qayyīm, *Syifā'*	Ibn Qayyīm al-Jawziyyah, Shams al-Dīn Abū ᶜAbd Alah b. Abī Bakr, *Syifā' al-ᶜAlīl fī Masā'il al-Qaḍā' wa al-Qadr wa al-Ḥikma wa al-Taᶜlīl*
Ibn Qayyīm, *Zād*	Ibn Qayyīm al-Jawziyyah, Shams al-Dīn Abū ᶜAbd Alah b. Abī Bakr,*Zād al-Maᶜad*
Ibn Rushd, *Bidāya*	Ibn Rushd al-Ḥafīd, Abū al-Walid, Muḥammad b. Aḥmad b. Muḥammad b. Aḥmad, *Bidāya al-Mujtahid wa Nihāya al-Muqtaṣid*
Ibn Rajb, *al-Qawāᶜīd*	Ibn Rajb, Abū al-Farj, ᶜAbd al-Raḥman b. Shihāb al-Dīn b. Rajb, *al-Qawāᶜīd fi al-Fiqh al-Islāmī*
Ibn al-Ṣalāḥ, *Muqaddimah*	Ibn al-Ṣalāḥ al-Shahrāzurī, Abū ᶜAmr ᶜUthman b. ᶜAbd al-Rahman, *Muqaddimah Ibn al-Ṣalāḥ fī ᶜUlūm al-Ḥadīth*
Ibn al-Ṣalāḥ, *Ṣiyānah*	Ibn al-Ṣalāḥ al-Shahrāzurī, Abū ᶜAmr ᶜUthman b. ᶜAbd al-Rahman, *Ṣiyānah Ṣaḥīḥ Muslim*
Ibn Taymīyya, *Majmūᶜ*	Ibn Taymīyya, Taqī al-Dīn Abū al-ᶜAbbās, *Majmūᶜ al-Fatāwā*

Ibn Taymīyya, *Minhāj*	Ibn Taymīyya, Taqī al-Dīn Abū al-ᶜAbbās, *Minhāj al-Sunna al-Nabawīyya*
Ibn al-ᶜImād, *Shadhara*	Ibn al-ᶜImād Abū al-Fallah ᶜAbd al-Ḥayyī al-Ḥanbalī, *Shadhara al-Dhahāb fī Akhbār man Dhahab*
Ibrahim, *al-Dalālāt,*	Ibrahim b. Ahmad b. Sulaiman al-Kindi, *al-Dalālāt wa Turūq al-Istinbāṭ*
Ihsan, *Utility*	Ihsan Bagby 'Abdul Wajid, *Utility in Classical Islamic Law: The Concept of Maṣlaḥa in Uṣūl al-Fiqh*
Islahi, *Islamic Law*	Islahi, *Islamic Law, Concept and Codification*
al-ᶜIywānī, *Taᶜlīl*	Taha Jabir Fiyad, *Taᶜlīl al-Aḥkām al-Sharᶜīyya wa Ikhtilāf al-ᶜUlamā' fīh wa Ḥaqīqa Mawqīf wa 'Athār Zalika fī Ḥujjīya al-Qiyās*
Izzi Dien, *Islam*	Izzi Dien, Mawil, *Islam and Environment, theory and practice*
Izzi Dien, *The Theory*	Izzi Dien, Mawil, *The Theory and Practice of Market Law in Medieval Islam*
Izzi Dien, *Maṣlaḥa*	Izzi Dien, Mawil, *Maṣlaḥa In Islamic Law: A Source or A Concept? A Framework For Interpretation*
Izzi Dien, *Islamic Law,*	Izzi Dien, Mawil, *Islamic Law, From Historical Foundation to Contemporary Practice*
al-Jurjāni,	al-Jurjāni, ᶜAli b. Muhammad b. Sharif, *Kitāb Taᶜrīfāt*
Jazīri, *Kitāb,*	Jazīri, ᶜAbd al-Raḥman, *Kitāb al-Fiqh ᶜala al-Madhāhib al-Arbaᶜah*
al-Juwayni, *al-Burhān,*	al-Juwayni, Abū al-Maᶜālī ᶜAbd al-Mālik b. ᶜAbd Allah b. Yusuf, *al-Burhān fī Uṣūl al-Fiqh*
al-Juwayni, *al-Irshād,*	al-Juwayni, Abu al-Maᶜālī ᶜAbd al-Mālik b. ᶜAbd Allah b. Yusuf, *al-Irshād, ila Qawāṭiᶜ al-Adilla fī Uṣūl al-Iᶜtiqād*
al-Kamāli, *Min Fiqh*	al-Kamāli, ᶜAbdullah Yaḥya, *Min Fiqh al-Muwāzana bayna al-Masāliḥ al-Sharᶜīyya*
al-Kamāli, *al-Sharᶜīyya*	al-Kamāli, ᶜAbdullah Yaḥya, *al-Sharᶜīyya al-Islamīyya wa Fiqh al-Muwāzana*
al-Kamāli, *Ta'ṣīl*	al-Kamāli, ᶜAbdullah Yaḥya,*Ta'ṣīl Fiqh al-Muwāzana*

Kamali, *Sharīᶜah*	Kamali Mohamad Hashim, *Sharīᶜah as Understood by the Classical Jurists*
Kamali, *Have We*	Kamali Mohamad Hashim, *Have We Neglected The Sharīᶜah-Law Doctrine of Maslaha*
Kamali, *Principles*	Kamali Mohamad Hashim, *Principles of Islamic Jurisprudence*
Kamali, *Maqāṣid*	Kamali Mohamad Hashim, *Maqāṣid al- Sharīᶜah: The Objectives of Islamic Law*
Kandahlawi, *Ḥujja*	Kandahlawi, *Ḥujja Allah al-Bālīgha*
al-Khalīfa, *Madrasa*	al-Khalīfa, Muḥammad Rashad, *Madrasa al-Ḥadīth fī Miṣr*
al-Khaṭīb, *Uṣūl*	al-Khaṭīb, Muhammad ᶜAjjāj, *Uṣūl al-Ḥadīth ᶜUlūmuhu wa Muṣṭalāhuhu*
al-Khaṭīb, *Tārīkh*	al-Khaṭīb al-Baghdādī, Abu Bakar Ahmad b. ᶜAli, *Tārīkh Baghdād*
al-Khuli, *Miftāḥ*	al-Khuli, Muhammad ᶜAbd Aziz, *Miftāḥ al-Sunna wa Tārīkh Funūn al-Ḥadīth*
Macdonald, *Development*	Macdonald Duncan Black, *Development of Muslim Theology, Jurisprudence and Constitutional Theory*
Maḥmasāni, *Falsafat*	Maḥmasāni, Subḥi, *Falsafat al-Tashrīᶜ fī al-Islām*
Maḥmasāni, *al-Naẓariyyāt*	Maḥmasāni, Subḥi, *al-Naẓariyyāt al-ᶜAmma li al-Mūjibāt wa al-ᶜUqūd fī al-Sharīᶜa al-Islāmīyya*
Majīd, *Islamic*	Majīd Khadduri, *Islamic Jurisprudence Shafiᶜi's Risāla*
Malik, *al-Mudawwana*	Malik bin Anas, *al-Mudawwana al-Kubra*
Malik, *al-Muwaṭṭā'*	Malik, *al-Muwaṭṭā'*
Masᶜud, *Shatibi*	Masᶜud, Muhammad Khalid, *Shatibi's Philosophy of Islamic Law*
Muslim, *Ṣaḥīḥ*	Muslim b. al-Ḥajjāj al-Nīsābūrī, *Ṣaḥīḥ Muslim*
Muslehuddin, *Islamic*	Muslehuddin Mohammad, *Islamic Jurisprudence and the Role of Necessity and Need*
al-Nasā'i, *Sunan*	al-Nasā'i, Aḥmad b. Shuᶜayb, *Sunan al-Nasā'i*

al-Nawāwi, *Tahdhīb*	al-Nawāwi, Abū Zakarīyya Muḥy al-Dīn b. Yaḥya b. Sharf, *Tahdhīb al-Asmā' wa al-Lugha*
al-Nawāwi, *al-Minhāj*	al-Nawāwi, Abū Zakarīyya Muḥy al-Dīn b. Yaḥya b. Sharf, *al-Minhāj fī Sharḥ Ṣaḥīḥ Musli*
al-Nawāwi, *Sharḥ*	al-Nawāwi, Abū Zakarīyya Muḥy al-Dīn b. Yaḥya b. Sharf, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawāwī*
Nu^{c}man, *Ṭuruq*	Nu^{c}man Jughaim, *Ṭuruq al-Kashp ^{c}an Maqāṣid al-Sharī^{c}a*
Nyazee, *Theories*	Nyazee, Imran Ahsan Khan, *Theories of Islamic Law: The Methodology of Ijtihad*
al-Qarāḍāwi, *Al-Sunnah*	al-Qarāḍāwi ,Yūsuf, *Al-Sunnah Maṣdarān Lil Ma^{c}rifah wa al-Ḥaḍārah*
al-Qarāḍāwi, *Al-Ṣaḥwah*	al-Qarāḍāwi ,Yūsuf, *Al-Ṣaḥwah al-Islāmīyyah bayna al-Juhūd wa al-Taṭarrūf*
al-Qarāḍāwi, *The Lawful*	al-Qarāḍāwi ,Yūsuf *The Lawful and the Prohibited in Islam*
al-Qarāfi, *Tanqīḥ*	al-Qarāfi, Shihab al-Dīn Abū al-^{c}Abbās al-Sunhaji al-Bahnasi, *Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī ^{c}Ilm al-'Uṣūl Sharḥ Tanqīh al-Fuṣūl*
Rahim, *Islamic*	Rahimin Affandi Abdul Rahim, *Islamic legal Reform In The Administration of Islamic Law In Malaysia: A Critical Analysis*
al-Rāzi, *al-Maḥṣūl*	al-Rāzi , Fakhr al-Dīn Muḥammad b. ^{c}Umar b. al-Ḥusayn, *al-Maḥṣūl fī ^{c}Ilm Uṣūl al-Fiqh*
Rayner, *The Theory*	S.E Rayner, *The Theory of Contracts in Islamic Law*
al-Raysūni, *Al-Ijtihād*	al-Raysūni, Aḥmad and Aḥmad Jamāl Bārūt, *Al-Ijtihād al-Naṣṣ, al-Wāqi^{c}, al-Maṣlaḥa*
al-Raysūni, *Naẓarīyyat*	al-Raysūni, Aḥmad, *Naẓarīyyat al-Maqāṣid ^{c}inda al-Imām al-Shāṭibī*
s.a.w	*ṢallaAllah ^{c}alaih wa Sallām*
al-Sakhāwi, *al-Jawāhir*	al-Sakhāwi, Abū al-Khayr Muḥammad b. ^{c}Abd al-Raḥman, *al-Jawāhir wa al-Durār fī Tarjamah Shaykh al-Islām Ibn Hajar*
al-Sakhāwi, *al-Ḍaw'*	al-Sakhāwi, Abu al-Khayr Muhammad b. ^{c}Abd

	al-Raḥman *al-Ḍaw' al-Lāmi*^{c}
al-Ṣan^{c}āni, *Subul*	al-Ṣan^{c}āni, Muḥammad b. Ismā^{c}īl, *Subul al-Salām*
Schact, *An Introduction*	Schact, Joseph, *An Introduction to Islamic Law*
Schact, *The Origins*	Schact, Joseph, *The Origins of Muhammadan Jurisprudence*
al-Shāfi^{c}i, *al-Risāla*	al-Shāfi^{c}i , Muḥammad b. Idrīs, *al-Risāla*
al-Shāfi^{c}i, *Ikhtilāf*	al-Shāfi^{c}i , Muḥammad b. Idrīs, *Ikhtilāf al-Ḥadīth*
Shālibi, *Ta^{c}līl*	Shālibi, Muḥammad Muṣṭafa, *Ta^{c}līl al-Alıkām*
al-Shāṭībi, *al-I^{c}tiṣām*	al-Shāṭībi, Ibrahim b. Mūsa al-Lakhmi, *al-I^{c}tiṣām*
al-Shāṭībi, *al-Muwāfaqāt*	al-Shāṭībi, Ibrahim b. Mūsa al-Lakhmi *al-Muwāfaqāt fī Usūl al-Sharī^{c}ah*
Shawkāni, *Irshād*	Shawkāni Muḥammad b. ^{c}Ali, *Irshād al-Fuḥūl ilā Taḥqīq al-Haq min ^{c}Ilm al-Uṣūl*
Shawkāni, *Nayl*	Shawkāni,Muḥammad b. ^{c}Ali, *Nayl al-Awṭār*
Sibā^{c}i, *al-Sunnah*	Sibā^{c}i Muṣṭafa, *al-Sunnah wa Makānatuhā fī al-Tashrī^{c} al-Islāmī*
Siddiqui, *Hadith*	Siddiqui, Muhammad Zubayr, *Hadith Literature: Origins, Development and Special Features*
al-Suyūṭi, *Tadrīb*	al-Suyūṭi,Jalāl al-Dīn b. ^{c}Abd al-Raḥman b. Abī Bakr *Tadrīb al-Rāwī fi Sharḥ Taqrīb al-Nawāwī*
al-Suyūṭi, *Sharḥ*	al-Suyūṭi,Jalāl al-Dīn b. ^{c}Abd al-Raḥman b. Abī Bakr *Sharḥ al-Suyūṭī Li-Sunan al-Nasā'ī*
al-Suyūṭi, *Ṭabaqāt*	al-Suyūṭī,Jalāl al-Dīn b. ^{c}Abd al-Raḥman b. Abī Bakr, *Ṭabaqāt al-Ḥuffāẓ*
Ṭabāri, *Tārīkh*	Ṭabāri, Abu Ja^{c}far Muḥammad b. Jarīr, *Tārīkh al-rusul wa al- muluk*
al-Taftazāni, *Sharḥ*	al-Taftazāni, Sa^{c}ad al-Dīn Mas^{c}ūd b. ^{c}Umar, *Sharḥ al-Talwīḥ ^{c}ala al-Tawḍīḥ li Matn al-Tanqīh fī Uṣūl al-Fiqh*
al-Tirmīdhi, *Sunan*	al-Tirmīdhi, Abū ^{c}Isa Muḥammad b. Sawrah, *Sunan*
al-^{c}Ubaydi, *al-Shāṭibī*	al-^{c}Ubaydī Hammādi, *al-Shāṭibī wa Maqāṣid al-*

	Sharī^{c}a
al-^{c}Unqari, *Ta^{c}līl*	al-^{c}Unqari, *Ta^{c}līl al-Aḥkām al-Syar^{c}īyya Dirāsa wa Taṭbīq*
Wizārah, *Al-Mawsū^{c}ah*	Wizārah al-Awqāf wa al-Shu'ūn al-Islāmīyyah, *Al-Mawsū^{c}ah al-Fiqhīyyah*
Yaqūt, *Mu^{c}jam*	Yaqūt, Shahāb al-Dīn b. ^{c}Abdullah al-Ḥamawī al-Rūmī, *Mu^{c}jam al-Buldān*
Zamakhsharī, *Asās*	Zamakhsharī Abū al-Qāsim Maḥmūd b. ^{c}Umar, *Asās al-Balāghah*
al-Zarakshī, *al-Baḥr*	al-Zarakshī, Badr al-Dīn Muhammad b. ^{c}Abdullah, *al-Baḥr al-Muḥiṭ*
al-Zayla^{c}ī, *Naṣb*	al-Zayla^{c}ī Jamāl al-Dīn, *Naṣb al-Rāya li Aḥādīth al-Hidāya*
Zayd, *Al-Maṣlaḥa*	Zayd, Mustafa, *Al-Maṣlaḥa fī al-Tashrī^{c} al-Islāmī*
Zaydān, *Al-Wajīz*	Zaydān ^{c}Abd al-Karīm, *Al-Wajīz fī Uṣūl al-Fiqh*
al-Zirikli, *Al-A^{c}lām*	al-Zirikli, Khayr al-Dīn, *Al-A^{c}lām, Qāmūs Tarājim Li Ashar al-Rijāl*
al-Zuḥayli, *Naẓarīyat*	al-Zuḥayli, Wahbah, *Naẓarīyat al-Ḍarūra al-Shar^{c}īyya*
al-Zuḥayli, *Uṣūl*	al- Zuḥayli, Wahbah, *Uṣūl al-Fiqh al-Islāmī*
al-Zuḥayli, *Al-Fiqh*	al-Zuḥayli, Wahbah, *Al-Fiqh al-Islāmī wa Adillatuh*

INTRODUCTION

Background

In Islamic jurisprudence, the formation of the juristic concept of *maṣlaḥa* or public interest in connection with Islamic legal texts or *nuṣūṣ* has been termed *maṣlaḥa mu^{c}tabara.* For al-Ghazāli (d.555H/1111C.E), the category of *maṣlaḥa mu^{c}tabara* is juristically considered the validity and recognised *maṣlaḥa,* since there is textual evidence in its favour, particularly in the *Qur'ān* and the *Sunna* or the *Ḥadīth* of the Prophet s.a.w[1].

Apart from *mu^{c}tabara,* the category of *maṣlaḥa mursala* has been juristically recognised by many jurists although it has no textual divine evidence in its favour. At this stage, it can be learned that any juristic rule that formed in the category of *maṣlaḥa mursala* but has no parallel ruling and principle with the objective of Islamic law, would therefore be categorised *mulgha* or unrecognised, nullified and discredited *maṣlaḥa*[2]. This principle highlights the significance of *maqāṣid al-shari^{c}a* or the ultimate objective of Islamic law in the formation of new rulings.

Importantly, the above discussion underlines the category of *maṣlaḥa mu^{c}tabara* as the highest level in its category of which juristically in line with the ultimate objective of Islamic law or *maqāṣid al-shari^{c}a.* This is because the existence of textual divine evidence or proofs from the primary sources of Islamic law in the category of *maṣlaḥa al-mu^{c}tabara.* In line with this category, some Muslim jurists form the term *al-maṣlaḥa wa al-naṣṣ* as the juristic concept of public interest in

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[1] al-Ghazāli, *al-Mustasfa,*v.2,p.118.
[2] *Ibid.*

which interrelated with textual divine evidence particularly the *Qur'ān* and the *Ḥadīth.*

The notion of juristic concept of *al-naṣṣ wa al-maṣlaḥa* or *al-maṣlaḥa wa al-naṣṣ* (interchangeable terms) has been introduced concisely by Aḥmad al-Raysūni and Aḥmad Jamāl Bārūt in one of sub topics of the book entitles *al-Ijtihād*: *al-Naṣṣ, al-Wāqiᶜ, al-Maṣlaḥa*[3]. In the introduction to the concept of *al-maṣlaḥa wa al-naṣṣ,* Aḥmad al-Raysūni claims that the current phenomenon of discussion among Muslim jurists on the subject of *al-ᶜaql* (reason) in accordance with *al-naql* (transmitted), is somewhat similar to that of *maṣlaḥa* in connection with *naṣṣ*[4]. Furthermore, in practice, he affirms that apart from the *Qur'ān,* the *Ḥadīth* of the Prophet s.a.w is a living source that aims to preserve the public interest of the life of humanity[5].

It appears that Aḥmad al-Raysūni's arguments on the significance of the concept of *al-maṣlaḥa wa al-naṣṣ* is pivotal to be further examined and analysed. For this reason, some related questions may arise here; on what basis the concept of *al-maṣlaḥa wa al-naṣṣ* is examined in the light of Islamic jurisprudence? If the *Ḥadīth* of the Prophet s.a.w is chosen as a reference of legal texts in connection with juristic concept of *maṣlaḥa,* thus, is there any limitation as well as special reference to this thesis because of the huge numbers and references for the *Ḥadīth* ? Above all, what are the main purposes of this thesis to highlight the concept of *al-maṣlaḥa wa al-naṣṣ* as the basic subject to be examined?

To answer to these particular questions, the next topic will discuss regarding the purpose, scope and limitation of the present study.

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[3] See al-Raysūni and Bārūt, *al-Ijtihād*, p.28, 49-59.
[4] *Ibid.*
[5] *Ibid.*

Purpose, scope and limitation of thesis

The main purpose of this thesis is to examine the formation of the concept of *al-maṣlaḥa wa al-naṣṣ* in the light of Islamic jurisprudence. To achieve this main purpose, this thesis will examine the definition, historical and theoretical development of the concept of *al-maṣlaḥa wa al-naṣṣ*. This examination aims to highlight the basic foundation upon which the formation of this concept is established in Islamic jurisprudence. Further examination will focus on the significance of *taᶜlīl al-aḥkām* for the concept of *al-maṣlaḥa wa al-naṣṣ*. The purpose of this examination is to analyse the process of *taᶜlīl al-aḥkām* from the legal text of the *Qur'ān* and the *Ḥadīth*. This process aims to identify the principles of public interest as well as the objective of Islamic law that encompass in the legal text of the *Qur'ān* and the *Ḥadīth*. At this stage, it can be learned that the concept of *al-maṣlaḥa wa al-naṣṣ* is juristically applicable in the analysis of the divine legal texts of the *Qur'ān* and the *Ḥadīth*. In other words, the concept of *al-maṣlaḥa wa al-naṣṣ* can be applied to the subject of Qur'anic exegesis (*tafsīr al-Qur'ān*) and the analysis of the *Ḥadīth* (*sharḥ al-Ḥadīth*).

As a matter of scope and limitation of study, this thesis will focus on the *Ḥadīth* of the Prophet s.a.w as a reference of legal texts in the analysis of the concept of *al-maṣlaḥa wa al-naṣṣ*. Since there are huge numbers and references for the *Ḥadīth* of the Prophet s.a.w, a special reference to the book of *Bulūgh al-Marām* is made for the purpose of analysis. Bearing in mind that the book of *Bulūgh al-Marām* consists of a total number of 1572 *aḥadīth*. In addition, there are 16 chapters and 93 sub topics that enclose in that book. Based on these factual numbers, this thesis will focus only on one of the chapters of *Bulūgh al-Marām* namely *Kitāb al-Buyūᶜ* or chapter on

business transactions. The limitation of chapter on *Kitāb al-Buyūᶜ* in this thesis aims to juristically analyse its 22 sub topics as well as 176 *aḥādith* within the concept of *al-maṣlaḥa wa al-naṣṣ*. It is hoped that the chapter on *Kitāb al-Buyūᶜ* will be analysed in revealing the principles of public interest and their main objectives of Islamic law of transactions.

Research Methodology

The study is mainly based on library research within the field of Islamic Jurisprudence in connection with the prophetic source of the *Ḥadīth* s.a.w. Three basic issues will be discussed: Firstly, the concept of *al-maṣlaḥa wa al-naṣṣ*. Secondly, the references sources for the *Ḥadīth* s.a.w and the book of *Bulūgh al-Marām*. Thirdly, *Kitāb al-Buyūᶜ*; the application of the concept of *al-maṣlaḥa wa al-naṣṣ* to the *aḥādīth* of *al-Buyūᶜ*.

The body of the thesis is focused on developing and elaborating the main field of the study and as a library research; it will entail theoretical, historical, analytical and descriptive approaches. The *Sunni* Schools of law will be confined to their concern with the broad principles of *al-maṣlaḥa wa al-naṣṣ*. The study will refer to valuable *Sunni* juristic sources written by many jurists such as al-Imām al-Ghazāli, al-Imām al-Shāṭībi, al-Imām Ibn Qayyīm al-Jawzi, al-Imām ᶜIzzuddin ᶜAbd al-ᶜAzīz b. ᶜAbd al-Salām and others regarding the juristic concept of *maṣlaḥa* and its connection with Islamic legal texts, *naṣṣ*.

For the book of *Bulūgh al-Marām*, the methodology of compilation will be focussed on the second part of this thesis. This includes the variation numbers of *aḥādīth Ṣaḥīḥ*, *Ḥasan* and *Ḍaᶜīf* from each chapter of *Bulūgh al-Marām*. Diagrams

and tables will be drawn up to highlight the variation numbers of those types of *aḥādīth.*

In the part of analysis, the methodology of *muḥaddithūn* or scholars of the *Ḥadīth* will be applied to analyse the rulings that enclose in 176 *aḥādīth* of *Kitāb al-Buyūᶜ* of *Bulūgh al-Marām.* However, the analysis of rulings is bounded to rewrite the disagreement of jurists regarding the rulings of the *Ḥadīth.* As an alternative, the agreed rulings by jurists will be highlighted in the analysis of those *aḥādīth.* This approach will be applied as methodology in the application of the concept of *al-maṣlaḥa wa al-naṣṣ* to the analysis of those *aḥādīth.* Furthermore, the methodology of simple and concise elaboration and analysis will also be applied to the process of *taᶜlīl al-aḥkām* that aims to examine the principles of public interest in the *aḥādīth* of *Kitāb al-Buyūᶜ* of *Bulūgh al-Marām.*

Literature Review

From juristic historical facts, the concept of *maṣlaḥa* has been a popular subject among Muslim jurists since the beginning of the 7th century A.H.[6]. Many, particularly from the prominent *Sunni* jurists, had begun their research on the subject of *maṣlaḥa* within the framework of Islamic jurisprudence. In the 8th century A.H., Abū Ishāq al-Shāṭibi (d. 790/1388) produced two books entitled *al-Muwāfaqāt fī 'Uṣūl al-'Aḥkām* and *al-Iᶜtiṣām,* which discuss the classification and the levels of *maṣlaḥa* in the light of Islamic jurisprudence. Al-Shāṭibi's opinion on *maṣlaḥa* as the ultimate objective of Islamic law affirms that of al-Ghazāli (d. 555/1111), as revealed in *al-Mustaṣfa minᶜilm al-'Uṣūl* and *Kitāb Shifā'*.

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[6] Zayd, *al-Maṣlaḥa,* p.21.

The discussion on *maṣlaḥa,* particularly in connection with the legal texts, has been general as well as specific in the works of Ḥanafi jurists such as ᶜAbd al-ᶜAzīz al-Bukhāri, who wrote *Kashf al-Asrār,* a commentary on *'Uṣūl al-Bazdawy.* In Ḥanbali legal theory, *Majmūᶜ al-Fatāwa* by Ibn Taymīyyah and *al-Mughni* by Ibn Qudāmah also discuss the concept of *maṣlaḥa* as a legal principle in Islamic jurisprudence and its connection with the Islamic primary sources.

Most discussions in the preceding classical sources indicate that the application of *maṣlaḥa* on Muslim life must be based on the light of God's revelation and despite a lack of specific reference to the concept of *al-maṣlaḥa wa al-naṣṣ*, it is clear that *al-Qur'ān* and *Sunna* prioritise the application of public interest.

Since the scientific period of *ijtihād,* (particularly from the year 132 until 350 A.H. [7]) with its implication for the modern Muslim world, the theory of *al-maṣāliḥ al-mursala* rather than that of *al-maṣlaḥa wa al-naṣṣ* has been approached effectively by jurists. Much research has been conducted and published on the subject of *maṣlaḥa,* particularly in elaborating the type of *al-maṣāliḥ al-mursala.* Some of these most important contemporary works are as follows: *al- Maṣlaḥa fī Tashrīᶜ al-Islāmīy wa al-Najm al-Dīn al-Ṭūfī* (1964) Muṣṭafa Abū Zayd, *Ḍāwābiṭ al-Maṣlaḥa fi al-Sharīᶜah al-Islāmīyyah* (1966) Saᶜīd Ramāḍān al-Būṭi and *Naẓāriyat al-Maṣlaḥa fī fīqh al-Islāmī* (1981) Ḥusayn Ḥamīd Ḥassan. Most of the discussion in these books relates to the arguments put forward by Najm al-Dīn al-Ṭūfī who authorises recourse to *maṣlaḥa* with or without the presence of a textual ruling or *ijmāᶜ*,(consensus).

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[7] Rahim, *Islamic*, p.32

There has been considerable research conducted on the topic of *maṣlaḥa.* Attempts have been made to explore a new focus on the subject such as; '*Malik's Concept of Maṣlaḥa (The Consideration of The Common Good): A Critical Study of This Method As A Means of Achieving The Goals and Purposes of Islamic Law With Special Reference To Its Application At The Shari'ah Courts In Nothern Nigeria*', (1991) written by Yushau Sodiq, '*Maslahah dan Pemakaiannya Di Dalam Undang-Undang Jenayah Islam*',(Malay language), (1999) written by Ridzwan Ahmad and '*Studies On The Principles And Theory of Maqāṣid al-Sharī'ah In The Sunni Schools With Special Reference To Their Application To Malaysian Law*', (2002) written by Mohamed Fadzli bin Haji Hassan. These contemporary studies focus on the application of public interest within the modern climate of *sharīᶜa* courts, Islamic criminal law and common law, such as Malaysian Law.

Several critiques of classical studies have dealt with the subject of *maṣlaḥa*, such as '*Utility in Classical Islamic Law: The Concept of Maṣlaḥa in 'Uṣūl al-Fīqh'*, (1986) by Ihsan Bagby 'Abdul Wajid. The research entitled '*The Theory of Al-Maṣāliḥ Al-Mursalah In Islamic Law*', (1990) by Juma Mikidadi Omari Mtupa was found to be, verbatim or *in toto* in some parts, without acknowledgment from the book entitled, '*Islamic Legal Philosophy: A Study of Abu Ishāq al-Shāṭībī's Life and Thought*', (1977) by Muḥammad Kamāl Mas'ūd.

A most up to date piece of research, '*Al-Ijtihād: al-Naṣṣ, al-Wāqiᶜ, al-Maṣlaḥa'*, (2002) by Aḥmad al-Raysūni, and Aḥmad Jamāl Bārūt, is classified as a broad principle in underlining the relationship between *ijtihād, naṣṣ, wāqiᶜ* and *maṣlaḥa.* Furthermore, the latest book of Islamic law; *'Islamic Law; From Historical Foundations To Contemporary Practise'*, (2004) by Mawil Izzi Dien highlights the

significance of *maṣlaḥa* as 'a *key tuner* that harmonises all sources of Islamic law and occupies a central position in the formation of legal opinion and the interpretation of the legal texts'[8]. However, there is a vacuum in terms of detailed approach and analysis to the concept of *al-maṣlaḥa wa al-naṣṣ* and the present writer feels that such study would benefit from particular reference to *Qur'ānic* evidence or the *Ḥadīth* in the analysis under the heading of *al-maṣlaḥa wa al-naṣṣ*. It is proposed that the current research entitled '*The concept of al-Maṣlaḥa wa al-Naṣṣ with special reference to Kitāb al-Buyūᶜ in the book of Bulūgh al-Marām*', may go some way towards filling this vacuum. As far as can be ascertained, this kind of study has not been carried out previously, particularly in the field of *uṣūl al-fīqh* (Islamic jurisprudence).

Outline of chapters

This thesis proposes three parts of focused subject within six related chapters. It is opened with an introduction and closed with a conclusion and some further suggestions.

The introduction elucidates the background of the study, its purpose, scope and limitation, the method applied, its literature review and the outline of the chapters.

The part A consists of three chapters. The first chapter examines the definition and historical development of the concept of *al-maṣlaḥa wa al-naṣṣ*. This chapter is considered a portal of thesis because its highlights the basic information regarding the juristic concept of *al-maṣlaḥa wa al-naṣṣ*.

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[8] Izzi Dien, *Islamic Law*, p.69.

The second chapter of part A is classified a skeleton of this thesis because its highlights the theoretical development of the concept of *al-maṣlaḥa wa al-naṣṣ*. This chapter discusses the hypothetical form of the theory of *maṣlaḥa* over the legitimacy of *naṣṣ* and al-Ṭūfi's theory. It also examines the views of Muslim jurists regarding the priority levels of *ḍarūriyya* and the theory of *maqāṣid al-sharīᶜa* in connection with *naṣṣ*.

The third chapter deals with the significance of *taᶜlīl al-aḥkām* for the concept of *al-maṣlaḥa wa al-naṣṣ*. It includes the process of *taᶜlīl al-aḥkām* from the legal texts of the *Qur'an* and the *Ḥadīth*.

The part B encompasses two chapters. The fourth chapter highlights the main reference sources for the books of *Ḥadīth*. In this regard, there are seven books of main reference sources and five of other reference sources for which they will be examined in this chapter.

The fifth chapter of part B focuses on the introduction to the book *Bulūgh al-Marām*. This chapter consists some sub topics such as the author biography, juristic features and compilation methodology.

The last part of thesis is part C that includes one analysis chapter of the *Ḥadīth*. The sixth chapter entitles *Kitāb al-Buyūᶜ*; the application of the concept of *al-maṣlaḥa wa al-naṣṣ* to the *aḥādīth* of *al-Buyūᶜ*. This chapter intends to analyse 22 sub topics of chapter on business transactions within the number of the *Ḥadīth* of 176. It is proved during the analysis that there are principles of public interest in the most of every single *Ḥadīth* and its rulings regarding the juristic themes of business transactions.

The conclusion highlights an overall evaluation and analysis of the findings laid down in the previous chapters. The thesis then concludes with some suggestions regarding further research in the area of Islamic jurisprudence and the subject of the *Ḥadīth.*

PART A

THE CONCEPT OF *Al-MAṢLAḤA WA Al- NAṢṢ* IN ISLAMIC JURISPRUDENCE

Introduction to Part A

This part A aims to present the interesting development of *al-Maṣlaḥa wa al-Naṣṣ* through the history and theory of Islamic jurisprudence, and one of the major discussions will centre on the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*.

In order to analyse the preceding points in a juristic light, it is necessary to examine the definition of the concept *al-Maṣlaḥa wa al-Naṣṣ*, as expressed in chapter one. In conjunction with the defining approach, this chapter will also examine the historical development of *al-Maṣlaḥa wa al-Naṣṣ*, with a view to elucidating the value accorded to this concept by Islamic jurisprudence. The theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* will be debated in chapter two. The core of part A is concerned with the significance of *Taʿlīl al-Aḥkām* to the concept of *al-Maṣlaḥa wa al-Naṣṣ*, which will be discussed in chapter three. This will be followed by a summary of the theory of *al-Maṣlaḥa wa al-Naṣṣ*.

CHAPTER ONE

THE DEFINITION AND HISTORICAL DEVELOPMENT OF THE CONCEPT OF *AL-MAṢLAḤA WA AL-NAṢṢ*

1.0 Introduction

In the first section of this chapter, the definition of the term *al-Maṣlaḥa wa al-Naṣṣ* becomes a key note, important to this study in terms of introduction to the juristic discussion regarding its concept. Incorporated is also a terminological discussion of the individual terms *al-Maṣlaḥa* and *al-Naṣṣ* in the light of Islamic jurisprudence. The second section of this chapter examines the development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* over four eras in history, in order to evaluate the development of this concept within the *Sunni* perspective of Islamic jurisprudence.

1.1 The definition of the concept of *al-Maṣlaḥa wa al-Naṣṣ*

In order to present the definition of the term *al-Maṣlaḥa wa al-Naṣṣ*, the discussion will be divided into literal[1] and technical[2] definitions. The literal definition of the term *al-Maṣlaḥa wa al-Naṣṣ*, is comprised of two Arabic words i.e. *al-Maṣlaḥa* and *al-Naṣṣ*, and one Arabic letter, i.e. *wa*. The technical definition of *al-Maṣlaḥa wa al-Naṣṣ* will be referred to within the scope of the elaboration and analysis made by

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[1] Lexically, 'literal' is an adjective word which means, a) corresponding exactly to the original. b) concerned with the basic or usual meaning of a word or phrase. To comply with the term literal definition, *maṣlaḥa* will be given in the original meaning, which Muslim jurists' works have used effectively in Islamic jurisprudence. In many Arabic Muslim jurists' works, *al-Taᶜrīf lughatan* is used, which means 'literal definition'.
See Hornby, *Oxford*, p.393.

[2] The term 'technical definition' is used in this chapter to indicate a large number of definitions made by Muslim jurists regarding the technical terms of *maṣlaḥa*. Many Arabic Muslim jurists' works use the term *al-Taᶜrīf Iṣṭilāḥan* or *al-Taᶜrīf Sharᶜan*, which can be translated as 'technical definition'.
See Baᶜalbaki, *al-Mawrid*, p.118

Muslim jurists who were involved both directly and indirectly with the subject of *Maṣlaḥa* in conjunction with the legal text, *Naṣṣ*.

1.1.1 Literal Definition

In the framework of Islamic jurisprudence, many Muslim jurists have defined the word *maṣlaḥa* on the basis of a literal rather than an etymological definition[3]. To Abū al-Ḥusayn al-Baṣri (d.478/1085), *maṣlaḥa* means 'goodness' and *maṣāliḥ* means 'good things'. He adds that, in Islamic jurisprudence, the term *al-maṣāliḥ al- sharīᶜa* refers to the actions, which the individual is compelled to perform in Islamic law such as *ᶜibāda*,(worship).[4] Based on Zamakhshari's definition, *maṣlaḥa* is referred to as *naẓara fī maṣāliḥ al-muslimīn*, which means: "he considered the things that were for the good of the Muslim"[5]. Ibn Manẓūr and al-Fayruzābādi define the word *maṣlaḥa* as *ḥusn al-ḥāl*, which means: "the good condition"[6].

It is thus evident from the aforementioned that a sense of good is inherent in the term *maṣlaḥa* and that it always refers to human life, particularly Muslim life. Therefore, later Muslim jurists tend to define *maṣlaḥa* literally as 'benefit' or 'interest'[7] or 'utility'[8] in conjunction with *Sharīᶜa* that is concerned with human

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[3] Etymology is the study of the origin and history of words and their meaning. In etymological definition, the root of *maṣlaḥa* is *ṣ-l-ḥ* which becomes *ṣilāḥ* and means *al-naf* This is used to indicate that something, or a person, becomes good, right and virtuous. In many Arabic dictionaries such as *Al-Qāmūs al-Muḥīṭ* and *Mukhtār al-Ṣiḥāḥ*, the similar word *maṣlaḥa* is *al-Ṣilāḥ* which is contrast with the word *al-fasad* means corruption and invalidity. In a rational sense, *maṣlaḥa* means 'a means', 'a goal' and 'a cause which is good'. For instance, a pen in the light of *maṣlaḥa* is useful for writing. In this case a pen is a cause for the writing, which is referred to as *maṣlaḥa*.
See al-Fayruzābādi, *al-Qāmus*, v.i, p.277, al-Razi, *Mukhtār*,.p.448 and Hornby, *Oxford*, p.393

[4] See al-Baṣri, *al-Muᶜtamad*, v..ii, p.888

[5] Zamakhshari, *Asās*, v.ii, p.23

[6] See Ibn Manẓūr, *Lisān*, v.ii, p.348 and al-Fayruzābādi, *Op.cit.*, v.i, p.277.

[7] See Kamali, *Principles*, p.267.

[8] See Ihsan, *Utility*, p.10.

welfare and justice as well as equity[9]. This definition concludes the examination of the literal meaning of *maṣlaḥa.*

In the term *al-Maṣlaḥa wa al-Naṣṣ, wa* is an Arabic letter that is called *ḥurf ᶜatf,* a letter which indicates a specific connection between two words[10]. One of the main functions of the letter *wa* in the Arabic language is *yufīd al-jamᶜ* [11], that is, to join two words together and form a relationship between them[12]. In this work, it is presumed that the function of *wa* is to describe *maṣlaḥa* as being parallel with *naṣṣ* or even as being convergent with it.

The word *Naṣṣ* or *Nuṣūṣ* generally means texts, script and provision[13]. In Islamic legal theory, *Nasṣ* refers to a legal text. The *Qur'ān* has been termed a legal document ,[14] as has the *Ḥadīth* which is the second source of Islamic law after the *Qur'ān.* As a result, both the *Qur'ān* and the *Ḥadīth* are classified as *Naṣṣ* and form the primary sources of Islamic legal theory. Muslim jurists unanimously accept *Naṣṣ* as valid and accredited by the legal sources of Islamic law. It has also been termed the Quranic legislation, [15]of which the Prophet Muḥammad s.a.w was the founder; it being initially applied during the time of Mecca and Medina. In addition, *Naṣṣ* is also known as *dalīl,* 'evidence' or 'proof' and *naql*[16], 'transmitted', terms that are common in juristic discussion on the subject of Islamic law. In summary, the literal definition of the word *Naṣṣ* refers to the primary sources, either the *Qur'ān* or the *Ḥadīth*

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[9] Bakar, *The Discernment*,p.103.
[10] See Baᶜalbaki, *al-Mawrid,* p.767.
[11] *Ibid.*
[12] al-Dakar, *Muᶜjam*,p.542.
[13] Qalᶜahji and Qanybi, *Muᶜjam,* p.480.
[14] Hallaq, *A History,* p.7.
[15] Coulson, *A History,* p.9.
[16] al-Azhāri, *Tahdhīb*,v.ix,p.151.

wherein are contained a *dalīl*, a *naql*, a legal text and a legal document for Islamic law.

1.1.2 Technical Definition

As a study of *maṣlaḥa* is one of the main objectives of this work, it is important to examine the definition of the term *maṣlaḥa* in conjunction with *naṣṣ*. As a starting point, al-Ghazāli claims that the term *maṣlaḥa* itself has no single standard definition[17]. This is partly due to the term itself; the meaning being sometimes very clear, sometimes less so and sometimes completely absent[18]. Due to this ambiguity, the term has received a great deal of attention from many jurists. The views of a representative of these have been chosen as source material for this work. Al-Ghazāli maintains that in general, *maṣlaḥa* is an expression for seeking *manfaᶜa* (something useful), whilst simultaneously indicating the removal of *maḍarra* (something harmful). Juristically, he defines *maṣlaḥa* as the preservation of the *maqṣūd*, an objective of the *sharīᶜa* which is concerned with five issues, i.e. the preservation of religion, life, intellect, lineage and property" [19]. In conjunction with *naṣṣ*, al-Ghazāli defines *muᶜtabara* as a type of *maṣlaḥa* that has textual evidence in favour of its consideration, and which is therefore valid and utilisable as a legal principle for *qiyās*[20]. Moreover, Fakhr al-Dīn al-Rāzi (d.606/1209) emphasises that *maṣlaḥa* is very close to *munāṣib* and *munāṣaba*, which suggests 'affinity with a strong feeling of

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[17] al-Ghazāli, *al-Mustasfa*, v.ii.,p.72.
[18] Bakar, *Op.cit.*,p.102.
[19] al-Ghazāli, *Op.cit.*,, v.i, p.286-287.
[20] *Ibid.*,p.284

interest'[21]. Al-Rāzi also claims that God's commandment revealed through the text coincídes with *maṣlaḥa.* Therefore, he claims that God's commandment has no *ᶜilla,* (*ratio legis*) and it is wrong for jurists to search for and justify the *ᶜilla* behind it[22]. To al-Shāṭibi, *maṣlaḥa* means *maqṣūd*[23], likewise, al-Ghazāli's point of view asserts that *maṣlaḥa* was the foundation of the theory *maqāṣid al-sharīᶜa*[24]. Moreover, in collaboration with *naṣṣ,* al-Shāṭibi maintains that every specific injunction of the *Qur'ān* and the *Sunna* has a 'specific' purpose or rationale or *ᶜilla* that contributes to the achievement of 'general' purpose, *maqāṣid al-sharīᶜa*[25]. At this stage *maṣlaḥa* is parallel with *ᶜilla* regarding the revealing of God's commandment to humans in the sense of *maṣlaḥa.*

Ibn ᶜĀshūr undertakes a particularly close study of the terms *al-Maṣlaḥa al-Qaṭᶜīyya* and *al-Maṣlaḥa al-Ẓannīyya*[26], which is valuable as a technical definition of *maṣlaḥa* in accordance with *naṣṣ.* He asserts that *al-Maṣlaḥa al-Qaṭᶜīyya* means any particular common good in the light of a definitive legal text, therefore no interpretation or *ta'wīl* can be made of it. For instance, the existence of *al-Maṣlaḥa al-Qaṭᶜīyya* on the subject of the pilgrimage which is obligatory for those who are capable of performing it[27], is made clear by the definitive *naṣṣ* of the *Sūra 'Āli ᶜImrān*:97[28]. The sense of *maṣlaḥa* exists in this particular form of definitive *naṣṣ* and

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[21] al-Rāzi, *al-Maḥṣūl,* vol.ii,p.218
[22] *Ibid.*
[23] al-Shāṭibi, *al-Muwāfaqāt,*v.ii,p.25.
[24] Hassan, *Studies,*p.138.
[25] al-Shāṭibi, *Op.cit.*,p.322.
[26] See Ibn ᶜĀshūr, *Maqāṣid,*p.168.
[27] al-Kamāli, *Min Fiqh,*p.12.
[28] The full translation of *Sūra 'Āli ᶜImrān :* 97: "In it are manifest signs; (for example), the *Maqām* (place) of Abraham; whosoever enters it, he attains security. And *Ḥajj* (pilgrimage to Mecca) to the house (*Kaᶜba*) is a duty that mankind owes to Allah, those who can afford the expenses (for one's conveyance, provision and residence); and whoever disbelieves [i.e. denies *Ḥajj* (pilgrimage to Mecca), then he is a disbelievers of Allah], then Allah stands not in need of any of *ᶜĀlamin* (mankind, jinn and all that exists) ".

is exemplified by *Sūra 'Āli ᶜImrān*:97, which concerns the condition of performing pilgrimage that is obligatory for those Muslims who are capable of it. Here, the *maṣlaḥa* is absolutely definite, and there is no room for reinterpretation or *ta'wīl*, particularly regarding the condition of performing pilgrimage.

Notwithstanding *al-Maṣlaḥa al-Qaṭᶜīyya* as a definitive *naṣṣ*, the term *al-Maṣlaḥa al-Ẓannīyya* has been defined technically by Ibn ᶜĀshūr as any particular common good achieved by non-definitive *naṣṣ* and through the process of legal reasoning on the basis of assumption, *ẓannīyya*[29]. For example, the *Ḥadīth*, 'no judge should be judging when he is angry'[30] is taken from authoritative sources such as *Ṣaḥīḥ Bukhāri* and *Ṣaḥīḥ Muslim* and the existence of *al-Maṣlaḥa al-Ẓannīyya* is inherent in its content, which is concerned with improper acts of judgement such as one undertaken when angry. A second example of the process of legal reasoning on the basis of assumption, is the use of dogs to guard the homes of townsfolk who resided in dangerous locations such as Qayrawan, a town in Tunisia [31]. The point of *al-Maṣlaḥa al-Ẓannīyya* in this case is the Islamic ruling regarding the keeping of dogs by *al-ḥaḍar* (the townspeople); an action that most Maliki jurists disapprove of. As al-Sheikh Abū Muḥammad b. Abī Zayd had a dog in his house, he claimed that if Imam Malik himself knew how dangerous the situation was, he would certainly have a lion guarding his house [32] rather than just a dog.

See al-Hilali, *The Translation*, p.86

[29] See Ibn ᶜĀshūr, *Maqāṣid*, p.168.

[30] The text of the *Ḥadīth:*

حَدِيثُ أَبِي بَكْرَةَ رَضِيَ اللَّهُ عَنْهُ قَالَ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ لَا يَقْضِي القَاضِي وَهُوَ غَضْبَانُ

This *Ḥadīth* narrated by Bukhāri, *Ṣaḥīḥ*, no: 6625 and Muslim, *Ṣaḥīḥ*, no:3241.

[31] See al-Nadāwī, *al-Qawāᶜīd*, p.359.

[32] See al-Kamāli, *Min Fiqh*, p.14.

Later jurists have offered a comprehensive definition of the term *al-Maṣlaḥa wa al-Naṣṣ*. Aḥmad al-Raysūni defines it as the interaction between the concept of *al-Maṣlaḥa wa al-Naṣṣ* (in Arabic; *al-Taᶜāmul al-Maṣlaḥī maᶜa al-Nuṣūṣ*)[33]. He emphasises that every single *nuṣūṣ* and its ruling is intended to fulfill the *maṣālīḥ* concerning humanity in seeking something useful (*manfaᶜa*) or removing something harmful (*mafāsid*) from their lives. In order to clarify the interaction between the concept of *maṣlaḥa* and *naṣṣ*, Aḥmad al-Raysūni presents the following three methods:

(a) the criteria of *naṣṣ* in determining the existence of *maṣlaḥa*.

Al-Raysūni insists that belief in *naṣṣ* means belief in its supremacy and this leads to the fundamental principles such as justice, mercy and *maṣāliḥ*, for as Allah states; "And We have sent you (O Muḥammad) not but as a mercy for the *ᶜĀlamīn* (mankind, jinn and all that exists)", 21:107[34]. This verse indicates directly that the ultimate aim in sending the Prophet Muḥammad was an act of mercy to the *ᶜĀlamīn*, which is connected with the subject of *maṣāliḥ*. Moreover, he supports Ibn Taymīyya's view that most of the principles and activities in *Sharīᶜa* that take place in the light of *naṣṣ* are directed towards achieving the concept of *maṣāliḥ*. In conclusion of this point, he claims that most *nuṣūṣ* have basic criteria that are employed to determine the value and the types of *maṣlaḥa*[35].

(b) the interpretation of *maṣlaḥa* from *nuṣūṣ*.

According to al-Raysūni, the interpretation of *maṣlaḥa* from *nuṣūṣ* involves the analysis and study of seeking the *maqāṣid*, that is, the objective of Islamic law, by means of *nuṣūṣ*. This methodology entails an examination of every single Islamic ruling in *nuṣūṣ*, and its interpretation in conjunction with the concepts of *maqāṣid* and

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[33] al-Raysūni, *al-Ijtihād*, p.49.
[34] See al-Hilali, *The Translation*, p.441.
[35] al-Raysūni, *Op.cit.*, p.50-52.

maṣlaḥa. He adds that by using this method, the hypothesis that 'every single Islamic ruling is in accordance with the *maṣlaḥa'* can be proven juristically[36].

(c) the implementation of *maṣlaḥa* through *nuṣūṣ.*

This method is a consequence of the preceding one, whereby following the interpretation of *maṣlaḥa* from *nuṣūṣ,* the implementation of *maṣlaḥa* must be undertaken. It is significant to note that the basic paradigm for the implementation of *maṣlaḥa* is valuable in forming an analysis of the method employed by the Prophet and his companions. To simplify, the *Sunna*-cum-*Ḥadīth* is the best example of the implementation of *maṣlaḥa* through *nuṣūṣ.* Al-Raysūni claims that there is much evidence to prove how the Prophet implemented the concept of *maṣlaḥa* during his lifetime. Therefore, the study of *Sunna* or *Ḥadīth,* with special attention paid to the elucidation of the concept of *maṣlaḥa,* is valuable in terms of the analysis of the basic principle in the implementation of *maṣlaḥa* through *nuṣūṣ*[37].

The preceding methods proposed by Aḥmad al-Raysūni indicate a basic foundation for the technical definition of the term *al-Maṣlaḥa wa al-Naṣṣ.* These methods are also believed to further develop the elaboration of the form of *maṣlaḥa mu'tabara,* which is considered to be a fundamental principle for *maṣlaḥa* in dealing with *naṣṣ.*

In conclusion, the definition of the term *al-Maṣlaḥa wa al-Naṣṣ* from the various aforementioned perspectives, is clarified by the following indicator which shows a framework explaining its concept. This model depicts the initial parallel nature of *maṣlaḥa* and *naṣṣ,* which becomes a convergence at the point where a legal

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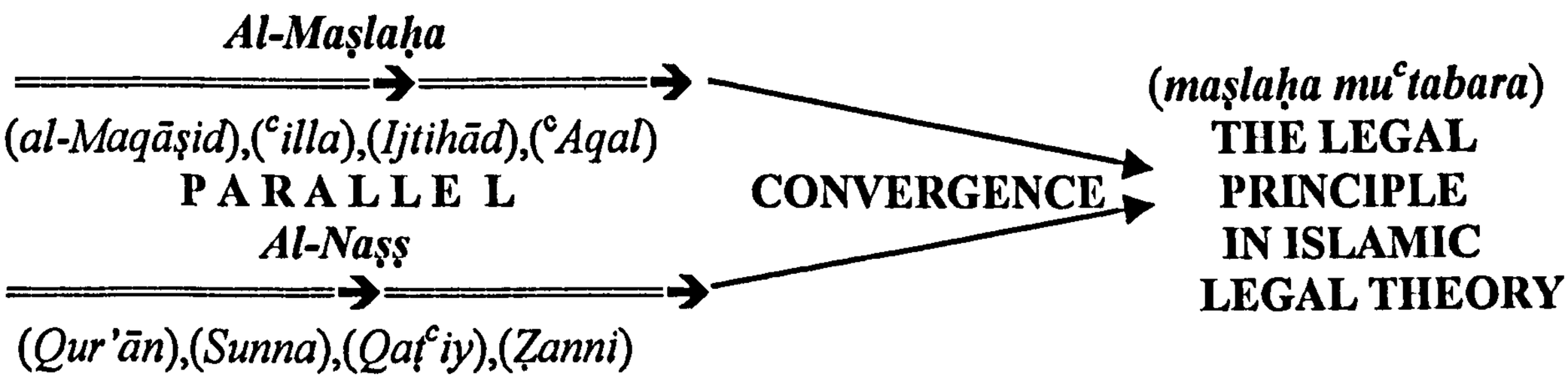
[36] Ibid.,p.53-54.
[37] Ibid.,p.55-58.

principle is formed. At this stage, firstly, the subject of *maṣlaḥa* has been discussed in many ways as parallel with the subject of *maqāṣid*, *ᶜilla*, *ijtihād* and *ᶜaqal*. Secondly, the subject of *naṣṣ* has also been discussed in many ways as parallel with the subject of the *Qur'ān*, the *Sunna*, *qaṭᶜiy* and *ẓanni*. Meanwhile, both of these subjects i.e. *maṣlaḥa* and *naṣṣ* are also in many ways have been examined as parallel with each others. Eventually, these two subjects becomes a convergence at the point, which is called as *maṣlaḥa muᶜtabara* or the accredited validity of the legal principle in Islamic legal theory. In order to elaborate the connection between the legal principle of *maṣlaḥa muᶜtabara* and the concept of *al-Maṣlaḥa wa al-Naṣṣ*, thus, this section will proceed to examine how the concept of *al-Maṣlaḥa wa al-Naṣṣ* has been developed through the history of Islamic legal theory.



1.2 The Historical Development of The Concept of *al-Maṣlaḥa wa al-Naṣṣ*

Scholars, particularly those from the Sunni school, have referred to the existence of the historical development of this concept. Many Muslim jurists have stated that the early development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* commenced during the life of the Prophet and then continued into the time of the *khulafā' al-Rāshidūn* (Rightly Guided Caliphs) from 11H/632C.E to 40H/660C.E[38].

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[38] See *E*[1], (art. *Khulafa'*), vol.iv:IRAN-KHA,p.937-957

Accordingly, the concept of *maṣlaḥa* emerged during the period of the Umayyad Empire, particularly under the caliph of ᶜUmar b. ᶜAbd. ᶜAzīz (99H/717C.E to 101H/720C.E)[39] and then continued into the beginning of the second and up until the eighth century of *Hijra*[40].

1.2.1 During the life of the Prophet s.a.w

To many later Muslim jurists, the existence of *maṣlaḥa* during the life of the Prophet constitutes part of the form of *ijtihād,* although he himself was the expounder of the *Qur'ān* and the living source of Islamic law[41]. When the Prophet needed to solve a problem or answer a question (particularly during the time lapse between revelations), *maṣlaḥa* as the form of *ijtihād* always occurred[42]. Indeed during his lifetime, there were many events and cases that set precedents relating to the subject of *maṣlaḥa* and these could be obtained from various authentic *Ḥadīth.*

The process of appointment to leadership during that era offers a clear example pertaining to the subject of *maṣlaḥa*[43]. In the case of two men who intended to become rulers of some lands, the Prophet rejected their request, saying; 'By Allah, we do not appoint to this position one who asks for it nor anyone who is covetous for the same'[44]. Paradoxically, in the case of Ziyād b. al-Ḥārith who requested authority to become a leader, the Prophet agreed to appoint him as leader of the tribe of *Sūdā* [45].

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[39] al-Būṭi, *Ḍawābiṭ,*p.314-315.
[40] *Ibid.*
[41] Hassan, *Studies,*p.138.
[41] al-Shāṭibī, *Op.cit.*,p.14.
[42] al-Āmidī, *al-Iḥkām,*v.iii, p.140 and al-ᶜIywāni, *Uṣūl,*p.15.
[43] al-Raysūni, *Op.cit.*,p.55-57.
[44] Muslim, *Ṣaḥīḥ,*in *Kitāb al-ᶜImāra,* no.:1083.

Ibn Qayyīm does not perceive any paradoxical nature between these two cases, since they reveal the permissibility of requesting leadership from the Prophet on the basis of the capability of the applicant. He adds that the former application was rejected as it was based on irrelevant criteria such as over-enthusiasm for leadership, whereas the latter was accepted due to the ability of Ziyād b. al-Ḥarīth to be a good leader for his tribe. Ibn Qayyīm asserts that the Prophet s.a.w applied the concept of *maṣlaḥa* in these two cases. In the first, the rejection was partly due to *maṣlaḥa* as it removed the potential harm of over-enthusiastic leadership from the appointment, whereas in the latter case, the acceptance was partly due to *maṣlaḥa* as it relied on seeking good qualities of leadership, such as those possessed by Ziyād b. al-Ḥarīth [46].

The preceding illustrations clearly indicate that the Prophet s.a.w was the best exemplar in implementing the concept of *maṣlaḥa* in the light of Islamic principle and thus, demonstrate why his actions in life are also regarded as primary sources of Islamic law. This instance forms a precedent in Islamic jurisprudence, particularly with reference to the development of the theory of *maṣlaḥa* in conjunction with *ḥadīth*-cum-*sunna*, as both are classified as *naṣṣ*.

1.2.2 During the period of the *Khulafā' al-Rāshidūn*

Subsequent to the death of the Prophet, the *Khulafā' al-Rāshidūn* (Rightly Guided Caliphs) took over the leadership of the Muslim nation for 29 years, during

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١٠٨٣ حَدِيثُ أَبِي مُوسَى رَضِيَ اللَّهُ عَنْهُ قَالَ دَخَلْتُ عَلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَا وَرَجُلَانِ مِنْ بَنِي عَمِّي فَقَالَ أَحَدُ الرَّجُلَيْنِ يَا رَسُولَ اللَّهِ أَمَّرَنَا عَلَى بَعْضِ مَا وَلَّاكَ اللَّهُ عَزَّ وَجَلَّ قَالَ الْآخَرُ مِثْلَ ذَلِكَ فَقَالَ إِنَّا وَاللَّهِ لَا نُوَلِّي عَلَى هَذَا الْعَمَلِ أَحَدًا سَأَلَهُ وَلَا أَحَدًا حَرَصَ عَلَيْهِ

[45] Ibn Qayyīm, *Zād*, v.iii, p.668.
[46] *Ibid.*

which time the application of *maṣlaḥa* was increasingly effective. The main factor responsible for this was probably the rapid and vast expansion of Muslim territory and the multicultural nature of the Muslim world[47]. In order to solve many challenges and problems during that period, *maṣlaḥa* as the form of *ijtihād* took place in conjunction with the legal principles of Islamic law. Indeed there were many cases and events in the period of *Khulafā' al-Rāshidūn,* which exemplify the application of *maṣlaḥa.*

Examples of these are as follows;

i. The codification of the *Qur'ān* that began in the period of Abū Bakr (11H/632C.E to 13H/634C.E) was due to the 'death reciters' of the *Qur'ān,* particularly in the war of *Yamāma.* After Abū Bakar's death, the codification of the *Qur'ān* was continued by ᶜUmar as the second caliph[48].

ii. The decision to wage war against Musaylamah al-Kadhdhab and his followers who refused to pay zakah in the period of Abu Bakr[49].

iii. In the period of ᶜUmar (13H/634C.E to 23H/644C.E), it was declared that a divorce would be valid if a man three times proclaimed his wife to be divorced. Umar's justification for validating this type of pronouncement was based on the rising social problem of men misusing the privilege[50].

iv. The decision to reverse an application of *ḥudūd,* prescribed penalties in the case of servants who stole a camel in the period of ᶜUmar, as the theft was due to a year of starvation[51].

v. The introduction of a standard copy of the *Qur'ān* was later named *muṣḥaf ᶜUthmāni* in the period of ᶜUthmān (23H/644C.E to 35H/656C.E). Introduction of the *muṣḥaf ᶜUthmāni* was due to the differences between the people of Sham and Iraq in the recitation of the *Qur'an*[52].

vi. In the period of ᶜAli (35H/656C.E to 40H/660C.E), the introduction of the punishment for drunkenness was equated with that of the punishment for *qadhaf,* false accusation of adultery. This was based on the premise that drunkenness might lead a person to make such an accusation, and therefore it should merit the same punishment[53].

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[47] Ḥassan, *The Early,*p.15.
[48] Bukhāri, *Ṣaḥīḥ,*v.6,p.183.
[49] Zuḥayli, *al-Fiqh,*,v.ii,p.764.
[50] Izzi Dien, *Maṣlaḥa,* p.346.
[51] Bayhaqi, *Sunan,*v.viii,p.278.
[52] *Ibid.*,v.5,p.510.
[53] al-Shāṭibī, *al-Iᶜtiṣām,*p.334.

The above cases form part of the judicial process towards the implementation of Islamic law within the concept of *maṣlaḥa,* which became classified as *ijtihād* during the period of *Khulafā' al-Rāshidūn.* In the case of i,ii,iii, and v in particular, the preservation of religion was clearly the objective, whereas in the case of iv, the preservation of life for the starving who stole the camel became the judicial reason for reversing the punishment of *ḥudūd*[54]. In the case of vi, the preservation of intellect became the judicial reason for the punishment of drunkenness being equivalent to the punishment of *qadhaf* . As Imām al-Shāṭibi asserts, the preservation of religion, life, intellect, lineage and property were being offered as a basis for *maṣlaḥa*-cum-*maqāṣid*[55]. In addition, later Muslim jurists concur that at the time of *Khulafā' al-Rāshidūn,* the companions took an inherently rational and comprehensive approach towards the implementation of Qur'anic law and the *Sunna,* whereby the circumstances and surrounding factors were always considered as vital elements in the application of Islamic law[56].

1.2.3 During the time of caliph ᶜUmar b. ᶜAbd. ᶜAzīz

The development of the concept of *maṣlaḥa* in particular, and in connection with *naṣṣ,* began during the period of *tābiᶜūn,* (followers); under the caliph ᶜUmar b. ᶜAbd. ᶜAzīz (99H/717C.E to 101H/720C.E)[57] in the dynasty of Umayyad. During this era, many jurists considered that the majority of applied government policy was in

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[54] *Ibid.*,p.332.
[55] *Ibid.*,p.332.
[56] Kamali, *Fiqh,* p.66; al-Durayni, *al-Manāhij,*p.33; al-ᶜIywāni, *Uṣūl,*p.21-30; al-Asyqār, *al-Sharīᶜa,*p.14-15.
[57] ᶜUmar b. ᶜAbd. ᶜAziz b. Marwan b. al-Hakam, Abu Hafs al-Ashadjdj, fifth caliph of the Marwanid branch of the Umayyad dynasty reigned 99H/71C.E to 101H/720C.E. See *E*[1], (art. ᶜUmar b. ᶜAbd. ᶜAziz), vol.X: T-U,p.821

accordance with the concept of *maṣlaḥa.* According to Saᶜīd Ramaḍān al-Būṭi, caliph ᶜUmar b. ᶜAbd. ᶜAzīz was among *tabiᶜūn* who had applied the concept of *maṣlaḥa* or *istiṣlaḥ* through his policy. For example:

i) Giving back the right of people who were treated as victims of injustice by the caliphs before him[58].

Al-Būṭi states that caliph ᶜUmar b. ᶜAbd. ᶜAzīz expended most of his efforts on returning rights to innocent people. Such a policy was not applied during the period of the Prophet s.a.w and the policy itself has no reference to Islamic sources such as the *Qur'ān,* the *Sunna* and *Qiyās*[59]. Caliph ᶜUmar b. ᶜAbd. ᶜAzīz's course of action reflects the concept of *maṣlaḥa* or *istiṣlaḥ,* which upholds the preservation of life and property in particular and it is undertaken for those who were treated as victims of injustice by the previous caliph[60]. Al-Ṭabari quotes the following sermon given by caliph ᶜUmar b. ᶜAbd. ᶜAzīz to the people in Khunasirah. It reveals his policy to be in accordance with the application of *maṣlaḥa*[61]:

> "Whenever we learn that one of you needs something, I try to satisfy his need to the extent that I am able. Whenever I can provide satisfaction to one of you out of my possessions, I seek to treat him as my equal and my relative, so that my life and his life are of equal value".

ii) The codification of *Ḥadīth,* its transcription and the creation of its rules of narration[62].

From the perspective of *muḥaddithīn*(scholars of *Ḥadīth)*[63], caliph ᶜUmar b. ᶜAbd. ᶜAzīz was a pioneer; being the first to issue definite orders to Abū Bakar b. Ḥazm, the caliph's governor at Medina and to other centres, to the effect that codification and

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[58] al-Būṭi, *Ḍawābiṭ* ,p.314-315.
[59] *Ibid.*,p.315.
[60] *Ibid.*
[61] al-Ṭabari, *Tārīkh,* vol.xxiv, p.99.
[62] al-Sibāᶜī, *al-Sunna,*p.104.
[63] Suhaib, *An Introduction,*p.5.

written collections of *Ḥadīth* should be prepared officially[64]. ᶜUmar b. ᶜAbd. ᶜAzīz informed them thus:

> "See whatever saying of the Holy Prophet s.a.w can be found, and write it down, for I fear the loss of knowledge and the disappearance of the learned men; and do not accept anything but the *Ḥadīth* of the Holy Prophet s.a.w.; and should make knowledge public and should sit in companies, so that who does not know should come to know, for knowledge does not disappear until it is concealed from the public"[65].

His policy contained fundamental reference to the preservation of religion, specifically with regard to the authentic *Ḥadīth* of the Prophet s.a.w., as well as the *Qur'ān*, as a primary source of Islamic law[66]. To some extent, this policy resulted from the appearance and movement of Muslim sects such as *Qadārīa* and *Khawārij* who were believed to represent invalid and non-authentic *Ḥadīth* as being traceable to the Prophet[67]. In order to avoid such misrepresentation and to secure the authentic and authoritative *Ḥadīth*, the implementation of this policy was necessary and in accordance with Islamic legal principle i.e. *maṣlaḥa* . At this stage, there is clear evidence of the application of *maṣlaḥa* as a tool of *ijtihād* within the policy of ᶜUmar b. ᶜAbd. ᶜAzīz. This may be referred to as the starting point of the development of the concept of *maṣlaḥa* in connection with *naṣṣ*.

1.2.4 During the Abbasid dynasty

After the fall of Umayyad dynasty in 132H/750C.E, the Abbasid dynasty took over Muslim territory for more than five hundred years, from 132H/750C.E to 656H/1258C.E[68]. Philip K. Hitti refers to this era as 'the golden prime' of the

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[64] Muhammad, *Collection*,p.33.
[65] Bukhāri, *Ṣaḥīḥ*,v.1 (k.3,b.34)
[66] al-Būṭi, *Ḍawābiṭ*,p.316.
[67] *Ibid.*
[68] *E*[1], (art. ᶜ*Abbasid*), vol.I: A-B,p.21-23

Abbasid, which endured from 750C.E to 833C.E.[69] This metaphorically golden time witnessed the growth of Islamic knowledge such as *fiqh* and *uṣūl fiqh*; juristic developments that encompassed discussion of the concept of *maṣlaḥa* and its status within the legal text.

To some extent, the simultaneous emergence of the four *Sunni* schools of law offered an environment that was conducive to freedom of opinion and thought. Most of the Abbasid caliphs encouraged this and the prevailing climate has contributed indirectly to the development of the concept of *maṣlaḥa* and its connection with *naṣṣ*.

Though the term *al-Maṣlaḥa wa al-Naṣṣ* was not in existence at that juncture, it is theorised that juristic discussions regarding the application of *qiyās, ijmāᶜ, istiḥsān* and *maṣlaḥa mursala*, and their connection with the primary sources i.e. the *Qur'ān* and the *Sunna*, indeed contributed to the development of the concept of *al-Maṣlaḥa wa al-Naṣṣ*. Therefore, the following discussion attempts to prove how the methodologies of those four Sunni schools of law have influenced juristic discussion of the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

1.2.4.1 The *Ḥanafī* School of law

The *Ḥanafī* School of law or *Ṭarīqa al-Ḥanafiyyin* was named after Abū Ḥanīfa[70], the eponym of the ancient schools of Kufa and Basra[71]. The Kufa school of law has been depicted as rationalist or *Ahl al-Ray'* due to its flexibility of approach to

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[69] Hitti, *History*,p.297.

[70] Imam Abū Ḥanīfa's full name is Abū Ḥanīfa al-Nuᶜman b. Thabīt . He was born at Kufa, Baghdad in the year 80H/699C.E and died in 150H/767C.E.
Abū Zahra, *Abū Ḥanifa*,p.15.

[71] *E*^{2}, (art. Ḥanafīyya), vol.III: H-IRAM,p.162.

the interpretation of the text and to the application of Islamic law. These phenomena are consequences of the existing environment; Kufa being a centre in which Arabs and non-Arab Muslims were in intimate contact. Hence, Muslim scholars at Kufa were conscious of the need to accommodate this environment and to apply the Islamic principles in accordance with the primary sources such as the *Qur'ān* and the *Sunna*[72].

In the *Ḥanafi* school of law, *Qiyās* and *Istiḥsān*(juristic preference) were formulated as secondary sources of Islamic law and these have similar attributes to the concept of *maṣlaḥa*[73]. According to Hashim Kamali, *Ḥanafi* jurists tend to define *Istiḥsān* similarly with *qiyās* that consists of a departure from *qiyās jali* (obvious analogy) to *qiyās khafi* (hidden analogy), which is closely connected with *ra'y* (reason) and analogical reasoning[74]. Ḥussein Ḥāmid Ḥassān adds that *Istiḥsān* will only prefer the benefit of people[75] in accordance with Qur'anic principles, such as *al-Zumar*, 39:18 and 55:

> 'And give good tidings to those of my servants who listen to the word and follow the best of it [*aḥsanahu*]. Those are the ones God has guided and endowed with understanding'.
>
> 'And follow the best [*aḥsana*] of what has been sent down to you from your lord'.

In conjunction with the *Qur'ān* and the *Sunna, Ḥanafi* jurists insist that *Istiḥsān* in particular, is conformed by the primary source of Islamic law and far removed from the elements of prejudice, bias and the like[76]. It is interesting to note that Ḥanafis have formulated the category of *al-Istiḥsān bil-Naṣṣ* in order to link the connection between *Istiḥsān* and *naṣṣ* and to reveal how Imām Abū Ḥanīfa himself applied the

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[72] Abū Zahra, p.165 and Coulson, *A History*, p.50.
[73] Kamali, *Istihsan*, p.37.
[74] Kamali, *Principles*, p.254.
[75] Ḥussein, *Naẓarīya*, p.587.
[76] *Ibid.*

interpretation of *Istiḥsān* from the *naṣṣ*. An example of this can be understood from a *Ḥadīth* relating to the subject of obligatory fasting[77]. According to Abū Ḥanīfah, if an individual takes food or drink while fasting because he/she has genuinely forgotten, then the fast is still valid[78]. Here, Abū Ḥanīfah's judgement is in accordance with the *Ḥadīth* of the Prophet, wherein he stated, 'continue your fasting (in case of eating or drinking due to forgetfulness) because Allah the Almighty gave you to eat and to drink'[79].

From the *Ḥanafi* perspective, the juristic method applied in this case is referred to *Istiḥsān,* which gives a preference to the benefit of Muslims, on the basis that it is connected with the primary source of *Ḥadīth*[80]. To some extent, this example signifies that *Istiḥsān* and *Qiyās* have been applied as secondary sources in Islamic law, particularly by *Ḥanafi* jurists, in order to give benefit and preference to Muslims. This notion is intertwined with the concept of *maṣlaḥa*[81].

The preceding discussion reveals that the *Ḥanafi* school of law has formulated the basic development of the concept of *al-Maṣlaḥa wa al-Naṣṣ,* although indirectly, through the application of *Istiḥsān* and *Qiyās* to Islamic legal theory that aims to benefit Muslims. In conclusion, as the first established school of Islamic law, the Ḥanafis have contributed the fundamental ideas to the development of the concept of *al-Maṣlaḥa wa al-Naṣṣ;* a process that was to be furthered by the Maliki school of law.

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[77] Kandahlawi, *Ḥujja,*v.1,p.161.
[78] *Ibid.*
[79] *Ibid.*
[80] Ḥussein, *Naẓarīya,*p.589.
[81] Kamali, *Istiḥsān,* p.37.

1.2.4.2 The *Māliki* school of law

The *Māliki* school of law, known as *Aṣḥāb al-Ḥadīth,* the 'traditionalist' school and also the Medinese school of law, was centred in Medina. This remained the focal point of intellectual activity and the capital of the Islamic empire during *Khulafā' al-Rāshidūn* until caliph ᶜAli b. Abī Ṭālib moved to the city of Kufa in Iraq[82]. Since Imam Mālik[83] spent all his life in Medina, some 84 years, he was later known as the Imam of Medina, *Dār al-Hijra*[84].

The *Māliki* school of law has been depicted as taking a traditionalist approach, particularly with reference to the book of *al-Muwaṭṭā'*, the first work compiled and written by Imām Mālik himself. The book pertains to the subject of Islamic law in accordance with the *Ḥadīth* (tradition of the Prophet) and the prevailing traditions and practices of the companions[85]. It is interesting to note the conclusion drawn by Macdonald regarding the Māliki stance, which reveals that both traditional and rational approaches were assumed. According to Macdonald, Imām Mālik's *Muwaṭṭā'* had applied a rational sense to decide the authentic *Ḥadīth* and its conformity with the principle of the *Qur'ān* and parallel with the needs of the people[86].

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[82] Ibn Ḥajar, *Tahdhīb*,,v.x,p.6.

[83] Imam Malik's full name is Malik ibn Anas ibn Malik ibn Amir ibn al-Harith ibn ᶜUthman al-Asbahi al-Himyari, Abu ᶜAbd Allah.The date of his birth is not known; the dates given, varying between 90 and 97H/708-16C.E, are hypotheses; which are presumably correct. However, it is commonly accepted that he was born in 94H/712C.E and died at the age of about 85 in the year 179H/796C.E in Medina and was buried in al-Baqiᶜ.
See Ibn Hajar , *Op.cit.*, E^2, (art. Malik b. Anas), vol.VI: MAHK-MID,p.262-263., Ibn ᶜAbd. al-Barr, *al-Tamhīd*,v.i,p.84., Zakarīyya, *Awjaz*,v.i,p.19.

[84] al-Zīrikli, *al-Iᶜlām*,v.vi,p.128.

[85] Ibn ᶜAbd. al-Barr, *al-Intiqā'*,p.20.

[86] Macdonald, *Development*,p.99.

The main features of the *Mālikī* school of law are the recognition of the practices of the people of Medina (*ᶜAmal Ahl al-Madīna*) and *al-Maṣlaḥa al-Mursala* as the secondary sources of Islamic law, apart from the *Qur'ān*, the *Sunna*, *Qiyās*, *Qawl al-Ṣaḥābi* (the views of the companions), *al-ᶜUrf wa al-ᶜAda* (custom), *Sadd al-Dharā'iᶜ* (prevention of presumably a bad thing), *Istiṣḥāb* (continuance) and *Istiḥsān* (juristic preference)[87].

According to ᶜAjjāj al-Khaṭīb, *ᶜAmal Ahl al-Madina* or the practise of the people of Medina became one of the main features of Imām Māliki's legal theory[88]. After the *Qur'ān* and the *Ḥadīth* as primary sources, Mālik gave priority to the preferences of the consensus of the people of Medina in determining the quality of narration and transmission of the *Ḥadīth* by any given person[89]. Al-Ṣābūni claims that Imām Mālik's view in this regard was due to the practical heritage of the *Sunna* that was undertaken by the people of Medina[90]. To some extent, the *Māliki* school of law recognised and endorsed *ᶜAmal Ahl al-Madīna* as one of the sources of Islamic law, in accordance with the principles in the *Qur'ān* and the *Sunna*[91].

Maṣlaḥa Mursala is known to be favoured by the *Māliki* school, as an independent tool in Islamic legal principle[92]. Though Imām Mālik himself did not define and elaborate the concept of *Maṣlaḥa Mursala*, it is believed that his disciples and in particular Ibn Qāsim, had studied the *Muwaṭṭā'* and claimed that the notion of

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[87] Abū Zahra, *Abū Ḥanīfa*, p.257.
[88] al-Khaṭīb, *al-Mukhtaṣar*, p.126.
[89] *Ibid.*
[90] al-Ṣābuni, *Muḥaḍara*, p.195.
[91] Dutton, *The Origins*, p.9-10.
[92] Abū Zahra, *Mālik*, p.368.

Maṣlaḥa Mursala was originally referred to by Imām Mālik[93]. Al-Shāṭibi claims that *Maṣlaḥa Mursala* is an independent Islamic legal theory in the Māliki school of law, which has never been employed in contradiction with the principles in the *Qur'ān* nor the *Ḥadīth*[94]. He adds that in elaborating *Maṣlaḥa Mursala* as an independent Islamic legal theory, it is always in accordance with the ultimate objective of Islamic law. Imām Mālik applied it to a number of cases in *al-Muwaṭṭā'* as well as in the record of his opinions entitled *al-Mudawwana al-Kubra*[95].

Imām Mālik applied *Maṣlaḥa Mursala* to many cases in Islamic legal theory, but only within the domain of transactional laws (*muᶜāmala*). He abandoned its application in the area of worship (*ᶜibāda*) because this sphere must accord with the prescriptions of the Lawgiver[96]. According to Abū Zahra, Imām Mālik has considered the rational role of human intellect in transactional acts, thus, the application of *Maṣlaḥa Mursala* fits more obviously in *muᶜāmala* rather than *ᶜibāda*, wherein the role of human intellect is very limited[97].

The following case portrays the significance of *Maṣlaḥa Mursala* as an independent tool in Islamic legal principle. Malik's *Mudawwana* outlines a situation whereby a mother was given guardianship over her daughter's marriage instead of the father, because he appeared to care very little for his daughter[98]. According to Ibn Rushd, Imām Mālik shifted the responsibility of guardianship from the father on the grounds of consideration of the girl's interest. She was living with her mother due to

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[93] Ibn ᶜAbd. al-Barr, *al-Intiqā'*,
[94] al-Shāṭibi, *al-ᶜItiṣām*, v.ii, p.132.
[95] *Ibid.*
[96] *Ibid.*
[97] Abū Zahra, *Mālik*, p.104.
[98] Zakarīyya, *Awjāz*, v.ix.p.278.

her parents being divorced[99]. Imām Mālik perceived that the mother should have the privilege of guardianship in her daughters' marriage on the basis of *Maṣlaḥa Mursala,* since there is no specific textual ruling to imply the necessity of male guardianship in order to validate a marriage[100].

The preceding case reveals that the *Māliki* school of law has developed the concept of *maṣlaḥa* through the form of *Maṣlaḥa Mursala.* Although the concept of *Maṣlaḥa Mursala* has no connection with the existence of Islamic legal principle in the *Qur'an* and the *Sunna,* the former has always been legislated by Muslim jurists without contravening the text. At this stage, the development of the concept of *maṣlaḥa* in connection with *naṣṣ,* such as the *Qur'ān* and the *Sunna,* deals with the condition that the former must contain no contradictory principles with the latter in terms of validity. In addition, it is worth noting that al-Shāṭibi was a leading Māliki scholar who instigated a systematic theory of the concept of *maṣlaḥa* through his valuable works. A detailed discussion of this will be offered in the separate topic entitled 'The Theoretical Development of the Concept of *al-Maṣlaḥa wa al-Naṣṣ'.*

In conclusion, the Māliki school of law has introduced the form of *Maṣlaḥa Mursala* in which has no connection with any legal principles that source in the *Qur'ān* and the *Ḥadīth.* Regarding this, some factors have been debated by the *Shāfiᶜi* school, established as the third school of Islamic law. The subsequent section will examine the development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* from the *Shāfiᶜi* perspective.

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[99] Ibn Rushd, *Bidāya,*v.ii,p.9
[100] Jazīri, *Kitāb,*v.iv,p.27.

1.2.4.3 The *Shāfi^{c}i* school of law

Also referred to as a traditionalist school (*Ahl al-Ḥadīth*), the *Shāfi^{c}i* school of law has been depicted as containing scholastic theologians (*al-Mutakallimūn*), those who adhered to God's text and the principles related to Divine commandments[101]. Imām *Shāfi^{c}i*[102]was the eponym of the *Shāfi^{c}i* school of law, and as Khadduri claims, he was the first to lay down systematic legal reasoning in Islamic jurisprudence through his valuable work the *Risāla*[103]. Imām *Shāfi^{c}i* was a great jurist who played a significant role in Islamic jurisprudence by resolving the conflict of approach between the *Mālikis* in Hijaz and the *Ḥanafis* in Iraq[104]. Therefore, it is presumed that Imām *Shāfi^{c}i*'s *Risāla* was born in response to the conflict between both schools of law and it was actually written at the request of ^{c}Abd. Raḥman b. Mahdi (d.198/813), a leading traditionalist in Basra, in order to explain the legal significance of Islamic law in accordance with the *Qur'ān* and the *Sunna*[105].

According to Ibn Ḥajar al-^{c}Asqalānī, Imām *Shāfi^{c}i* composed two treatise on Islamic jurisprudence; both being referred to as *al-Risāla*[106]. It is believed that the first book of *al-Risāla* is known as the old *Risāla,* composed in Iraq; whilst the second is known as the new *Risāla,* composed in Egypt[107]. Majid Khadduri claims that very little is known about the former compared with the latter, due to the text of the former

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[101] E^{2}, (art.*al-Shafi^{c}i*), vol.IX: SAN-SZE,p.183.
[102] Imām *Shāfi^{c}i's* full name is Abū 'Abd Allah Muḥammad b. Idrīs al-'Abbās b. 'Uthmān b. Shāfi'i b. al-Sa'ib b. 'Ubayd b. Abd Yazid b. Hashim b. al-Muttalib b. 'Abd Manaf b. Kusay al-Kurashi. He was born at 'Asqalān, Palestine, in 150/767, the year of the death of Abū Ḥanīfa. He died on the last day of Rajab in the year 204H/820CE in Cairo, Egypt.
See Abū Zahra, *al- Shāfi^{c}i,* p.15.
[103] Khadduri, *Islamic,*p.4.
[104] Ibid.,p.8.
[105] See al-Rāzi, *Taqdīmat,* p.250
[106] Ibn Ḥajar, *Tawālī,*p.77
[107] *Ibid.*

having failed to reach us, thus, it is difficult to define and elaborate precisely its scope and arguments[108]. The first section of the new *Risāla,* is mostly concerned with the superiority of the *Qur'ān* and the *Sunna* as primary sources of Islamic law. As a leading Muslim jurist of his age, Imām *Shāfiᶜi* denoted the systematic approach of dealing with the *Qur'ān* and the *Sunna* in accordance with Islamic jurisprudence in which he discussed the abrogation of Divine Legislation and the duties laid down in the text. Following the detailed textual discussion, the second part of *Risāla* elaborates on the legitimacy of consensus (*Ijmāᶜ*), analogy (*Qiyās*), personal reasoning (*Ijtihād*), juristic preference (*Istiḥsān*) and disagreement (*Ikhtilāf*).

Regarding the development of the concept of *maṣlaḥa* in connection with *naṣṣ,* the divine texts, indeed Imām *Shāfiᶜi's Risāla* in particular, has contributed indirectly as well as directly through the form of *Qiyās.* With regard to Imām *Shāfiᶜi's Risāla*, the form of *Istiḥsān* is rejected if it is not confirmed by the authentic narrative from the *Qur'ān* and the *Sunna* unless if *Qiyās,* (analogy) were abandoned on the basis no narrative have found, thus, it would be permissible for the Muslim jurists to exercise *Istiḥsān* in the absence of a narrative[109]. It is worthing to quote Khadduri's translation of Imām *Shāfiᶜi's Risāla* regarding his point of view in this subject;

> 'For if analogy were abandoned, it would be permissible for any intelligent man, other than the scholars, to exercise *Istiḥsān* in the absence of a narrative. But to give an opinion based neither on a narrative nor on analogy, as I have already stated in the discussion on the *Qur'ān* and the *Sunna,* is not permissible according to [the rules of] analogy.'[110]

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[108] Khadduri, *Islamic,*p.22
[109] *Ibid.*,p.304-305.
[110] *Ibid.*,p.305.

According to al-Būṭi, though Imām *Shāfi*^{c}*i* rejected the form of *Istiḥsān* as well as *Maṣlaḥa Mursala,* as both are of the secondary sources of Islamic law, there is proof to support that Imām *Shāfi*^{c}*i* accepted the idea and spirit of *maṣlaḥa* in general through the form of *Qiyās* (analogy) in which it is acknowledged apart from the *Qur'ān* and the *Sunna*[111]. At this stage, the acceptance of *Qiyās* by Imām *Shāfi*^{c}*i* and his abandoned to *Istiḥsān* and *Maṣlaḥa Mursala* to be legalised as the principle of Islamic law was due to his consciousness pertaining to inexistence principles from the *Qur'ān* and the *Sunna.* Therefore, Imām *Shāfi*^{c}*i* directly made his stands that only *Qiyās* as a legal form to deal with the concept of *maṣlaḥa* that in accordance with the divine commandments.

Though Imām *Shāfi*^{c}*i's* point of views are not confined as a final analysis regarding the subject of the development of the concept of *maṣlaḥa* in connection with *naṣṣ,* it is believed that particularly Imām al-Juwayni and Imām Ghazāli from the *Shāfi*^{c}*i* school of law, were among leading Muslim jurists in exposing and elaborating the concept of *maṣlaḥa* in accordance with the principle in the *Qur'ān* and the *Sunna.* As both of them gave the valuable views regarding the subject of *maṣlaḥa,* their views will be discussed juristically in the separate topic entitled 'The Theoretical Development of the Concept of *al-Maṣlaḥa wa al-Naṣṣ'.*

In conclusion, Imām *Shāfi*^{c}*i* as eponym of the *Shāfi*^{c}*i* school of law accepted the form of *Qiyās* as a legal principle apart from the *Qur'ān* and the *Sunna,* in which some ways have connected with the concept of *maṣlaḥa.* His concerned with the existence principles in the *Qur'ān* and the *Sunna* that must be followed without

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[111] al-Būṭi, *Ḍawābiṭ,* p.378-380.

hesitating by Muslim jurists were part of indicating that the concept of *maṣlaḥa* juristically must be parallel with the God's commandments and the *Sunna* of the prophet. In addition, the following section will be discussed on the *Ḥanbali* school of law pertaining to the development of the concept *al-Maṣlaḥa wa al-Naṣṣ*.

1.2.4.4 The *Ḥanbali* School of law

As the fourth *Sunni* school of law, the *Ḥanbali* School of law has been established since its eponym, Imām Aḥmad b. Ḥanbal[112] was a leading Muslim jurist, theologian and traditionist located in Baghdad[113]. He was disciple of Imām *Shāfi*ᶜ*i*, thus, Imām Aḥmad b. Ḥanbal's approach was quite similar to that of Imām *Shāfi*ᶜ*i* that attribute of *Mutakallimūn*. *Al-Musnad* is regarded as an authentic book of *Ḥadīth* that compiled by Imām Aḥmad in which he juxtaposed a number of narrators includes of Abū Bakar, ᶜUmar, ᶜUthmān, ᶜAli and the principle Companions, and ends with the narrator of the *Anṣār*, the Meccans, the Medinians, the people of *Kufa* and *Baṣra*, and the Syrians[114].

As a leading Muslim jurist at his age, Imām Aḥmad b. Ḥanbal was concerned with the supremacy of the *Qur'ān* and the *Sunna* as the primary source of Islamic law as well as *Qiyās* , a legal principle in Islamic legal theory. According to al-Būṭi, with respect to the concept of *maṣlaḥa*, Imām Aḥmad b. Ḥanbal's view was nearest to Imām Mālik that regarded *maṣlaḥa* as a tool to interpreting the law but as not as a

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[112]Imām Aḥmad b. Ḥanbal's name is Aḥmad b. Muḥammad b. Ḥanbal was born on 20th of Rabīᶜ al-Awal in the year 164H/780CE in Marw, Baghdad. At the age of 75, he died in Rabīᶜ al-Awal 241H/855CE and he was buried in *Maqābir al-Shuhadā'* (the Martyrs cemetery), near the Ḥarb gate in Baghdad.
See Ibn Kathīr, *al-Bidāya*,v.x, p.340., Ibn al-Jawzi, *Manākib*,p.418., Abū Zahra, *Ibn Ḥanbal*,p.15
[113] See E^2, (art.*Aḥmad b. Ḥanbal*), vol.I: A-B,p.272.
[114] *Ibid.*

source of law[115]. To most of Ḥanbali's jurists, *maṣlaḥa* as a valid principle in Islamic legal theory was partly due to its connection with the juridical analogy (*al-Qiyās*)[116].

To some extent, a validity of *maṣlaḥa* is referred to its compatible with the ultimate objective of Islamic law and its no contradiction with the texts of the *Qur'ān* and the *Sunna*[117]. Though Imām Aḥmad b. Ḥanbal had no such juristic definition of *maṣlaḥa*, his disciple, Ibn Qayyīm in particular, claims that instead of the term *maṣlaḥa*, the term *al-waṣf al-munāṣib* (compatible description) has been used by Ḥanbali jurists as well as Ḥanafi's jurists that reveal its similar meaning in some way with the concept of *maṣlaḥa*[118]. Ibn Qayyīm insists that the concept of *maṣlaḥa* must be rational in the sense of its conformity with the objective of Islamic law and its convene with the needs and benefits of the people[119].

In addition, the Ḥanbali Imām Ibn Taymīyya , seems sceptical in regarding *maṣlaḥa* as a source of law, but he occasionally refers to the concept of *maṣlaḥa* as juristic views that have predominant benefit whilst have no opposite sense with the existing law from the texts i.e. the *Qur'ān* and the *Sunna* in particular. It is believed that Ibn Taymīyya's sceptical of *maṣlaḥa* was a consequence of his fear that Muslim jurists attribute of *maṣlaḥa* would become more legislators rather than interpreter of Islamic law[120].

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[115] al-Būṭi, *Ḍawābiṭ*,p,368.
[116] Ibn Taymīyya, *Majmūᶜ*, v.xi,p.342.
[117] *Ibid.*
[118] Ibn Qayyīm, *Iᶜlām*, v.i, p.31
[119] *Ibid.*v.3,p.6
[120] Ibn Taymīyya, *Op.cit.*,,v.iii,p.371.

The application of the concept of *maṣlaḥa* to the principle of Islamic legal theory made by Ḥanbali scholars can be found in their works, such *al-Qawāᶜid fi al-Fiqh al-Islāmi*, written by Ibn Rajab al-Ḥanbali[121]. In this regard, the case of requesting permission from a partner before selling any jointly owned property becomes an example of the application of *maṣlaḥa* in the area of transactional law (*mu'āmala*)[122]. According to Ibn Rajab al-Ḥanbali, under contract of joint property, a partner must be aware of making any harmful by selling out the property. Therefore, permission must be taken from a partner due to respect his right and interest before any transaction is made to the property. It is clear that this condition is formed due to the concept of *maṣlaḥa* that concerns with the preservation of property that belongs to a person although in a form of sharing property[123]. It is believed that Ibn Rajab al-Ḥanbali formatted this type of principle particularly in the area of transactional law (*muᶜāmala*), which conforms to the legal principles contained in the *Qur'ān* and the *Sunna.*

The preceding paragraphs reveal that the Ḥanbali school of law has contributed juristically to the early development of the concept of *maṣlaḥa* in connection with the legal texts, particularly the *Qur'ān* and the *Sunna.* Moreover, Ḥanbali jurists such as Najm al-Dīn al-Ṭūfī , have involved academically in the discussion on the legitimacy of *maṣlaḥa* having some supremacy over *naṣṣ* (legal texts). Therefore, further relevant will take place in the following chapter, which is concerned with the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ.*

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[121] Ibn Rajab, *al-Qawāᶜid*,p.111
[122] *Ibid.*
[123] *Ibid.*

1.3 Summary

Within this chapter, the definition of the term *al-Maṣlaḥa wa al-Naṣṣ* with regard to both literal and technical arguments have brought a significant introduction to the concept of *al-Maṣlaḥa wa al-Naṣṣ*. This concept has formed an Islamic legal principle on the basis of public interest or common good of people that always parallel with the Divine legal texts particularly the *Qur'ān* and the *Sunna*. Within the framework of Islamic jurisprudence, the concept of *al-Maṣlaḥa wa al-Naṣṣ* means the interaction and dealing of *maṣlaḥa*, as Islamic legal principle with the Divine commandments through the legal texts in the *Qur'ān* and the *Sunna*, which is termed as *Naṣṣ*.

The concept of *al-Maṣlaḥa wa al-Naṣṣ* is well accepted as a valid and legal Islamic principle that emerged during the period of the Prophet and continued during the era of his companions, particularly that of the *khulafā' al-Rāshidīn* or Rightly Guided Caliphs. In the period of *tābiᶜūn* or followers, particularly during the rule of the caliph ᶜUmar ᶜAbd ᶜAzīz, there was significant indication of the further development of the concept *maṣlaḥa* in accordance with *naṣṣ*. This growth continued and filtered into the four *Sunni* schools of law, who contributed both directly and indirectly to the development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* in terms of defining and elaborating the latter in connection with the former. Their contribution to this concept was subsequently well developed by the disciples and jurists from their own schools of thought, particularly in the sphere of theoretical development. The following chapter will discuss the topic of the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

CHAPTER TWO

THE THEORETICAL DEVELOPMENT OF THE CONCEPT OF *AL-MAṢLAḤA WA AL-NAṢṢ*

2.0 Introduction

The term theoretical is being used as the main subject of this chapter as an elucidation and examination of the theories designed and developed by Muslim jurists will be undertaken within the framework of Islamic jurisprudence, concerning the correlation between the concept of *maṣlaḥa* and the legitimacy of *naṣṣ* i.e. the *Qur'ān* and the *Sunna*, both being the primary sources of Islamic law. A topic frequently debated amongst Muslim jurists regarding the concept of *al-Maṣlaḥa wa al-Naṣṣ*, is the theory of the priority of *maṣlaḥa* as a form of legal principle in Islamic law, over the legitimacy of *nass* in the *Qur'ān* and the *Sunna* in particular, as well as the *Ijmāᶜ*.

Apart from the theory above, Muslim jurists have formulated the theory of the levels of *Ḍarūrīyya*, *Ḥājīyya*, and *Taḥsīnīyya*, which are closely related to the concept of *maṣlaḥa* in that they relate to the primary sources of Islamic law such as the *Qur'ān* and the *Sunna*. In addition, the theory of *Maqāṣid al-Sharīᶜa*-cum-*Maṣlaḥa* has become popular discussion among Muslim jurists as a new approach to Islamic jurisprudence particularly in dealing with the *naṣṣ* in the *Qur'ān* and the *Sunna*. It can also be held that the theory of *Maqāṣid al-Sharīᶜa*, was developed by later jurists in order to form a juristic legal principle dealing with the ultimate objective of Islamic law, which is to uphold the commandments of Law in the *Qur'ān* and in the prophetic life of the *Sunna*.

From the aforementioned, the main intention of this chapter is to deal with those three main theories regarding the concept of *al-Maṣlaḥa wa al-Naṣṣ*. The first section of this chapter deals with the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*. This is disputed juristically among Muslim jurists, particularly regarding the view put forward by Najm al-Dīn al-Ṭūfī (d.716H/1316C.E). The theory of the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* in connection with the concept of *al-Maṣlaḥa wa al-Naṣṣ* is discussed in the second section of this chapter. The final part of this chapter examines juristically the theory of *Maqāṣid al-Sharīᶜa* in conjunction with *Naṣṣ*.

2.1 The theory of priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ*

It is suggested that the juristic discussion regarding the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ* commenced historically during the life of Imām Mālik, the eponym of the Māliki school of law, when he formed *Maṣlaḥa Mursala* as a legal principle in Islamic legal theory. This is shown by Muṣṭafa Zayd in his Ph.D thesis (1964) in which he claims there were many juristic opinions made by Imām Mālik himself and his disciples which uphold the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*[1]. Moreover, Muṣṭafa Shālibi, in his book entitled *Taᶜlīl al-Aḥkām,* shared the same view as Muṣṭafa Zayd regarding this theory; that is in some ways Imām Mālik's legal opinions, (*fatāwa*) as well as the form of *Maṣlaḥa Mursala* that he designed and legalised, obviously contradict *naṣṣ*[2]. The accusation made against Imām Mālik and his disciples of giving some sort of priority to *Maṣlaḥa Mursala* in particular, over the legitimacy of *naṣṣ*, has subsequently been juristically

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[1] Zayd, *al-Maṣlaḥa*,p.128-136.
[2] Shālibi, *Taᶜlīl*,p.367

debated, particularly among later Muslim jurists such as Ḥussein Ḥāmid Ḥassan in his Ph.D thesis entitled '*Naẓaria al-Maṣlaha fi al-Fiqh al-Islāmi'* (1981), as well as Yushau Sodiq in his Ph.D thesis entitled '*Malik's Concept of Maslaha (The Consideration of The Common Good): A Critical Study of This Method As A Means of Achieving The Goals and Purposes of Islamic law With Special Reference To Its Application At The Shari'a Courts In Northern Nigeria* (1991).

In addition, not only Imām Mālik and his disciples have to be said formulated to the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ,* but Najm al-Dīn al-Ṭūfi, a *Ḥanbali* scholar also accepted this theory. To some extent, Ṭūfi's point of view pertaining to this theory appears to have become a controversial issue, particularly among later jurists. The debate involves not only Ṭūfi's point of view on this within the framework of Islamic jurisprudence, but also involves his life and credibility as a Muslim scholar. Some later Muslim jurists seem obviously to oppose Ṭūfi both as a legitimate Muslim jurist and also in his view on this theory, whilst others seem to support him and his theory. For instance, al-Būṭi's work entitled *Ḍawābiṭ al-Maṣlaḥa*(1987) seems juristically to undermine the credibility of Ṭūfi as a Muslim jurist and particularly his point of view on this theory. However, ᶜAbdallah M. al-Husayn al-ᶜAmiri's work entitled *At-Tufi's Refutation of Traditional Muslim Juristic Sources of Law And His View On The Priority of Regard For Human Welfare As The Highest Legal Source Or Principle* (1982) seems to support Ṭūfi's choice of life as jurist and encourage his work as well as supporting his point of view pertaining to the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ.*

In order to help clarifying the discussion about the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*, this section will first examine the hypothetical form of this theory in the light of Islamic jurisprudence. Secondly, an analysis will be undertaken of the form of *Maṣlaḥa al-Mursala* suggested by Imām Mālik, which has been claimed to give it some sort of priority over the legitimacy of *naṣṣ*. Thirdly, this section will explore Najm al-Dīn al-Ṭūfī's point of view on the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*.

2.1.1 The hypothetical form

It is to be borne in mind that *al-Maṣlaha wa al-Naṣṣ* was a direct outcome of the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*[3]. For Aḥmad Raysūni, recent developments in Islamic jurisprudence explore the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ* as well as its application[4]. This is due to the theory can be openly interpreted and examined by all Muslim jurists as it has been expressed in hypothetical form[5] by Najm al-Dīn al-Ṭūfī in his analysis of the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others'[6].

According to Aḥmad al-Raysūni, there was no juristic evidence or absolute example given by Ṭūfī in his analysis of the application of the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others'. The only exception that

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[3] al-Raysūni, *al-Ijtihād*,p.49
[4] *Ibid*.p.37-38.
[5] *Ibid*.
[6] The *Ḥadīth* is categorized as *Ḥassan* and narrated by ᶜAmru b. Yaḥya deriving from his father and from the Prophet. It is reported by Ibn Mājah, Darruquṭni and Imām Mālik in his *al-Muwaṭṭā'*. See Zayd, *al-Maṣlaḥa*, p.206.

Ṭūfi mentioned was in the area of transaction (*muᶜamala*) and custom (ᶜ*adat*), which in some circumstances is connected with the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*[7].

For Muṣṭafa Zayd, Ṭūfi himself wrote no specific work referring to the theory of *maṣlaḥa* and he made no detailed explanation of *maṣlaḥa* except in his work about the explanation of the forty *Ḥadīth* of al-Nawāwi in which he made a brief statement in his analysis of the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others'. Muṣṭafa Zayd adds that at this stage, Ṭūfi claimed that this *Ḥadīth* legalises *maṣlaḥa* as the objective of Islamic law, giving it priority over the *naṣṣ*, as well as the *Ijmāᶜ* in the area of transaction (*muᶜāmala*) and custom (ᶜ*adat*). To some extent, Muṣṭafa Zayd believed that Jamāl al-Dīn al-Qāsimi was a person who quoted Ṭūfi's point of view theory until it became controversy particularly amongst later Muslim jurists[8].

It is worth noting that Muṣṭafa Zayd also claimed that not only Ṭūfi had the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ* but Imām Mālik had previously held the same opinions about the theory by means of a form of *Maṣlaḥa Mursala*[9]. Therefore, later jurist such as Ḥussein Ḥāmid Ḥassan has juristically debated on Muṣṭafa Zayd's arguments regarding Imām Mālik's stand on the priority of *Maṣlaḥa Mursala* over the legitimacy of *naṣṣ*[10]. The juristic debate between both

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[7] al-Raysūni, *al-Ijtihād*, p.38.
[8] Zayd, *al-Maṣlaḥa*, p.113.
[9] *Ibid.*
[10] Ḥussein, *Naẓarīa*, p.108-183

jurists pertaining to this theory clearly indicates its hypothetical form within the framework of Islamic jurisprudence. In the following section, the theory of *Maṣlaḥa Mursala* and its connection with *naṣṣ* is examined in order to elucidate the juristic debated amongst Muslim jurists regarding this theory.

2.1.2 The connection of *Maṣlaḥa Mursala* with the legitimacy of *Naṣṣ*

As has been discussed in the previous chapter, a form of *Maṣlaḥa Mursala* was designed by Imām Mālik and extensively applied, particularly by Muslim jurists of the Māliki school of law to establish their legal opinion of Islamic law. Imām al-Shāṭibi, a leading scholar of Māliki school of law, defines *Maṣlaḥa Mursala* as a form of Islamic legal principle that no specific *Naṣṣ* (legal text) confirms or denies [11] but in general, the *maṣlaḥa* itself is formed to secure the preponderance of benefit for the people that is in accordance with the objectives of the Lawgiver[12]. At this stage, Imām Shāṭibi employs the term *al-munāṣib*[13] that is synonymous with *Maṣlaḥa Mursala,* which in connection with the *Maqāṣid al-Sharīᶜa,* means the ultimate objectives of Islamic law.

It is believed that the above definition of the concept of *Maṣlaḥa Mursala* is unanimously accepted by the majority of Muslim jurists in the *Sunni* legal schools. The concept of *Maṣlaḥa Mursala* is interrelated with the objectives of the Lawgiver, although it does not necessarily conform to any specific legal text (*Naṣṣ*). At this

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[11] al-Shāṭibi, *al-Iᶜtiṣām,* v.ii, p.362.
[12] al-Shāṭibi, *al-Muwāfaqāt,* v.ii,p.2.
[13] al-Shāṭibi, *Op.cit.*,v.ii, p.362.

stage, Muslim jurists of Māliki school of law in particular, laid out the criteria of *Maṣlaḥa Mursala* in order to establish its validity as an Islamic legal principle.

To this effect, Imām al-Shāṭibi has set out three criteria of *Maṣlaḥa Mursala* in *al-Iʿtiṣām* under the heading of the distinction between heresy and *Maṣlaḥa Mursala,* or in Arabic; '*Fi al-Farq bayna al-Badʿ wa al-Maṣāliḥ al-Mursala*'. Imām al-Shāṭibi insists that the first criterion of *Maṣlaḥa Mursala* states that to be validated as an Islamic legal principle through the objectives of Islamic law (*Maqāṣid al-Sharīʿa*) there should be no contradiction with any textual evidence, *dalīl* or *naṣṣ,* juristically referred to in the *Qu'rān,* the *Sunna* and the *Ijmāʿ*. According to Imām al-Shāṭibi, the second criterion by which the validity of *Maṣlaḥa Mursala* can be judged is that it concerns rational matters and has no connection with the area of worship, *ʿibāda.* As the third criterion, Imām Shāṭibi emphasizes the correlation between *Maṣlaḥa Mursala* and *Maqāṣid al-Shariʿa* or the ultimate objective of Islamic law regarding the matters of *Ḍarūrīyya*(lit. necessities) that is to preserve the five safeguards for human beings; religion, life, lineage, intellect and property as well as the matters of *rafʿ al-ḥarāj;* alleviating hardship[14].

Through these criteria, Imām Shāṭibi seeks to validate *Maṣlaḥa Mursala* as a legal principle in Islamic law by developing the theory of *Maṣlaḥa Mursala* being interconnected with *Maqāṣid al-Shariʿa* in some way, which is referred juristically to the legal principle that is laid down by the legal text or *naṣṣ.* Though *Maṣlaḥa Mursala* has been legalised as a legal principle independent of legal texts of *dalīl,* evidence and *naṣṣ,* to some extent it must, nevertheless be connected, or parallel with,

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[14] al-Shāṭibi, *al-Iʿtiṣām,* v.ii, p.375-379.

the basic legal principle of the theory of the *Maqāṣid al-Sharīᶜa.* Many of Imām Mālik's legal opinions were developed with no opposition or contradiction of *dalīl* or *naṣṣ* from the *Qur'ān,* the *Ḥadīth* or *Ijmāᶜ*, which means they follow juristically, the parallel line between *Maṣlaḥa Mursala* and *Maqāṣid al-Sharīᶜa* mentioned above.

Moreover, Imām al-Shāṭibi gives ten examples of *Maṣlaḥa Mursala* which he discusses in the light of Maliki's legal opinions[15]. It is interesting to note that in order to justify these ten examples of *Maṣlaḥa Mursala,* Imām al-Shāṭibi draws on, uses as evidence some verses from the *Qur'ān* and the *Ḥadīth* that indirectly verify Māliki's legal opinions on *Maṣlaḥa Mursala*[16]. It is believed that not only Imām al-Shāṭibi employs method of elaborating *Maṣlaḥa Mursala,* Imām Mālik himself used this method in which the elaborating of the legal opinions through the form of *Maṣlaḥa Mursala* is undertaken. In *al-Mudawwana,* Imām Mālik emphasizes the legal opinion in which the *Qur'ān* and the *Ḥadīth* in particular, are silent on the new ruling that was formed by *Maṣlaḥa Mursala.* In other way, the connection of *Maṣlaḥa Mursala* with the legitimacy of *naṣṣ* is based on principles of non-existence whereby if the *Qur'ān* and the *Ḥadīth* are silent on the legal opinions that are formed by *Maṣlaḥa Mursala,* then they are valid.

The following point exemplify how Imām Mālik and his disciples juristically refer to principles of non-existence of a concept in the *Qur'ān* and the *Ḥadīth* when forming their legal opinions through *Maṣlaḥa Mursala,* as follows;

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[15] *Ibid.*v.ii, p.364-384.
[16] *Ibid.*

(a) The obligation of the husband in providing the basic needs such as shelter, food and clothing for his wife is based on the husband's capacity and his wife's social status[17].

Pertaining to the legal opinion of the Māliki school of law stated above, the consequences can be cited in two examples or cases as follows. In the first case, the husband is incapable of affording the basic needs for his wife; and in the second case, the wife is richer than her husband, therefore, she can afford the basic needs including supporting her husband. Thus, these two cases affect the following questions. In the former case, does the wife have full right to seek basic needs for the family? And does she have a right to appeal for divorce from her husband? In the latter case, is it the wife's right to seek a refund from her husband, thus, considering the husband to be indebted to his wife?

In order to facilitate the acceptance of those two cases as well as alleviate questions arising from them, Imām Mālik and his disciples used the form of *Maṣlaḥa Mursala* as the legal principle for their legal opinions. In the first case, the Māliki jurists are in agreement that the wife has two choices, either she remains with her husband and seeks the basic needs for the family, or she may appeal for a divorce from her husband[18]. The form of *Maṣlaḥa Mursala* has been applied to this case in accordance with the concept of *Maṣlaḥa* itself, that no harm is caused on either party, therefore the wife is given a choice due to the incapability of her husband to provide for the basic needs of the family[19]. According to Imām Mālik, the form of *Maṣlaḥa Mursala* applies to this particular case, as the basic principle of the *Qur'ān* and the

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[17] al-Dardir, *al-Sharḥ,* v.ii, p.729.
[18] *Ibid.*,v.ii,p.745 and al-Dāsūqi, *Ḥāshiya*,v.ii,517.
[19] Mālik, *al-Mudawwana,* v.2,p.259.

Ḥadīth is silent about whether the wife should remain with her husband, or whether she should leave her husband[20]. In the second case, the wife has two choices. Firstly, if the wife chooses not to leave her husband for the sake of her marriage, then, she may choose not seek or a refund from her husband whether he is rich or poor. Secondly, the wife may leave her husband and if the husband is rich, the wife has the right to seek a refund from her husband, which makes him indebted to her[21]. According to Imām Mālik, in the second case, the form of *Maṣlaḥa Mursala* is applied in consideration the interests of both parties as no evidence or *naṣṣ* exists either to up hold or to oppose this legal opinion in this particular case[22].

The clarification above made by Imām Mālik in his *al-Mudawwana* regarding this particular legal opinion, clearly indicates that in order to legalise the form of *Maṣlaḥa Mursala* in accordance with the objectives of Islamic law, and *Maqāṣid al-Sharīᶜa,* the consideration of legal principles from the *Qur'ān* and the *Ḥadīth* has to be undertaken as to whether they are silent or in opposition to the case in question. Ḥussein Ḥāmid Ḥassan claims that it is incorrect to claim that most of Imām Mālik's legal opinions are overruled by the legitimacy of *naṣṣ*. In fact, it is demonstrated clearly that the principles of non-existence that are laid down by the *Qur'ān* and the *Ḥadīth,* are always utilized in forming his legal opinions through *Maṣlaḥa Mursala*[23]. In more detail, Ḥussein Ḥāmid Ḥassan cites ten examples of Imām Māliks' legal opinions that he claims have no priority over the legitimacy *naṣṣ*[24]. He also argues that apart from *Maṣlaḥa Mursala,* Imām Mālik's legal opinions have been formed by

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[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] Ḥussein, *Naẓaria*,p.108-183.
[24] *Ibid.*

ᶜUrf (customary practices) as well as *Manaṭ al-Ḥukm* (the cause of the ruling)[25]. However it should be borne in mind that it is not the main intention of this topic to further Ḥussein Ḥāmid Ḥassan's arguments on the form of *ᶜUrf* or the *Manaṭ al-Ḥukm* that is concerned with Imām Mālik's legal opinions.

In conclusion, the *Qur'ān* and the *Ḥadīth* are always referred to in as far as no *dalīl* or *naṣṣ* is either verified or opposed in forming *Maṣlaḥa Mursala* in connection with *Maqāṣid al-Sharīᶜa*. Consequently, the theory of *Maṣlaḥa Mursala*, which in some ways is indirectly interconnected with the legitimacy of *naṣṣ* has been proven from the juristic discussion above. Furthermore, it can be seen that the theory of *al-Maṣlaḥa wa al-Naṣṣ* has been further developed by later Muslim jurists particularly by al-Ṭūfi, as he claims that in some ways *maṣlaḥa* has priority over the legitimacy of *naṣṣ*. In order to illustrate this theory juristically, the following section will discuss al-Ṭūfi's point of view regarding the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*.

2.1.3 al-Ṭūfi's theory

In order to discuss al-Ṭūfi's theory in the sense of academic analysis within the framework of Islamic jurisprudence, as the first stage it is important to demonstrate its originality and authencity from reliable sources. As far as can be ascertained, there are two reliable sources regarding al-Ṭūfi's texts on the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ*. The first reliable source is *Al-Maṣlaḥa fi al-Tashrīᶜ al-Islāmi wa Najm al-Dīn al-Ṭūfi* (1964), written by Muṣṭafa Zayd, in which al-Ṭūfi's analysis

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[25] *Ibid.*,p.116 and p.127

regarding the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others' is set out as well as his controversial theory. The second reliable source is *At-Tufi's Refutation of Traditional Muslim Juristic Sources of Law And His View On The Priority of Regard For Human Welfare As The Highest Legal Source Or Principle* (1982) written by ᶜAbdallah M. al-Ḥusayn al-ᶜAmiri, in which al-Ṭūfī's analysis is translated into English from the Arabic texts in which again support al-Ṭūfī's authority. It is to be borne in mind that both are PhD thesises; the former was submitted to the University of Cairo in the year 1964 and the latter to the University of California, Santa Barbara, in the year 1982. Hence, in the first stage both reliable sources will be referred to, particularly the latter, in order to present al-Ṭūfī's theory in its originality and authencity prior to the discussion and analysis in the second stage.

Before al-Ṭūfi highlights his theory concerning the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*, previously he examined the significance of the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others', which it is connected with the concept of *maṣlaḥa*. The full text of al-Ṭūfī's point of view in this regard is as follows;

'Its meaning is what we already have pointed out, namely the denial of harm and malicious acts by law. It is a general denial, except for such matters as [legal] argument has particularized. And this necessitates giving priority to the obligatory character of this Tradition over all legal arguments, as well as particularizing them, according to its lights, as regards the denial of injury and the attainment of *Maṣlaḥa* [human welfare]. For if we assume that some legal sources of the Law warrant the infliction of some form of harm, then to deny it on the strength of this Tradition would be to act according to two sources. And if we do not deny it according to it, then we render one of the two sources null and void, namely this Tradition. There is no doubt, however, that harmonizing the texts when we act according to their lights is better than to nullify some of them'[26].

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[26] al-ᶜAmiri, *At-Tufi*, p.144

Ṭūfi's statement above clearly indicates that the *Ḥadīth* of the prophet, 'You should neither harm yourself nor cause harm to others' becomes definite evidence or *dalīl,* which overrules other evidence in giving priority to avoiding harm and to attain the *maṣlaḥa.* In other words, Ṭūfi's theory concerning the priority of *maṣlaḥa* over the legitimacy of *naṣṣ* is rooted in the basis of the *Ḥadīth* of the prophet, which clarifies the denial of injury and the attainment of *maṣlaḥa* or public interest. Moreover, in later discussion, Ṭūfi claims that there were nineteen legal sources of Islamic law that are accepted by Muslim scholars as follows;

'We say, on the basis of investigation, that the sum total of the sources of the law that are known to the *ᶜUlamā'* (religious scholars) fall into nineteen categories, as no more. The first is the Book (*al-Qur'ān*), the second is the *Sunna,* the third is the consensus (*Ijmāᶜ*) of the Community (*Umma*), the forth is the *Ijmāᶜ* of the people of *Medina,* the fifth is analogy (*Qiyās*), the sixth is the recorded sayings of the prophets companions, the seven is the unrestricted undefined public interest (*al-Maṣlaḥa Mursala*), the eight is the presumptive continued validity of past legal ruling (*al-Istiṣḥāb*), the ninth is the presumptive exemption from judgment in the absence of a specific ruling (*al-barā'a al-aṣliyya*), the tenth is accepted custom (*al-ᶜ awaid*), the eleven is investigation or examination (*al-istiqrā'*), the twelfth is the legally correct contributory action (*sadd adh-dharāiᶜ)*, the thirteenth is demonstration or deduction (*al-istidlāl*), the fourteenth is preference (*al-istiṣḥāb*), the fifteenth is adoption of the least burdensome [solution] (*al-akhdh bi al-akhaff*), the sixteenth is the *Ijmāᶜ* of the people of al-Kufah, the eighteenth is the *Ijmāᶜ* of the members of the family of the prophet (*al-ᶜ itrah*), the nineteenth is the *Ijmāᶜ* of the four Caliphs. Some of these are [universally] agreed upon, others are disputed. However, knowledge of their limits, their prescriptions, the demonstration of their true meaning, and the details of their rulings are to be found in the sources of jurisprudence (*Uṣūl al-fiqh*). The saying of the prophet, *"La ḍarar wa lā ḍirār"*, therefore necessitates that provision be made for the general welfare (*maṣāliḥ*) by [an implicit] affirmation, and against evil-doing by [an exmplicit] negation. For harm is evil-doing, ad if the Law (*al-Sharᶜ*) repudiates it, the good, which is the general welfare (*maṣlaḥa*), is necessarily affirmed, for the two are mutually contradictory, with no possibility of reconciliation'[27].

After listing nineteen legal sources of Islamic law, Ṭūfi insists that some of those legal sources are juristically accepted, whereas some are accepted with

[27] *Ibid.*,p.144-145

reservations by Muslim scholars[28]. At the end of the above discussion, Ṭūfī claims yet again that the *Ḥadīth* of the prophet, 'You should neither harm yourself nor cause harm to others' is juristically significance concerning *maṣlaḥa* in indicating that good is affirmative but harm must be refused; both are absolutely paradoxical and must be no compromised. At this stage, Ṭūfī seemingly begins his theory that the ruling in the *Ḥadīth* of the prophet will legalise the validity of *maṣlaḥa.* Thus, in the following section, Ṭūfī's theory is elaborated under the topic of the strongest legal sources as follows;

'The strongest of these nineteen legal sources are the [Qur'anic] text and consensus. Now both of them either agree on showing regard for *maṣlaḥa* or they are opposed to it. If they agree on it, no conflict arises, and all is well, for the three legal sources are in agreement in their judgment-they being the text, Consensus and regard for *maṣlaḥa*- the latter derived from the Prophet's saying, 'Do not cause harm nor repay one harm with another'. But if they disagree with it, then regard for *Maṣlaḥa* necessarily takes priority over the [other] two: [such priority being] by way of explaining and specifying them, and not by way of suspending them and denying their validity, just as the *Sunna* takes priority over the *Qur'an,* by way explaining the [latter]. The determination of this is as follow: The text and Consensus either do not at all necessitate injury and evil-doing or they do. If they do not do so, then they are in agreement with [the principle] of regard for *Maṣlaḥa.* If they do, however, necessitate [the infliction of] harm, then it [that is, the harm] is either their entire justification or part of it. If it is their entire justification, then it must necessarily fall into the category of exceptions to the prophet's saying, *"La ḍarar wa lā ḍirār"*, such as the fixed *ḥādd*-punishment and the penalties for crimes. And if it is part of their justification-then if it is rendered necessary by a particular piece of evidence, that evidence is to be followed; but if a particular piece of evidence does not render it necessary, then both of them are necessarily subject to the restrictions of the Prophet's saying, *"La ḍarar wa lā ḍirār"*, encompassing all the legal sources together'[29].

At this juncture, Ṭūfī strongly believes that the *Qur'ān* and the *Ijmāᶜ* (consensus) are the strongest legal sources apart from the *Ḥadīth,* which on the subject of *maṣlaḥa* is referred to the *Ḥadīth* of the prophet; *"La ḍarar wa lā ḍirār"*. From this point of view, Ṭūfī claims that occasionally both the *Qur'ān* and the *Ijmāᶜ*

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[28] Further discussion in this regard can be found in the science of Islamic jurisprudence. See al-Ṭaib, *al-Ijtihād,*p.5-8.
[29] *Ibid*,,p.145-147

either agree or disagree with the subject of *maṣlaḥa* as verified by the *Ḥadīth* of the prophet. In the case of disagreement, Ṭūfī states that; '*Maṣlaḥa* necessarily takes priority over the [other] two: [such priority being] by way of explaining and specifying them, and not by way of suspending them and denying their validity, just as the *Sunna* takes priority over the *Qur'ān*, by way of explaining the [latter]'. In other words, Ṭūfī insists that the theory of priority of *maṣlaḥa* over the legitimacy of *naṣṣ* is quite similar to the theory of priority of the *Sunna* over the legitimacy of the *Qur'ān* by way of explaining and specifying the latter. Ṭūfī later adds the discussion of priority area to which his theory is applied as follows;

> 'We give priority to due regard for [their] well-being in matters of customs [*ᶜada*], social intercourse [*muᶜāmala*], and the like. For due regard for it in these matters is the very pivot [*quṭb*] of the Law's objective, as opposed to matters of worship [*ᶜibāda*], which belongs as of right to the Law, and whose exact formulation cannot be known except through its authority, [as expressed] in text and Consensus'[30].

Matters of limitation concerning customs [*ᶜada*] and social intercourse [*muᶜāmala*] with the exception of matters of worship [*ᶜibāda*], are given the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*, which clearly indicates the legal conditions that are formed by Ṭūfī in his theory. He adds that the priority of *maṣlaḥa* in the matters of customs [*ᶜada*] and social intercourse [*muᶜāmala*] must be in accordance with the very pivot of the objectives of Islamic law. Moreover, Ṭūfī has drawn up three reasons why in his theory the priority to *maṣlaḥa* over the *naṣṣ* as well as the *Ijmāᶜ* are undertaken as follows;

1. **<u>The first reason</u>**: *'is that those who have rejected Consensus have upheld the regard for Maṣlaḥa, which makes the latter an occasion for harmony and Consensus an occasion for disagreement; and holding to what has been agreed upon'*[31].

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[30] *Ibid.*,p.150-151
[31] *Ibid.*,p.175

2. ***The second reason:*** *' is that the texts are at variance and in contradiction (mukhālafa mutaᶜāriḍa). Thus they are the cause of disagreement in formulating judgments, which is legally blameworthy. Regard for Maṣlaḥa, however, is a real matter in itself that occasion no disagreement, and is, consequently, the cause of agreement, which is legally desirable, and thus the more appropriate to follow. For the Mighty and Exalted has said, 'And hold you fast to God's bond, together, and do not scatter'. 'Those who have made divisions in their religion ad become sects, thou art not of them in anything'. And he (May peace be upon him) said, 'Do not be at variance lest your hearts be at variance'. And the Mighty and Exalted has said, in His praise of unanimity, 'And he brought their hearts together. Hadst thou expended all that is in the earth, thou couldst not have brought their hearts together, but God brought their hearts together'. And he (May peace by upon him) said, 'Be as brothers and servants of God'*[32] ...

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[32] *Ibid.*,p.175-181

..... If one reflects on the quarrels and mutual aversion, which have taken, place among the Imam of Legal Schools, he will see the truth in what we have said. The followers of Malik took control of the West [i.e. North Africa], and the followers of Abu Hanifah of the East [i.e. east of Egypt], whereby neither of the schools can live in harmony with any other in its own territory, save in token fashion. We have been informed that when a Hanafite chances to come among the Hanbalite people of Jilan, they kill him and take his possessions as booty, just as they do non-believers.

Further, we have also been informed about a single Shafi'ite mosque that was in one of the Hanafite in Transoxiana. Seeing that mosque, the governor of the town, who used to come out everyday for the morning prayer, would say, 'Is it not time to close this church (kinasa)? He went on in this manner till he got up one day, and the door of that mosque had been walled up with mud and clay bricks, which greatly pleased the governor. Moreover, the followers of each Imam prefer their Imam over any other in both their writings and debates, to such an extent that I have seen a Hanafite write a compilation of the virtues of Abu Hanifah, and then boast in this [compilation] of his followers, such as Abu Yusuf, Muhammad, Ibn al-Mubarak, et. al. Furthermore, in referring to the other schools, he has said; 'These are my ancestors: Can you indeed, show me their like, When we, O Jarir, are gathered together in council?' These smacks of the pretentiousness of the Jahiliyya and examples of the like are many. Thus each party began to transmit Traditions exalting the merits of its imam.

And so the Malikites transmitted [the saying]: 'Camels may be ridden [in all directions], without ever finding anyone more learned than the scholar of Medina'. They said: And this is Malik.

The Shafi'ites transmitted [the sayings]: 'The imams are from Quraysh', 'Seek knowledge from Quraysh but do not vie in knowledge with them'. Or 'The scholar of Quraysh has filled the earth with his knowledge'. They said: 'No one of this description has emerged from Quraysh al-Shafi'i.

The Hanafites have transmitted the saying; 'There will be in my community (ummati) a man by the name of al-Nu'man, who will be the lamp of my community. And there will also be a man in my community by the name of Muhammad b. Idris, who will be more harmful to it that than Iblis.

The Hanbalites have transmitted [the saying]: 'There will be a man in my community by the name of Ahmad b. Hanbal who will follow my Sunna, in the manner of the prophet', or something like this for I do not recall the exact wording.

Abu Faraj al-Shirazi has said in the beginning of his book, al-Minhaj;

'Know that these Traditions are either correct but not valid or valid but not correct. What has been transmitted about Malik and al-Shafi'I is good but does not provide any indication of their intended objective. For if [the expression] 'scholar of Medina' is a generic noun (ism jins), the scholars of Medina are many, and there is no particular designation of Malik, apart from the others. Moreover, if it is a proper noun (ism shakhs), there is no reason to limit it to Malik, since the Seven Legists (al-Fuqaha' al-Sba'ah) as well as others were among the scholars of Medina who were the teacher of Malik, and who were more famous than he was at the time. The reason that led his adherents to interpret the Traditions as referring to him is due to the great number of his followers and the broad diffusion of his school throughout the lands. This is what instigated them to say what they did. The same thing applies to [the saying]: 'The imams are from Quraysh; there is no special designation of al-Shafi'I in it. Moreover, it has been taken to refer to the Caliphs, as argued by Abu Bakar on the Day of Saqifah. Likewise [the tradition]: 'Seek knowledge from Quraysh...'contains no particular

3. ***The third reason;*** *'is that it is well established that in the Sunna there are contradictory texts with reference to welfare and other such matters, in a number of cases, some of which [are the following]: Ibn Mas'ud's opposition to the text and Consensus as regards tayammum, in favour of the benefit of precaution in matters of worship, as was mentioned earlier*[33] ...

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designation of anyone. As for his saying: 'The scholar of Quraysh fills the earth with his knowledge'. Ibn Abbas might well competer with Al-Syafi'I over it, for the former si more entitled to it than the latter due to his seniority, his companionship [with the prophet] and the prophet's [s.a.w] supplication to God for him in his saying; 'O my God! Make him erudite in religion ad instruct him in its interpretation'. For he was called the 'Sea of Knowledge' and the Rabbin (hibr) of the Arabs'. The motive that led the Shafi'ites to interpret the tradition as referring to Al-Shafi'I was the fame of his schools and the great number to his followers. Novertheless, the school of Ibn 'Abbas is undeniably famous among scholars.

'As for what has been transmitted regarding Abu Hanifah and Ahmad b. Hanbal, it is a forgery with no factual basis. And as for the Tradition, He is the lamp of my community', it has been cited by Ibn al-Jawzi as among the among the forged [Traditions]. He [also] mentioned that when the school of Al-Shafi'ites became famous, the Hanafites wanted to discredit it. And so they conspired with Ma'mun b. Ahmad al-Salmi and Ahmad b. 'Abdullah al-Khushari, who were liars and forgers, ad they forged this Tradition in praise of Abu Hanifah and dispraise of Al-Shafi'i. But God refuses but to perfect His light.

'As for what has been transmitted concerning Ahmad b. Hanbal, it is definitely a forgery, for we have already submitted that Ahmad was the most assiduous od men in adhering to the Sunna, and the most rigorous of them in protecting it. It has been established that he has committed to emory a million traditions, and that he said: I composed my Musnad out of 750,000 Traditions, and I let it stand as a testimonial between me and God, sowhatever you do not find therein is as nothing [I value]. Now this Tradition, adduced by al-Shirazi in regard to the virtues of Ahmad, is not found in the latters Musnad; for if it were a genuine one, he would have been the most suitable of men to produce it anduse it as a most suitable of men to produce it and use it as a probativeargument during his ordeal, even the mention of which causes anguish'.

Observe, by God, such a disposition that leads the followers [of the Legal Schools] to forge Traditions, in exaltation of their imams and in dispraise of some others. The instigation for it can only be the rivalry among the Legal Schools in their preference for literal [meanings] and the like, as opposed to regard for Maṣlaḥa, *whose explanation is clear and whose proof is obvious. For if they could have come to an agreement somehow, nothing of what we have said above about them would have come into being.*

'Know that some of the disagreements among the 'ulama' are due to contradiction (taᶜāruḍ) in what has been transmitted and the texts (al-riwayat wa al-nusus). Some people, however, allege that 'Umar b. al-Khattab is the cause of this, since his companions had asked his permission to write down the Sunna at the that time, and he had refused them this. He said, 'I write nothing besides the Qur'an', even though he knew that the prophet has said, 'Write for Abu Shah the Farewell Sermon', and also said: Record knowledge in writing'. [These people] say that if he had let each of the Companions write down whatever he transmitted from the Prophet, the Sunna would have been accurately recorded, and no one would have stood between anyone of the community and the Prophet in every Tradition, save the Companion who wrote what he had to transmit. Such written records would have been handed down from them to us in uninterrupted succession in the same way as those of Al-Bukhari, Muslim and others'.

[33] *Ibid.*,p.181-184.

... Also, his saying to 'A'ishah: 'If your people were not recent converts to Islam, I would have demolished the Ka'bah and built it [a new] on the foundations of Ibrahim, thereby indicating that its construction on the foundation of Ibrahim was the right thing to do. Nevertheless, he abandoned the idea due to his regard for the people's welfare.

*'Also, when he bade them consider their pilgrimage (*hajj*) as a 'umrah, they said: How is that possible, since we have stated [our intention of making] the hajj? And they abstained. This shows a contradiction to the text by way of custom, which is similar to what we are considering.*

Also, what is related by Al-Mawsili- concerning a man who entered the mosque to pray, and whose appearance pleased the Companions-that the Prophet told Abu Bakar, 'Go and kill him'. When he went he found him praying, so he let him alone. Then he bid 'Umar [do the same], but the two returned

The preceding citation reveals three reasons laid down by Ṭūfī in justifying his theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ* as well as of *Ijmā*^{c}. In addition to the three reasons that he draws up, Ṭūfī also elaborates with juristic examples and evidences to support them. As the second stage of this analysis, at this juncture, Ṭūfī's theory will be examined and discussed including arguments and juristic examples quoted from reliable sources. It is to be borne in mind that there are many findings of examination and analysis made by later jurists concerning Ṭūfī's theory, however, these will not be referred to until the present writer concludes his own findings. This approach is employed in order to avoid any bias and prejudice that may occur in analysing Ṭūfī's theory should conclusion coincide with the finding of later jurists. In order to begin the examination and analysis of Ṭūfī's theory, there are three main points to be discussed on as follows;

a) The first point

The *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others' as the basis of discussion on Tufi's much

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*saying, How can I kill a man while he is praying?'. The he bid 'Ali kill the man, but when he sought him he did not find him. Thereupon the Prophet said: 'If he had been killed, no two people of my Community would have disagreed with one another.' Therefore, these two companions abandoned the ordinance (*naṣṣ*) with no probative evidence [to back them up] than their approval of his coming to worship. It cannot be said that they ignored this ordinance to kill the man on the basis of his having said: 'I have been forbidden to kill those engaged in prayer, 'for the latter ordinance is abrogated by the former, which is more recent and particular to this man. It seems that their refusal to kill him indicates nothing more than their discretionary concern for equity (*istiḥsān*), which pertains to the matter concerning us here, [i.e] acting against prescriptive ordinances and the like by [invoking]* maṣlaḥa. *To be sure, the prophet did not rebuke them, but let them go their own way and allowed them to exercise independent judgment, for he recognised [the purity of] their intention and their sincerity. And so it is anyone who gives priority to the* maṣlaḥa *of the people over the rest of the legal sources, for the sole purpose of improving their affairs, regulating their condition, and obtaining what God has granted them in the way of well-being, and bringing them into agreement out of their former disharmony. It is necessary that this be permissible, if not altogether obligatory'.*
'It is necessary, therefore, that the priority given to regard for the maṣlaḥa over the rest of the legal sources be one of those questions requiring independent judgment (ijtihād) at the very least, or else it is a weighty and obligatory [matter], as we have already said'.

debated theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*.

Within the framework of Islamic jurisprudence, the question may be raised as to how the connection is made between the former and the latter, particularly the theory of *maṣlaḥa* itself in terms of juristic discussion. In other words, does Ṭūfī have the juristic approach in correlating the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others', and the theory of *maṣlaḥa.* It is vital to clarify this point before further discussion concerning Ṭūfī's theory takes place. In order to deal with this question, Ṭūfī's approach in elaborating the *Ḥadīth* as interrelated with the theory of *maṣlaḥa* is examined in the light of Islamic jurisprudence.

The main principle arising from the prophet's *Ḥadīth* ('You should neither harm yourself nor cause harm to others') concerns forbidding any actions and deeds that cause harm to one's own person or that of another. In conjunction with the technical definition of the term *maṣlaḥa* which refers to al-Ghazāli's point of view, the main principle of the *Ḥadīth* is synonymous. To al-Ghazāli, the first appearance of *maṣlaḥa* is an expression for seeking something useful, whilst simultaneously indicating the removal of something harmful[34]. In building up the legitimacy of *maṣlaḥa,* al-Ghazāli insists that it ought to link with the subject of *Maqāṣid al-Sharīᶜa,* which concerns the preservation the five principles; religion, life, lineage, intellect and property[35]. To some extent, al-Ṣanᶜāni also shared the same view as Ṭūfī concerning this subject in his analysis of the *Ḥadīth* of the prophet; 'You should

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[34] al-Ghazāli, *al-Mustasfa*,v.1,p.286-287.
[35] *Ibid.*

neither harm yourself nor cause harm to others'. To al-Ṣanᶜāni, apart from the forbidding of harm indicated by the *Ḥadīth,* it is also important to legalise *maṣlaḥa* as the Islamic legal principle in accordance with averting from harm[36].

To some extent, the *Ḥadīth* of the prophet; 'You should neither harm yourself nor cause harm to others' has been perceived differently by *Ḥadīth* scholars in terms of analysis and study. To Imām Mālik, the *Ḥadīth* is examined under the topic of judgement (in Arabic; *al-'Aqḍīyya*) which interrelates with the ruling of public utility, (*al-Qaḍā' fi al-Mirfaq*)[37], whereas, in Ibn Ḥajar al-ᶜAsqalāni's analysis of the *Ḥadīth,* it is studied under the topic of business transactions (in Arabic; *al-Buyūᶜ*), which interconnects with the issue of the development of barren lands, (*Ihyā' al-Mawāt*)[38]. Juristically, both of the *Ḥadīth* scholars i.e. Imām Mālik and Ibn Ḥajar al-ᶜAsqalāni have examined the *Ḥadīth* of the prophet, 'You should neither harm yourself nor cause harm to others', in accordance with the subject of *maṣlaḥa;* however, the former has discussed the *Ḥadīth* under the principle of public utility, while the latter has studied the *Ḥadīth* under the heading of business transactions under the perspective of the cultivation of barren lands. To put another way, as discussed among *Ḥadīth* scholars, the *Ḥadīth* of the prophet, 'You should neither harm yourself nor cause harm to others', is interconnected with the subject of *maṣlaḥa* in which ways can be discussed from many perspectives such as judgement, business transaction and the like.

At this point, it can be concluded that Ṭūfī's approach in analysing the *Ḥadīth* of the prophet, 'You should neither harm yourself nor cause harm to others' as

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[36] al-Ṣanᶜāni, *Subul*,v.ii,p.84.
[37] Mālik, *Muwaṭṭā'*,p. 134
[38] Ibn Ḥajar, *Bulūgh al-Marām*,p.272.

interrelated with the subject of *maṣlaḥa* is juristically accepted by many prominent *Ḥadīth* scholars such as Imām Mālik and Ibn Ḥajar al-ᶜAsqalāni who share the same approach. To some extent, Ṭūfi's elaboration of the *Ḥadīth* of the Prophet s.a.w concerning the concept of *maṣlaḥa* is in accordance with *Maqāṣid al-Sharīᶜa.*

b) The second point

As Ṭūfi claims, the texts are at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). Thus, they are the cause of disagreement in formulating judgments, which is legally blameworthy. Regard for *maṣlaḥa*, however, is a real matter in itself that occasions no disagreement, and is, consequently, the cause of agreement which is legally desirable, and thus the more appropriate to follow.

The basic idea in the second point, which seems to be the subject of dispute, is Ṭūfi's view that the texts are at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). This basic idea raises the following question; does the subject of texts which are in conflict of evidence (*al-Taᶜāruḍ*) is really exist or is this a matter of imagination among Muslim jurists? Again, on what basis does the subject of *Taᶜāruḍ* (conflict of evidence) stand? These questions will be discussed from the perspective of Islamic jurisprudence in order to reach an academic solution concerning the subject of *Taᶜāruḍ* or conflict of evidence before further examining Ṭūfi's view in this regard.

To return to the historical development of Islamic jurisprudence, the proper treatment of *al-Taᶜāruḍ* (conflict of evidence) as well as its solution, *Tarjīḥ*[39], has

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[39] Bakar, *Conflict*, p.56

been much discussed by Muslim jurists particularly Imām al-Shāfiᶜi through his valuable works such as *Ikhtilāf al-Ḥadīth* and *Ikhtilāf Malik wa al-Shafiᶜi*[40]. According to Imām al-Shāfi'i's work, *Ikhtilāf al-Ḥadīth,* a large number of conflicting *Hadith* has been revealed relating to the category of the *mubāḥ* (what is permitted) such as the *Ḥadīth* of recitation in the prayer or *tashahhūd,* taking a bath on Friday, women going out to the Mosque and so on[41]. In order to deal with the conflicting *Ḥadīth* in *Ikhtilāf al-Ḥadīth,* Imām al-Shāfiᶜi applies a particular method of reconciliation (*tawfīq*) and harmonization (*jāmiᶜ*) by means of specifying the general (*takhsīṣ al-ᶜamm*) or by considering the differences between events (*taqyīd al-mutlāq*)[42]. It appears, then, that Imām al-Shāfiᶜi also applies the method of *Bayān* or explanation as well as *Ta'wīl* or interpretation in dealing with the ambiguities surrounding the Prophetic traditions, whilst not contradicting other *Ḥadīth*[43].

Moreover, the subject of *al-Taᶜāruḍ wa al- Tarjīḥ,* the study of legal texts that refer to the *Qur'ān* and the *Ḥadīth* in terms of interpretation and the validity of sources is always a major controversy amongst Muslim jurists[44]. The *Ḥadīth* in particular is therefore commonly examined by a form of the *Ḥadīth* criticism as to both its validity of legal text and chain of transmission (*Isnād*)[45]. Therefore, the conflict of evidence concerning the legal texts of *Ḥadīth* as well as the chain of transmission (*Isnād*) of the *Ḥadīth* continues to exist in the Islamic legal theory.

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[40] ᶜAli, *Imām al-Shāfiᶜī,* p. 78
[41] al-Shāfiᶜi, *Ikhtilāf al-Ḥadīth,*p.43-48.
[42] *Ibid.;* al-Khulī, *Miftāḥ,*p.159.
[43] Ibn Khaldūn, *al-Muqaddima,*p.63; al-Khaṭīb, *Uṣūl,*p.283.
[44] al-Durayni, *al-Manāhij,*p.7-12.
[45] Ibn Ḥazm, *al-Iḥkām,*v.i,p.85

In conjunction with his view concerning the existence of conflict of evidence among legal texts, Ṭūfi elaborates the effect of conflict on the validity and its chain of authority of the *Ḥadīth*, which took place particularly during his life. According to Ṭūfi, there were many facts concerning the *Ḥadīth* on the subject of *al-Taᶜāruḍ wa al-Tarjīḥ*, due to the followers of each school such as Malikites, Shafi'ites, Hanafites and Hanbalites, which began to transmit invalid *Ḥadīth* exalting the merits of its *imām*. Furthermore, in order to support his point of view, Ṭūfi quotes in the second reason Abu Faraj al-Shirazi's analysis, which reveals as forgery with no factual basis the *Ḥadīth*, which each school of law exalts the merits of *imam*. At this stage, Ṭūfi's arguments on the existence of the texts which are at variance and in contradiction (*mukhālafa mutaᶜāriḍa*) that specifically refer to the *Ḥadīth*, (as has been elaborated in the second reason of his theory), is juristically proven by referring to the form of *al-Taᶜāruḍ wa al- Tarjīḥ* as evidence of its existence.

Ṭūfi's argument can be employed to rebut Būṭi[46] as well as Muṣṭafa Zayd[47] on the point that *Nuṣūṣ* or legal texts were never at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). Būṭi argues specifically that the *Nuṣūṣ* of the *Qur'ān* were never in disagreement and in contradiction (*mukhālafa mutaᶜāriḍa*); he adds that disagreement between the *Nuṣūṣ* occurs on only the basis of understanding and interpretation, never in terms of at variance and in contradiction (*mukhālafa mutaᶜāriḍa*)[48]. It should be said at this juncture, that Būṭi overlooked Ṭūfi's second reason elaborating the numbers of *Ḥadīth* which were at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). In the second reason of his theory, Ṭūfi never mentions disagreement between the *Nuṣūṣ* of the *Qur'ān*, pointing out only numbers of *Ḥadīth*

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[46] al-Būṭi, *Ḍawābiṭ*, p.186-187.
[47] Zayd, *al-Maṣlaḥa*, p.145.
[48] *Ibid.*

which were at variance and in contradiction. Therefore, Būṭi's analysis clearly overlooks the reliable source which Ṭūfi presents.

c) The third point

Ṭūfi claims that in the case of conflict and disagreement between legal texts, the *Maṣlaḥa* necessarily takes priority by way of explaining and specifying, not by way of suspending and denying validity, just as the *Ḥadīth* takes priority over the *Qur'ān*, through explanation.

Ṭūfi's statement above indicates the analogy between his theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ* and the condition of the *Ḥadīth* which takes priority over the *Qur'ān*, by way of explaining the latter. Before further analysis of the priority of *Maṣlaḥa*, it is important to study the legal texts as a subject of analogy as Ṭūfi claims in his theory. In Islamic legal theory, specifically by reference to *Tafsīr al-Qur'ān*, it is unanimously accepted by Muslim scholars that the *Sunna* or the *Ḥadīth* may necessarily take priority over the *Qur'ān* in terms of interpretation, explanation and justification. In addition, as al-'Awzā^{c}i (d.157H/774M) citing Ḥasan b. ^{c}Aṭiya (d.130H/748M) states: 'Revelation came to the messenger of God, and Jibriel provided the *sunna*, which explains it'. He also adds; 'The holy *al-Qurān* needs the *sunna* more than the *sunna* needs the holy *al-Qurān*[49]. In order to more fully understand the function of *al-Ḥadīth* as a commentary on the holy *al-Qurān*, there

[49] Ibn ^{c}Abd. al-Barr, *Jāmi^{c}*, ii. 234.

follows a brief summary of the conclusion of *Sunna* or *al-Ḥadīth* rules of the holy *al-Qurān*[50]:

> 'There are at least five functions of the *Sunna* over the *Qur'an.* Firstly, the *sunna* details that which is general in the holy *al-Qurān*, for example, the five times of prayer, the amounts due for *zakat,* the beneficiaries of *zakat,* and the rule of pilgrimage. Secondly, the *sunna* clarifies what is obscure in the holy *al-Qurān,* especially the meanings and applications of words and expressions. Thirdly, the *sunna* contains acts which demonstrate the meanings of the revealed text. Fourthly, the *sunna* gives answers to questions about the rules of worship and behaviour. Fifthly, the *sunna* restricts that which is absolute in the holy *al-Qurān.* For example, in Q. 5/38, it is said that the hands of a thief should be cut off as punishment. The *sunna* restricts that penalty to the amputation of the right hand'.

The preceding points clarify how the *Sunna* as a secondary source of Islamic law takes priority over the *Qur'ān* as the primary source of Islamic law by explaining the latter but not by suspending or denying its validity. From this point, an important question arises; does the analogy of the *Sunna* as taking priority over the *Qur'ān* apply to the theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ* where conditions conflict one with the other?

To address this question, in the third reason of Ṭūfī's theory, there is evidence which is advanced to support the theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ* as follows; The first piece of evidence relates to Ibn Masᶜūd's opposition to the text and consensus as regards *tayammum*, in favour of the benefit of precaution in matters of worship. The second point of evidence pertains to the *Ḥadīth* of the Prophet s.a.w which sets out the concept of demolishing the *Kaᶜbah* and building it anew on the foundations of Ibrāhim should the people of Mekka refuse to convert to Islam. Eventually, the Prophet s.a.w abandoned this concept due to his concern for the

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[50] al-Sibāᶜī, *al-Sunna*, p.344

people's welfare or *Maṣlaḥa*. The third piece of evidence concerns the case of Abū Bakar and ᶜUmar who ignored the Prophet's order assigning priority to the *Maṣlaḥa* of the people over the rest of the legal sources when they killed a man at prayer in the mosque. According to Ṭūfī, the Prophet eventually agreed with the decision made by his two companions on the basis of exercising independent judgment, for he recognised [the purity of] their intention and their sincerity.

From the three juristic evidences suggested by Ṭūfī in his argument to legalise his theory of the priority of *Maṣlaḥa* over the legitimacy of *Naṣṣ*, the validity of each peace of evidence is supported mostly by reliable sources. However, the evidence advanced by Ṭūfī, categorises these as the area of *ᶜibāda* or worship not that of *Muᶜāmala* and *ᶜAdat*. At this stage, Ṭūfī seems to contradict his previous statement that the only area applicable for his theory is that of *Muᶜāmala* and *ᶜAdat*.

In conclusion, for the most part, Ṭūfī advances evidence from reliable sources; he then concludes that juristic solutions are provided through the theory of the priority of *Maṣlaḥa* over the *Naṣṣ* when they are at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). If this were the reasoning behind Ṭūfī's much debated theory, it would be concluded that the analogy he made with the priority of the *Sunna* over the legal texts of the *Qur'ān* is juristically accepted by reference to the specific cases of the *Ḥadīth* which were at variance and in contradiction (*mukhālafa mutaᶜāriḍa*). Much criticism has been levelled at this stage from many aspects and perspectives, but it is not the main objective of this chapter to take part in this debate. Ironically, by way of acknowledgment of Ṭūfī's theory, he did his best to develop a new theory as a Muslim jurist out of a sense of responsibility towards solving the critical phenomena

of the variance and contradiction of the *Ḥadīth*, which occurred during his life. It is also important to note that many Muslim jurists have developed the theory of the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* due to its significance in the concept of *al-Maṣlaḥa wa al-Naṣṣ.* The following section will therefore discuss the theory juristically.

2.2 The theory of the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* and the concept of *al-Maṣlaḥa wa al-Naṣṣ.*

The Muslim jurists are in agreement that the theory of levels of *Ḍarūrīyya* (lit. necessities), *Ḥājīyya* (lit. needs), and *Taḥsīnīyya* (lit. improvements) are originally rooted in the concept of *Maṣlaḥa* or *Maqāṣid al-Sharī*ᶜ*a,* designed and discussed by al-Ghazāli in *al-Mustasfa* [51] and followed then by many Muslim jurists in their works such as al-Shāṭibi in *al-Muwāfaqāt* [52]. As Wael B. Hallaq asserts, the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* are very close to Ghazali's taxonomy, which is in turn by al-Shāṭibi as the existential purpose of the *Sharī*ᶜ*a;* to be the protection and promotion of the three legal categories[53]. In other words, *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* are three levels of legal categories, which have been examined under the heading of *Maṣlaḥa* or *Maqāṣid,* also defined as the aims of the law.

Notwithstanding *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* as three legal categories in accordance with the aims of the law, these have been classified as a medium or vehicle in achieving the aims or objectives of Islamic law. As Jamāl al-Dīn ᶜAṭṭīya claims, the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* are not concerned with the

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[51] al-Ghazāli, *al-Mustasfa,* v.i, p.286.
[52] al-Shāṭibi, *al-Muwāfaqāt,*v.ii,p.4.
[53] Hallaq, *A History,* p.168.

objectives of the law but act only as a medium in achieving the objectives of the law[54].

Jamāl al-Dīn ᶜAṭṭīya cites juristic examples to support his point of view regarding the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* as the medium to achieve the objectives of Islamic law,[55]. In order to elaborate his theory, food is seen as a medium to achieve the objective of preservation of life, which is divided into three levels. The first is *Ḍarūrīyya,* the basic necessity to eat the right kind of food to maintain a body healthy. It would be harmful to the body to be deprived of food, thus, food is a necessity (*Ḍarūrīyya*). The second level is *Ḥājīyya,* the need to have a quality food such as fresh or organic products. The third is *Taḥsīnīyya,* 'improvement' in eating food; that is, one should demonstrate judgement, good manners, restraint and the like. This example suggests that food becomes a medium within three types of level to achieve the objective of preserving the life of humankind[56].

In order to correlate the theory of *al-Maṣlaḥa wa al-Naṣṣ* with the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya,* an important question arises; what basis, criterion or standard (*Miᶜyār*) could the theory be inter-related juristically with the three mediums to achieve the objectives of Islamic law? For Jamāl al-Dīn ᶜAṭṭīya [57], there are two types of *Miᶜyār* which accord with the correlation between the theory of *al-Maṣlaḥa wa al-Naṣṣ* and the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya.*

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[54] ᶜAṭṭīya, *Naḥw al-Tafᶜīl,* p.51
[55] *Ibid.*,p.51-52.
[56] *Ibid.*
[57] *Ibid.*,p.59-60.

The first type of *Mi^{c}yār* refers to the nature of *al-Ḥukm al-Taklifi* (defining law) which defines rights and obligations. Should *al-Ḥukm al-Taklifi* constitutes the type of *wājib* (obligatory) or the type of *muḥarrām* (unlawful), it could be possibly referred to as *Ḍarūrīyya.* Alternatively, should *al-Ḥukm al-Taklifi* constitutes the type of *mandūb* (commendable) or the type of *makrūh* (reprehensible), it could be referred to as *Ḥājīyya.* Finally, should *al-Ḥukm al-Taklifi* constitutes the type of *mubāḥ* (permissible), it could be referred to as *Taḥsīnīyya.* To Jamāl al-Dīn ^{c}Aṭṭīya, this type of *Mi^{c}yār* could be termed as *Mi^{c}yār Shaklī*[58]. In addition, the correlation between the theory of *al-Maṣlaḥa wa al-Naṣṣ* and the type of *Mi^{c}yār Shaklī* is proven by the existence of enormous numbers of verses in the *Qur'ān* and in the *Ḥadīth* dealing with *al-Ḥukm al-Taklifi* directly; this constitutes the ruling of *wājib, muharrām, mandūb, makrūh* and *mubāḥ*[59].

The second type of *Mi^{c}yār* in this regard has been termed *Mi^{c}yār Mawḍū^{c}ī,* which refers to the level degree of *Maṣlaḥa* or the level degree of *Mafsada,* whereby both levels interconnect with *al-Ḥukm al-Taklifi.* Should the level degree is high in *Maṣlaḥa* or *Mafsada*, it could possibly be referred to as *Ḍarūrīyya;* However, if low, it could be defined as *Taḥsīnīyya.* The middle level of degree either in *Maṣlaḥa* or in *Mafsada* could be referred to as *Ḥājīyya*[60]. In the case of *Mi^{c}yār Mawḍū^{c}ī,* the common indicators of *al-Ḥukm al-Taklifi* such as *wājib, muḥarrām, mubāḥ, mandūb* and *makruh* will not be included in the justification of every single level in *Mi^{c}yār Mawḍū^{c}ī.* However, the indicator of *Maṣlaḥa* or the indicator of *Mafsada* will important. In this regard, as al-Shāṭibi asserts, the typical indicator of *Maṣlaḥa* is the form of *'awāmir,* (commandments) particularly from the *Qur'ān* and the *Sunna.* On

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[58] *Ibid.*
[59] *Ibid.*
[60] *Ibid.*

the other hand, the typical indicator of *Mafsada* is the form of *nawāhi,* (forbiddances) particularly as found in the *Qur'ān* and the *Sunna*[61]. Thus, the form of *'awāmir* (commandments) and the form of *nawāhi* (forbiddances) derived from the *Qur'ān* and the *Sunna* demonstrate correlation between the theory of *al-Maṣlaḥa wa al-Naṣṣ* and the type of *Miᶜyār Mawḍūᶜī.*

It is important to point out that the two types of *Miᶜyār* (including *Shakli* and *Mawḍūᶜī*) are two indicators signifying the correlation between the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* and the theory of *al-Maṣlaḥa wa al-Naṣṣ.* For Imām ᶜIzz al-Dīn ᶜAbd al-Salām[62], the concept of *maṣlaḥa* as it accords with *al-Ḥukm al-Taklifi* could be divided into three categories, which refer to the level degree of *maṣlaḥa,* as follows; firstly, *Maṣāliḥ al-Mubāḥāt;* secondly, *Maṣāliḥ al-Mandūbāt;* thirdly, *Maṣāliḥ al-Wājibāt.* He adds that the level degree of *Mafsada* could be divided into two categories, as follows; firstly, *Mafāsid al-Makrūhāt;* and secondly, *Mafāsid al-Muḥarramāt*[63].

These categorizations drawn up by Imām ᶜIzz al-Dīn ᶜAbd al-Salām, as examined above, obviously employ two types of *Miᶜyār;* that is, *Shakli* and *Mawḍūᶜī,* two concepts which could be applied simultaneously. Furthermore, in his effort to collate *Miᶜyār Shakli* with *Miᶜyār Mawḍūᶜī,* new terminologies have been developed whereby the five terms (*Maṣāliḥ al-Mubāḥāt, Maṣāliḥ al-Mandūbāt, Maṣāliḥ al-Wājibāt, Mafāsid al-Makrūhāt,* and *Mafāsid al-Muḥarramāt*) are introduced with specific reference to the theory of *al-Maṣlaḥa wa al-Naṣṣ.* These terminologies clearly indicate the connection between *al-Ḥukm al-Taklifi* and the concept of

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[61] al-Shāṭibi, *al-Muwāfaqāt,*v.iii,p.153.
[62] ᶜIzz al-Dīn, *Qawāᶜīd,*v.i,p.8-9.
[63] *Ibid.*

Maṣlaḥa and also with *Mafsada*. Nevertheless, Imām ᶜIzz al-Dīn ᶜAbd al-Salām's categorization of levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* or *Takmīlī* appears somehow unclear until elsewhere he adds further explanation. For Imām ᶜIzz al-Dīn ᶜAbd al-Salām, the level of *Ḍarūrīyya* can be divided into two categories as follows; firstly, *al-Ḍarūrīy al-Ukhrāwī,* whereby the Muslim submits by carrying out stated obligations and avoiding unlawful actions, and secondly, *al-Ḍarūrīy al-Dunyāwīy,* the basis of daily life such as food, drinks, clothes, house, marriage and the like[64]. He also claims that the level of *Ḥājīyya* can be attained by carrying out *al-Sunan al-Mu'akkada,*(commendable actions) and *al-Shaᶜā'ir al-Ẓahira,*(external rituals)[65]. For the level of *Taḥsīnīyya* or *Takmili,* he advocates it by actions such as eating good food, drinking quality water, living in a luxury house and the like[66].

The foregoing represents a juristic discussion on the development of the theory of the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* designed by Muslim jurists in their analyses within the framework of the concept of *al-Maṣlaḥa wa al-Naṣṣ*. This juristic discussion has also examined juristic terminologies based on elaboration of the terms *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya,* such as that undertaken by Imām ᶜIzz al-Dīn ᶜAbd al-Salām. To some extent, the present discussion also highlights the theory of the levels of *Ḍarūrīyya, Ḥājīyya,* and *Taḥsīnīyya* in dealing with juristic methods such *Miᶜyār Shakli* and *Miᶜyār Mawḍūᶜī,* in that both are interrelated with the ultimate objectives of Islamic law (*Maqāṣid al-Sharīᶜa*).

In addition, in Islamic legal theory, discussion on the five constituents of the levels of *Ḍarūrīyya* is of interest to Muslim jurists. Some, for example are concerned

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[64] ᶜIzz al-Dīn, *al-Fawā'id,* p.38-40
[65] *Ibid.*
[66] *Ibid.*

with the order of priority the five constituents are placed, and the limitations either five or six constituents in the levels of *Ḍarūrīyya.* Discussion in this respect is based on theories of Islamic legal principles developed by Muslim jurists through the juristic approach which accord with Islamic jurisprudence. Eleven views of Muslim jurists have therefore been tabulated for close analysis. It will be seen that there are five or six priority levels of *Ḍarūrīyya,* each views will therefore be examined in the light of the concept of *al-Maṣlaḥa wa al-Naṣṣ.*

2.2.1 The Priority Levels of *Ḍarūrīyya* ; The Views of Muslim Jurists

Levels / Jurists	1	2	3	4	5	6
Ghazāli[67]	Religion	Life	Intellect	Lineage	Property	
Al-Rāzi[68]						
a)	Life	Property	Lineage	Religion	Intellect	
b)	Life	Intellect	Religion	Property	Lineage	
Al-Āmidi[69]	Religion	Life	Lineage	Intellect	Property	
Ibn Ḥajib[70]	Religion	Life	Lineage	Intellect	Property	
Al-Qarāfi[71]	Life	Religion	Lineage	Intellect	Property	Honour
Al-Bayḍāwi[72]	Life	Religion	Intellect	Property	Lineage	
Ibn Taymīyya[73]	Life	Property	Honour	Intellect	Religion	
Ibn Subki[74]	Religion	Life	Intellect	Lineage	Property	Honour
Shaṭībi [75]						
a)	Religion	Life	Lineage	Property	Intellect	
b)	Religion	Life	Intellect	Lineage	Property	
c)	Religion	Life	Lineage	Intellect	Property	
Al-Zarakshi[76]	Life	Property	Lineage	Religion	Intellect	Honour
Ibn ᶜĀshūr[77]	Religion	Life	Intellect	Property	Lineage	

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[67] al-Ghazāli, *al-Mustasfa*,v.ii,p.258.
[68] al-Rāzi, *al-Maḥṣūl*,v.ii, p.220 and p.612.
[69] al-Āmīdī, *al-Aḥkām*, v.ii,p.252
[70] Ibn Ḥajib, *Ḥāshia*,v.ii,p.153
[71] al-Qarāfi, *Sharḥ*,p.391
[72] al-Bayḍāwi, *Minhāj*,p.59
[73] Ibn Taymīyya, *Majmūᶜ*,p.343
[74] Ibn Subki, *Jamᶜ*,v.ii,p.281
[75] al-Shāṭibi, *al-Muwāfaqāt*,v.i,p.38,v.3,p.47 and *al-Iᶜtiṣām*,v.ii,p.189.
[76] al-Zarakshi, *al-Baḥr*,v.v,p.206
[77] Ibn ᶜĀshūr, *Maqāṣid*,p.89.

Diagrammatic representation as shown clearly indicates that religion and way of life have been chosen by the eleven jurists as the first level of *Ḍarūrīyya,* beginning with al-Ghazāli, and followed by al-Āmidi, Ibn Ḥajib, Ibn Subki, Shāṭibi and Ibn ᶜĀshūr. This can be explained by the concept of *maṣlaḥa* which preserves firstly religion, and subsequently life. This group of jurists are thus unanimous in believing that most Islamic rulings are concerned firstly with religion and then life[78]. The legitimacy of *Jihād,* and the punishment of *ḥudūd* and *Qiṣāṣ* are among factual examples of this; in accordance juristically with the theory of *al-Maṣlaha wa al-Naṣṣ*. This derives from the fact that there are an enormous number of verses or legal texts from the *Qur'ān* and the *Ḥadīth* concerning the preservation of religion and life particularly through the form of *Jihād*[79], the punishment of *ḥudūd*[80] and *Qiṣāṣ*[81].

It is interesting to note here that five jurists namely al-Rāzi, al-Qarāfi, al-Bayḍāwi, Ibn Taymīyya and al-Zarakshi, have agreed upon life as the first level of *Ḍarūrīyya* instead of religion, although without justification. Given this lack of justification, it is assumed (based on the arguments of al-Ghazāli and ᶜIzz ᶜAbd al-

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[78] See al-Ghazāli, *al-Mustasfa*,v.1,p.481.

[79] Exemplified as follows;

In *Sura Al-Baqarah*: 190; Allah s.w.t says; '*And fight in the Way of Allah those who fight you,. but transgress not the limits. Truly, Allah likes not the transgressors*'.

[80] The exemplify in this regards as follows;

Narrated ᶜĀ'isha r.a; Allah's Messenger s.a.w said; '*Are you interceding regarding one of the punishment prescribed by Allah? He then got up and gave an address saying, 'O people, what destroyed your predecessors was just that when a person of rank among them committed a theft, they left him alone; but when a weak one of them committed a theft, they inflicted the prescribed punishment on him*'.

[81] The exemplify in this regards as follows;

In *Sura Al-Baqarah*: 178; Allah s.w.t says; '*O you who believe! Al-Qisas* (the Law of Equality in punishment) *is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female. But if the killer is forgiven by the brother* (of the relatives, etc.) *of the killed against blood-money, then adhering to it with fairness and payment of the blood-money to the heir should be made in fairness. This is an alleviation and a mercy from your Lord. So after this whoever transgresses the limits* (i.e. kills the killer after taking the blood-money), *he shall have a painful torment*'.

Salām) that under particular circumstances, it is permitted to give priority to life instead of religion, such as, permission to use the words of *riddah* (apostasy) under the circumstances of compulsion[82]. In addition, Ibn Taymīyya's ruling on life as the first level of *Ḍarūrīyya* has brought significance to studies in this subject. According to Dr. Muḥammad ᶜAmmāra, during Ibn Taymīyya's life there was political instability under the Mamālik emperor; thus, Ibn Taymīyya has perhaps decided upon life as the first level of *Ḍarūrīyya* due to the necessity of preserving the life of *ummah* during that time[83]. Juristically, Ibn Taymīyya's ruling clearly indicates the application of the theory of *Maṣlaḥa* in preserving human life, thus demonstrating that the objectives of Islamic law (*Maqāṣid al-Sharᶜīyya*) are always parallel with evolution and priorities of human life.

As shown by diagram, opinions of Muslim jurists differ upon third and the fourth levels of *Ḍarūrīyya*. Al-Ghazāli, al-Bayḍāwi, and Shāṭibi for example, have chosen intellect and lineage interchangeably as the third and the fourth levels of *Ḍarūrīyya*. The justification of the intellect as the third level of *Ḍarūrīyya* basically refers to the theory of *maṣlaḥa*, whereby the preservation of intellect is due to the efficacy of the human intellect and to prevent the dysfunction that manifests itself as a consequence of any kind of disruption particularly, by drinking alcohol. Thus, the punishment for alcohol consumption in Islamic law is a deterrent intended to avert the disruption of human intellect[84]. On the other hand, the justification of lineage as the fourth level of *Ḍarūrīyya* is due to its lesser importance compared with the intellect. Though the preservation of lineage means to conserve the quality of Muslim lineage, the preservation of intellect is however much more important; this is due to the

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[82] *Ibid.*,v.i,p.258. and ᶜIzz al-Dīn, *al-Fawā'id*,p.58-64.
[83] ᶜAṭṭīya, *Naḥw Taf'īl*,p.46.
[84] al-Ghazāli, *al-Mustasfa*,v.i,p.286.

concept of the intellectual faculty of the individual, which becomes the basic criterion of *taklīf,* (i.e. the law concerns itself with circumstances that affect the sanity and capacity of the individual such as duress, minority, intoxication, interdiction, error and insanity[85]).

Instead of the intellect and lineage being interchangeable as the third and fourth level, honour has been chosen as the third level of *Ḍarūrīyya.* As can also be seen from tabulated opinions, however, Ibn Taymīyya chooses honour as the third level of *Ḍarūrīyya,* although no justification is made for this. Again, honour has been chosen as the sixth level of *Ḍarūrīyya,* by al-Qarāfī, Ibn Subki and al-Zarakshi; it is assumed that ruling upon honour as the sixth level of *Ḍarūrīyya* is due to the *hadith;* "So he who guards against doubtful things keeps his religion and honour blameless"[86]. In this regard, honour has a similar position with religion as a result of a stand made by a good Muslim against doubtful things. Thus, the concept of *maṣlaḥa* in the preservation of religion as well as honour is evident through the *Ḥadīth.*

It can also be seen from the diagram that property is chosen as level five of *Ḍarūrīyya* by many Muslim jurists such as al-Ghazāli, al-Āmidi, Ibn Ḥajib, al-Qarāfī, Ibn Subki and Shāṭibi. based on the *Ḥadīth;* 'He who died in defence of his property is a martyr'[87], it is clear that these Muslim jurists are in agreement that property has become level five of *Ḍarūrīyya* after religion, life, intellect and lineage.

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[85] Kamali, *Principles*, p.351.

[86] The text of the *Ḥadīth;*

قَالَ رَسُولُ اللهِ صلّى اللهُ عَلَيْهِ وَسَلَّمَ :فَمَنِ اتَّقَى الشُّبُهَاتِ اسْتَبْرَأَ لِدِينِهِ وَعِرْضِهِ

This *Ḥadīth* narrated by Bukhāri, *Ṣaḥīḥ,*no:50, Muslim, *Ṣaḥīḥ,*no:2996 and Tirmīdhi,*Sunan,* no:1126.

[87] The text of the *Ḥadīth:*

حَدِيثُعَبْدِ اللهِ بْنِ عَمْرٍو رَضِيَ اللهُ عَنْهُمَا قَالسَمِعْتُ رَسُولَ اللهِ صلّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ قُتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ

This *Ḥadīth* narrated by Bukhāri,*Ṣaḥīḥ,*no:2300, Muslim,*Ṣaḥīḥ,*no:202 and Tirmīdhi,*Sunan,*no.:1339.

Consequently, one may learn that if a person dies in the effort to preserve property, that person is classified as a martyr. In this regard, the preservation of property is obviously within the theory of *maṣlaḥa* that in accordance with the level of *Ḍarūrīyya.*

To sum up the discussion above, juristic opinion as tabulated is divergent on which constituent takes priority within the five or six levels of *Ḍarūrīyya.* This phenomenon indicates the variety of interpretations and choices of priority made by Muslim jurists concerning these levels of *Ḍarūrīyya.* Importantly, one may also conclude that al-Ghazāli's point of view on the five levels of *Ḍarūrīyya* is a basis and foundation for associated juristic discussion. In other words, the priority of the five levels of *Ḍarūrīyya* i.e. religion, life, intellect, lineage and property as laid down by al-Ghazāli subsequently becomes the basic framework for many Muslim jurists in their works concerning the theory of *maṣlaḥa* or *Maqāṣid al-Shar^{c}īyya.* As the theory of *Maqāṣid al-Shar^{c}īyya* becomes a juristic concept in this regard, therefore, the following section will discuss its connection with *naṣṣ* as the Islamic legal texts.

2.3 The theory of *Maqāṣid al-Shar^{c}īyya* in connection with *Naṣṣ.*

Juristically, the term *Maqāṣid al-Shar^{c}īyya* is interchangeable with the term *Maṣlaḥa.* Muslim jurists have discussed both terms in the light of Islamic legal theory. At this stage, their main concern is how both terms deal with *Naṣṣ* as Islamic legal texts. Therefore, the concept of *Maqāṣid al-Shar^{c}īyya* in connection with *Naṣṣ* will be discussed on in order to examine how the former has been developed juristically by Muslim jurists in dealing with the latter. This examination is vital in

terms of the theoretical development of *Maqāṣid al-Sharᶜīyya* in connection with *Naṣṣ*, as an integral part of the main concept of *al-Maṣlaḥa wa al-Naṣṣ*.

According to al-Shāṭibi, theoretically, this connection is significance to freeing humanity from the grasp of its own notions and desires, it justifies *Maqāṣid al-Sharᶜīyya* by referring to *Naṣṣ* that effect to be the servant of Allah by preference[88]. To some extent, al-Shāṭibi insists that the interest of humanity becomes a top priority in legislating to establish the legal principles of Islamic law that in accordance with the purposes of the Hereafter set apart from the purposes of the world[89].

In understanding the theory of *Maqāṣid al-Sharᶜīyya* in connection with *Naṣṣ*, many Muslim jurists have developed a juristic method which can be applied to identify the legal texts (*Naṣṣ*) (particularly in the *Qur'ān* and in the *Ḥadīth*) in harmony with the concept of *Maqāṣid al-Sharᶜīyya* as follows;

a) Identifying *Maqāṣid al-Sharᶜīyya* from the literal meaning of legal texts[90]

As the bulk of the legal texts in the *Qur'ān* as well as in the *Ḥadīth* have been revealed in the sense of literal meaning, the significance of these legal texts is therefore to deliver the message of *Maqāṣid al-Sharᶜīyya*, (the ultimate objectives of Islamic law) directly and definitively to humanity[91]. To Imām al-Shāfiᶜi, every single *Ḥadīth* revealed in the literal and general sense can be understood *per se* except where

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[88] al-Shāṭibi, *al-Muwāfaqāt*, v.ii,p.168.
[89] al-Shāṭibi, *Op.cit.*
[90] al-Juwayni, *al-Burhān*, v.i,p.280
[91] *Ibid.*

there is an ambiguity[92]. Additionally, Imām Bayhaqi insists that priority must be given to the literal meaning in the *Ḥadīth* rather than interpreting any ambiguity[93]. To illustrate this method, some verses or legal texts (from the *Qur'ān* and in the *Ḥadīth*) now follow;

> i). Allah s.w.t. says; 'Allah intends for you ease, and He does not want to make things difficult for you'[94].
>
> ii). Allah s.w.t. says; 'He has chosen you (to convey His Message of Islamic Monotheism to mankind by inviting them to His religion of Islam), and has not laid upon you in religion any hardship'[95].
>
> iii). Narrated (Ibn 'Abbas) r.a.: Allah's Messenger s.a.w said, 'You should neither harm yourself nor cause harm to others'[96].

To Nu'man Jughaim, the verses in (i) and (ii) clearly signify the ultimate objectives of *Shari^{c}a* or *Maqāṣid al-Shar^{c}īyya;* that is, to create ease (particularly for the Muslim) in practising the Islamic religion as the way of life and, therefore, to avoid any difficulties and hardships[97]. Moreover, the *Ḥadīth* in (iii); signifies further ultimate objectives of *Sharī^{c}a* or *Maqāṣid al-Shar^{c}īyya,* that is to circumvent harm both to ourselves and to others. In this sense, the three legal texts above are categorised as definitive and direct legal texts that can be understood as conveying literal meaning. This elaboration thus shows the significance of the study of legal texts which are revealed as direct and definitive in the sense of literal meaning in accordance with the subject of *Maqāṣid al-Shar^{c}īyya* (the ultimate objectives of Islamic law).

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[92] al-Shāfi^{c}i, *al-Risāla,*p.341.
[93] al-Bayhāqi, *Manāqib,* v.ii,p.30.
[94] *al-Baqara;*185
[95] *al-Hajj;*78
[96] This *Ḥadīth* is reported by Aḥmad and Ibn Mājah. Ibn Mājah reported something similar to the aforesaid *Ḥadīth* from Abū Sa^{c}id's narration; it is found in *Al-Muwaṭṭā'* in a *Mursal* form.
See Ibn Ḥajar al-^{c}Asqalānī, *Bulūgh al-Marām,*p.324.
[97] Nu^{c}man, *Ṭuruq,*p.65

b) Identifying *Maqāṣid al-Sharᶜīyya* through the form of *awāmir* (commandments) and the form of *nawāhi* (forbiddances) that derive from the *Qur'ān* and the *Ḥadīth* [98].

Thus, apart from the literal meaning of legal texts in the *Qur'ān* and the *Ḥadīth* in identifying the concept of *Maqāṣid al-Sharᶜīyya*, the form of *awāmir* (commandments) and the form of *nawāhi* (forbiddances) that derive from the formers can also be accepted to identify the latter. To Imām al-Shāṭibi, the great part of the form of *awāmir* (commandments) and the form of *nawāhi* (forbiddances) both from the *Qur'ān* and the *Ḥadīth* have conveyed the significance of *Maqāṣid al-Sharᶜīyya* in delivering the commandments and the forbiddances from the Lawgiver to humanity. In this respect, there are two types of the form of *awāmir* (commandments) and the form of *nawāhi* (forbiddances) revealed from the *Qur'ān* and the *Ḥadīth*, which are termed direct and indirect[99]. The following legal texts illustrate both types;

i) Direct type of *awāmir* (commandments) and *nawāhi* (forbiddances);

> Allah s.w.t. says; 'O you who believe! Fear Allah (by doing all that He has ordered and by abstaining from all that He has forbidden) as He should be feared. [Obey Him, be thankful to Him, and remember Him always], and die not except in a state of Islam' [as Muslims (with complete submission to Allah)][100]

> Allah s.w.t. says: 'And kill not anyone whom Allah has forbidden, except for a just cause (according to Islamic law). This He has commanded you that you may understand'[101].

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[98] al-Shāṭibi, *al-Muwāfaqāt*,v.iii,p.153
[99] *Ibid.*
[100] *Āli-ᶜImrān*: 102
[101] *Al-'Anᶜam*:151

ii) Indirect type of *awāmir* (commandments) and *nawāhi* (forbiddances);

Allah s.w.t. says; 'So whoever of you sights (the cresent on the first night of) of the month (of *Ramadan* i.e. is present at his home), he must observe *Saum* (fasts) that month'[102].

Allah s.w.t. says; 'And forbids *Al-Faḥsha'* (i.e. all evil deeds e.g illegal sexual acts, disobedience of parents, polytheism, to tell lies, to give false witness, to kill a life without right), and *Al-Munkar* (i.e. all that is prohibited by Islamic law: polytheism of every kind of evil deeds), and *Al-Baghy* (i.e. all kinds of oppression). He admonishes you, that you may take heed.'[103]

The first verse of type one above clearly highlights the objective of Islamic law in living as good believers; to fear Allah and die in a state of Islam. This form of commandment by Allah is direct form in order to elaborate the way of life which should be lived by good believers in Islam. To Nu'man Jughaim, this direct form of commandment signifies clearly the way to fear Allah for Muslim believers[104]. To this end, good Muslim believers must fear Allah by implementing all Islamic principles laid down by Him and by abstaining from all forbiddances as He has directed. Good believers are also directly ordered to keep their lives in the way of Islam until death. Thus, it can be seen that this directive by Allah is revealed as a definitive objective of Islamic law for the way of good believers in Islam.

The same approach is seen in the second verse of type one; it is by way forbidden to kill anyone except for a just cause in accordance with Islamic principle. The directive by Allah in this regard is to signify the killing is forbiddance except for justified causes[105]. Juristically, then, one of the main objectives of Islamic law (*Maqāṣid al-Sharᶜīyya*) is clearly highlighted to preserve the life of humanity. The

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[102] *al-Baqara:* 185
[103] *al-Nahl:*90
[104] Nuᶜman, *Ṭuruq,*p.65
[105] *Ibid.*

importance of the preservation of life is shown in directive commandments of Allah, such as in verse 151 of *Sura Al-'An^{c}ām.* The juristic approach thus justifies the connection between the theory of *Maqāṣid al-Shar^{c}īyya* and *Naṣṣ* (the legal texts) through the direct form of *nawāhi* (forbiddances).

The first verse of type two above shows the indirect form of *awāmir* (commandment). It concerns obligatory fasting on sight of the crescent on the first night of the month of *Ramaḍān.* Thus, the commandment obligatory fasting for Muslim through the month of *Ramaḍān* is conveyed by indirectly; via first sight of the crescent moon. On one level, juristically, the main objective of Islamic law in prescribing obligatory fasting through the month of *Ramaḍān* is to preserve religion as well life of Muslim[106]. Though the commandment is revealed indirectly, it is cleared that the objective of Islamic law in this respect is juristical. This elaboration thus demonstrates that the concept of *Maqāṣid al-Shar^{c}īyya* (the objectives of Islamic law) always in connect with *Naṣṣ* (legal texts) although by the way of the indirect form of *awāmir* (commandments) such as is exemplified in the *Sura al-Baqara:*.185.

The indirect form of *nawāhi* (forbiddances) is shown above in the second verse of type two. This verse is categorised as the indirect form of *nawāhi* (forbiddances) through three terms; i.e, *al-Faḥsha'*, *al-Munkar* and *al-Baghy.* This indirect form illustrates that the ultimate objectives of Islamic law in forbidding *al-Faḥsha'*, *al-Munkar* and *al-Baghy* are to preserve exactly the five constituents integral to Islam i.e.; religion, life, intellect, lineage, property, and simultaneously to prevent all things harmful to Muslim life. To Nu'man Jughaim, this indirect form of

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[106] *Ibid.*

forbiddance also signifies the need to avoid any harmful activities in Muslim life, such as *al-Faḥsha'*, *al-Munkar* and *al-Baghy*. He claims that the significance of this forbiddance is interrelated with the ultimate objective of Islamic law in terms of preventive steps[107].

To sum up the above discussion, two approaches are used to examine juristically the theory of *Maqāṣid al-Shar^{c}īyya* as it connects with *Naṣṣ*; firstly, by analysing the former in the light of the literal meaning of the latter, and secondly, by analysing the former through the form of *awāmir* (commandments) and the form of *nawāhi* (forbiddances) that derive from the *Qur'ān* and the *Ḥadīth*. These two approaches show the juristic methods that can be applied to illustrate the ultimate objectives of Islamic law (*Maqāṣid al-Shar^{c}īyya*) through legal texts such as the *Qur'ān* and the *Ḥadīth*. Because of this significance of study, Muslim jurists have designated the juristic process as 'ratiocination' of Islamic law (*Ta^{c}līl al-Ahkām al-Shar^{c}īyya*). That is, this process has evolved as a consequence of the theory of *Maqāṣid al-Shar^{c}īyya* as it connects with *Naṣṣ*, in which logical and linguistic analysis is used to identify the exact reasoning behind the Divine commandments. The subsequent chapter will therefore discuss the significance of *Ta^{c}līl al-Ahkām* for the concept of *al-Maṣlaḥa wa al-Naṣṣ* from the standpoint of Islamic jurisprudence. However prior to this discussion, it is useful to conclude this chapter with a brief summary as follows.

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[107] *Ibid.*

2.4 Summary

Through this chapter, the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* has been examined via juristic discussion of three theories; firstly, the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*, secondly, the theory of the levels of *Ḍarūrīyya*, *Ḥājīyya*, and *Taḥsīnīyya*, and thirdly, the theory of *Maqāṣid al-Sharīᶜa*.

The main finding to emerge from discussion of the first theory is the effort of Muslim jurists to link the concept of public interest (*Maṣlaḥa*) with the Divine legal texts (*Naṣṣ*) such as the *Qur'ān* and the *Ḥadīth*. To this end, some Muslim jurists have formed a legal principle of *Maṣlaḥa* that does not complete with any textual evidence, *dalīl* or *naṣṣ*. This form of legal principle is termed *al-Maṣlaḥa al-Mursala*, developed by Imām Mālik. Also Ṭūfi has drawn up as a hypothetical form the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*. However, because of its controversial nature, many Muslim jurists have examined this theory from various perspectives and aspects in the light of Islamic jurisprudence. Despite the multiplicity of critical views regarding this theory, it can be stated that at the very least Ṭūfi contributed a new theory in response to juristic crises of his age.

It can be seen from the foregoing that Muslim jurists have developed the theory of the levels of *Ḍarūrīyya*, *Ḥājīyya*, and *Taḥsīnīyya* to incorporate the basic area of human needs, particularly the preservation of religion, life, lineage, intellect, property and honour. Of great significance here is the priority of legal level in Islamic law; that is, in order to apply Islamic law to humanity, the priority levels of

Ḍarūrīyya (lit. necessities), *Ḥājīyya* (lit. needs), and *Taḥsīnīyya* (lit. improvements) are always to be taken into account. To put it simply, Islamic law is prescribed law, but is nevertheless flexible in its application to humanity.

The main conclusion to emerge from this study of the theory of *Maqāṣid al-Sharī'a* as it connects with *Naṣṣ* is the significance of every single legal text from both the *Qur'ān* and the *Ḥadīth,* and of their ultimate objectives for humanity. This demonstrates that Islamic law (as the Divine law given to humanity) is a civilised law that has at its heart sound objectives which accord with the human capacity for reason, as can be examined through the legal texts of the *Qur'ān* and the *Ḥadīth.* This will be elaborated in the next chapter.

To bring this chapter to a close, it is worthy of note that the theoretical development of the concept of *al-Maṣlaḥa wa al-Naṣṣ* illustrates that Islamic law is an evolving and living law, its purpose to protect humanity through its Divine rules.

CHAPTER THREE

THE SIGNIFICANCE OF *TAᶜLĪL AL-AḤKĀM* FOR THE CONCEPT OF *AL-MAṢLAḤA WA AL-NAṢṢ*

3.0 Introduction

Apart from the ultimate objectives (*Maqāṣid*) as one of the features of Islamic law, ratiocination (*Taᶜlīl al-Ahkām*) also highlights Islamic law as a dynamic law for humanity. That is, every single legal text from the *Qur'ān* and the *Ḥadīth* can be examined in order to identify ultimate objectives (*Maqāṣid*) as well as 'ratiocination' (*Taᶜlīl al-Aḥkām*). This process of *Taᶜlīl al-Aḥkām* becomes a crucial subject in the science of Islamic jurisprudence, due to its significance in determining the ultimate objectives of Islamic law (*Maqāṣid al-Sharīᶜa*), public interest (*Maṣlaḥa*) and the wisdom at the heart of each Divine commandment (*ḥikma*). Indeed, *Taᶜlīl al-Aḥkām al-Sharīᶜa* has become an essential process in establishing the theory of *Maṣlaḥa*, as ᶜAbdullah al-Kamāli demonstrates in the Arabic version, *al-Uṣūl al-Mabniyya ᶜala al-Maṣāliḥ*[1]. In other words, the process of *Taᶜlīl al-Aḥkām* is critical in clarifying both *Maqāṣid al-Sharīᶜa* and *Maṣlaḥa* through the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

This being so, this chapter will analyse the significance of *Taᶜlīl al-Aḥkām* for the concept of *al-Maṣlaḥa wa al-Naṣṣ*. As a first step to analyse the process of *Taᶜlīl al-Aḥkām* juristically, it is important to examine its definition in the framework of Islamic jurisprudence. For this reason, the views of Muslim jurists on the subject of *Taᶜlīl al-Aḥkām* will be discussed, followed by a consideration of the concept of *Taᶜbbudiyya* as it connects with *Taᶜlīl al-Aḥkām* . The main focus will be upon the

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[1] al-Kamāli, *Min Fiqh*,,p.79

significance of the process of *Taᶜlīl al-Aḥkām* as it relates to the concept of *al-Maṣlaḥa wa al-Naṣṣ.*

3.1 Definition of *Taᶜlīl al-Aḥkām*

Juristically, the term *Taᶜlīl al-Aḥkām* is rooted in the concept of *ᶜilla* (*ratio legis*), which is at the heart of *Qiyās*[2] (analogical deduction). The Muslim jurists are in unanimous agreement that *ᶜilla* is the effective cause in Islamic jurisprudence. Shawkāni has drawn up three alternative definitions of the term *ᶜilla*[3]. Firstly, *ᶜilla* is referred to as *sabab*, meaning 'cause'; secondly, *ᶜilla* is referred to as *manāṭ al-ḥukm*, meaning the cause of the law (*ḥukm*); thirdly; *ᶜilla* is referred to as *amārah al-ḥukm*, meaning the sign of the law (*ḥukm*). When the term *ᶜilla* becomes *Taᶜlīl al-Aḥkām al-Sharīᶜa*, it is defined as the process of seeking the effective cause of Islamic law, particularly in the *Qur'ān* and the *Ḥadīth*[4].

Many attempts have been made by later jurists to translate *Taᶜlīl al-Aḥkām al-Sharīᶜa* into English. Muhammad Khalid Masᶜud, for example, takes the term *Taᶜlīl al-Aḥkām* to mean 'the determination of the cause of Divine commandments by logical and linguistic analysis'[5]. Again, Mohammad Hashim Kamali tends to define *Taᶜlīl al-Aḥkām* as ratiocination whereby searching for the effective cause of a ruling[6] is undertaken in Islamic law. On the face of it, these two approaches are apparently similar; however, Khalid Masᶜud's definition is more juristic in that he uses the

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[2] Muṣṭafa, *Taᶜlīl*, p.112-128, and al-ᶜUnqarī, *Taᶜlīl*, p.34
[3] al-Shawkāni, *Irshād*, p.207.
[4] al-ᶜUnqarī,, *Op.cit.*, p.33.
[5] Masᶜud, *Shatibi's Philosophy*, p.284.
[6] Kamali, *Principles*, p.420.

method of logical and linguistic analysis in determining the cause of Divine commandments.

3.2 The Views of Muslim Jurists On *Taᶜlīl al-Aḥkām al-Sharīᶜa*

There is considerable controversy among Muslim jurists on ways in which of *Taᶜlīl al-Aḥkām al-Sharīᶜa* is applied to the *Qur'ān* and the *Ḥadīth*[7]. Nevertheless, it must be borne in mind that the *Qur'ān* and the *Ḥadīth* in particular, are in fact legal texts and documents of Islamic legal theory. As Wael B. Hallaq asserts, the *Qur'ān* is recognized as a legal document which contains some 500 verses with many legal and quasi-legal stipulations, such as the legislation of selected matters of ritual, alms-tax, property and the treatment of orphans, inheritance, usury, consumption of alcohol, marriage, divorce, sexual intercourse, adultery, theft, homicide and the like[8]. It can thus be seen that the legal and quasi-legal stipulations of the *Qur'ān* deal explicitly and implicitly with the subject of *Maṣlaḥa,* as will be discussed in a later topic.

Apart from the holy book of the *Qur'ān,* the *Sunna* or *Ḥadīth* is unanimously accepted as the second source of Islamic law and as legal doctrines that are validated by tradition. It is the primary fountain of knowledge after that of the *Qur'ān.* Indeed, it has been compiled with numerous texts that deal explicitly and implicitly with the subject of *Maṣlaḥa* [9]. Further elaboration on the way the *Sunna* or *Ḥadīth* deals with the theory of *al-Maṣlaḥa wa al-Naṣṣ* will therefore take place in part B.

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[7] See ᶜIywāni, *Taᶜlīl,* p.169.
[8] Hallaq, *A History*, p.3
[9] Zayd *al-Maṣlaḥa* p.13.

A different view among Muslim jurists appears on the subject of *Taᶜlīl al-Aḥkām al-Sharīᶜa* in accordance with the primary sources of Islamic legal theory i.e. the *Qur'ān* and the *Ḥadīth* or *Sunna.* There are three differing Islamic legal schools of thought on the subject of *Taᶜlīl al-Aḥkām al-Sharīᶜa.* The first group totally reject any attempt to undertake *Taᶜlīl al-Aḥkām al-Sharīᶜa* on the basis that no *Taᶜlīl* could be made on the Lawgiver's action (*afᶜāl Allah*) and the Divine commandments. Ibn Ḥazm, for example, asserts that '*al-Qiyās wa al-Taᶜlīl al-Aḥkām Din Iblis*'. This means *al-Qiyās* and *Taᶜlīl al-Aḥkām* is the way of the Devil[10]. The same point of view is held by *al-Jahmīyya* [11] and *madhhab al-'Ashᶜarīyya*[12].

The second group takes *al-Muᶜtazila*'s point of view, which holds that *Taᶜlīl al-Aḥkām* on *afᶜāl Allah* (the Lawgiver's action) and the Divine commandments is obligatory. They argue that *ᶜilla,* is a major element in the process of *Taᶜlīl al-Aḥkām* (also called *waṣf dhāti* or identical attribute) as a means by which the Divine commandments are understood. Thus, it is absolutely necessary when seeking the sense of *maṣlaḥa* in *afᶜāl Allah*[13].

The third group could be described as holding a liberal opinion on the subject of *Taᶜlīl al-Aḥkām,* based on rational points of view which fall between the two fundamental Islamic legal schools of thought. This group accepts the significance of *Taᶜlīl al-Aḥkām* in Islamic jurisprudence, particularly its contribution to the process of *Ijtihād*(lit. exertion), which is the highest accomplishment in Islamic legal theory. It is noteworthy that this third point of view became the most prominently held among

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[10] See Ibn Ḥazm, *al-Iḥkām,* v.viii,p.113
[11] See Ibn Taymīyyah, *Minhāj,* v.i,p.463; Ibn al-Qayyim, *Shifā',* p.186; and Ibn al-Najar, *Sharḥ,* ,v.i,p.312
[12] See al-Baqilāni, *al-Tamhīd,*p.50; Samira, *Muᶜjam,* p.313; al-Āmidi, *Ghāya,*p.224
[13] See al-Sharastani, *al-Milal,*p.63; and al-Juwayni, *al-Irshād,* p.287.

Muslim jurists[14] including Ḥanafi's jurists[15], Ibn al-Qayyīm[16] and Ibn Taymīyya[17]. As the majority of Muslim jurists fall in the third group, Aḥmad al-Raysūni, therefore applies the term *Ijmāᶜ* or consensus[18].

In the light of this consensus the present writer will elaborate on *Taᶜlīl al-Aḥkām* as it applies to *al-Maṣlaḥa wa al-Naṣṣ*. This application gives rise a number of questions for many Muslim jurists. Does every ruling in Islamic law have *ᶜilla*, (the effective cause) and *maṣlaḥa* ? If any ruling in the *Qur'ān* and the *Ḥadīth* has no *ᶜilla* and *maṣlaḥa*, does it only deal with *taᶜbbudiyya* (worshipping or strict obedience)[19], leading thereby to the process of *Taᶜlīl al-Aḥkām* being rejected by a number of Muslim jurists? What is the best solution for these particular questions?

As step towards finding this solution, the following section will focus on the concept of *taᶜbbudīyya* in the light of *Taᶜlīl al-Aḥkām*, but in the framework of *al-Maṣlaḥa wa al-Naṣṣ*.

3.3 The concept of *Taᶜbbudīyya* in conjunction with *Taᶜlīl al-Aḥkām*

It is significant that The Encyclopedia of *al-Fiqhiyyah*, applies the term al-*taᶜbbudiyya* into two circumstances. Firstly, to the activities of *al-ᶜibāda*, (worship) and *al-tanassuk*, (piety and devotion). Secondly, to any Islamic ruling, which has no

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[14] al-Jurjani, *Sharḥ*,v.iii,p.162.
[15] al-Tiftazani, *Sharḥ*,,v.ii, p.63
[16] Ibn al-Qayyīm, *Shifā'*, p.186; and Ibn al-Najar, *Sharḥ*,v.i,p.8330
[17] Ibn Taymīyya, *Minhāj*,v.i,p.143, *Majmūᶜ*,v.viii, p.81.
[18] al-Raysūni, *Naẓarīyya*,p.226-227.
[19] Literally, Muhammad Khalid Mas'ud defines *ta'bbudīyya* as strict obedience. In English, obedience means doing what is told to do or willing to obey.
See Masᶜud, *Shatibi's Philosophy*, p.196; and Hornby, *Oxford*,p.796.

added meaning of *ḥikma,* (wisdom), but only the sense of *taᶜbbud,* i.e., worship *per se*. One who obeys the Islamic ruling would deserve reward from the Lawgiver, while disobedience would mean punishment[20].

In the first application of *taᶜbbudīyya,* it is unanimously accepted by Muslim jurists that the application of Islamic law in Muslim life means worship (*ᶜibada*) and piety and devotion (*tanassuk*) to the Lawgiver, Allah, the Lord of the universe. Every single law such as offering prayer (*ṣolāt*), fasting, performing *ḥajj* (pilgrimage), the punishment of *ḥudūd,* Islamic transactions in banking and the financial sector and the like, is focused on the path of *taᶜbbudīyya* to the Lawgiver. The second application is more complex as it appears to deny the existence of *ḥikma* in any Islamic law and allowing only for the sense of *taᶜbbud*(worship) *per se*. However, does (as Abdullah al-Kamāli argues) the origin of Islamic law only consist of *taᶜbbud* (worship) or does it also consist of the process of *Taᶜlīl al-Aḥkām,* which would entail finding the *ḥikma* for any Islamic ruling?[21]. In addition, the present writer would argue that if the second application of *taᶜbbudiyya* is accepted, why is it that the concept of *ḥikma per se* should not be applicable to many Islamic rulings particularly in the *Qurān* and the *Ḥadīth*? And why is the concept of *taᶜbbudiyya* occasionally conjoined by some Muslim jurists with the concept of *ḥikma* which in turn becomes the main impetus in the theory of *al-Maṣlaḥa wa al-Naṣṣ*?.

This apparent spilt between *taᶜbbudiyya* with reference to *Taᶜlīl al-Aḥkām* in the framework of Islamic jurisprudence has exercised Muslim jurists since the

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[20] *al-Mawsū'a al-Fiqhiyya*,,v.12,p201
[21] al-Kamāli, *Min Fiqh*,,p.103

beginning of the 7th century A.H.[22]. Many prominent Muslim jurists such as the *Shāfiᶜis* jurists, Ibn Taymīyyah, Ibn Qayyīm, al-Zarkashi, al-Shāṭibi took part in the debate, as well as later jurists such as Aḥmad al-Raysūni, Khalid Masᶜud and Mohammad Hashim Kamali.

Saᶜad al-Dīn al-Taftazani of the *Shāfiᶜis* jurists claims that originally, the Islamic ruling applies only to *taᶜbbudiyya,* and there is no sense of *al-taᶜlīl* unless it is supported by *dalīl,* (evidence) particularly from the *Qur'ān* and the *Ḥadīth*[23]. A paradox occurs later with Ibn Taymīyyah and his student, Ibn Qayyīm who contends that every single Islamic ruling has a sense of *al-taᶜlīl.* It is therefore *bāṭil* (invalid) and false to claim that *taᶜbbud* takes place only because of Islamic rulings. Ibn Qayyīm adds that the *Sharīᶜa* is not only a question of legal rulings but rather of *ḥikma* or the existence of intellectual activity[24]. In order to support his claim, Ibn Qayyīm has provided evidence in the form of ten examples of Islamic rulings which have a sense of *ḥikma.* This contradict the Muslim jurists who allege that Islamic rulings have no sense of *ḥikma.* Ibn Qayyīm argues that *Qiyās al-Ṣaḥīḥ* can be applied to the *Sharīᶜa* without conflict, because it is always parallel with the Divine commandments. He adds that intellectual activity has been elevated through the process of *Qiyās al-Ṣaḥīḥ* as well as *Taᶜlīl al-Aḥkām,* and this (he asserts) becomes the major evidence that its application to *naṣṣ* testifies to the value of *al-aql*[25].

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[22] Zayd, *al-Maṣlaḥa,* p.21.
[23] al-Taftazani, *Sharḥ,*v.ii,p.64.
[24] Ibn al-Qayyīm, *Iᶜlām,* v.ii, p.51.
[25] *Ibid,*v.ii,p.40.

Muslim jurists are agreed that Ibn Qayyīm's arguments form the juristic division of *Aḥkām al-Sharīᶜa* into two categories[26]. The first category involves *ḥikma,* supported by *naṣṣ* and *Taᶜlīl al-Aḥkām.* The second category does not refer to *ḥikma,* neither is there any reference to *naṣṣ* and *Taᶜlīl al-Aḥkām*[27].

The term *ḥikma* as used by al-Zarakshi has become the main indicator in categorising *Aḥkām al-Sharīᶜa,* leading to two definitions in Islamic jurisprudence. Based on The Encyclopedia of *Fiqhiyyah,* the first definition of *ḥikma* is *maṣlaḥa al-ᶜabd;* that is, the public interest of humankind in preserving religion, life, lineage, intellect and property. The second definition of *ḥikma* is *maṣlaḥa al-akhīrat,* (the *maṣlaḥa* of the hereafter) whereby obedience and purity are necessary in the process of *taᶜbbudiyya* to the Lawgiver[28].

Juristically, the two categories of *Aḥkām al-Sharīᶜa* created by al-Zarakshi were not the final endeavour in Islamic legal theory in terms of intellectual research by Muslim jurists. Al-Shāṭibi's research in *al-Muwāfaqāt* made a tremendous contribution to academic analysis, particularly on the subject of *Aḥkām al-Sharīᶜa* as it accords with the concept of *taᶜbbudiyya* and the process of *Taᶜlīl al-Aḥkām*[29].

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[26] al-Zarakshi, *al-Baḥr,* v.v, p.127.
[27] *Ibid.*
[28] *al-Mawsūᶜa al-Fiqhīyya,*v.xii,p.201
[29] al-Shāṭibi's work entitled *al-Muwāfaqāt fī Uṣūl al-Sharīᶜa* has been unanimously accepted by Muslim jurists due to these particular characteristics; Firstly; the reconciliation between Maliki's legal thought and Hanafi's legal thought directly and indirectly on some points of Islamic legal principles. Secondly; the introduction of the theory *al-Maqāṣid al-Sharīᶜa,* which employs the concept of *Maṣlaḥa* in corroboration of the primary sources of Islamic law, i.e.*Qur'ān* and *Sunna,*Thirdly; the comprehensive discussion on the Islamic legal theory, which has been divided academically into four parts consisting of four book i.e *aḥkām* (Islamic ruling), *maqāṣid* (objectives), *adilla* (sources) and *ijtihād* (legal reasoning). See al-ᶜUbaydī, *al-Shāṭibi,*p.104-112; and Masᶜud, *Shatibi's Philosophy,* p.120-124.

For al-Shāṭibi, *Taᶜlīl al-aḥkām* is part of the process *istiqrā' bi al-nuṣūṣ,* (the induction into legal texts) in justifying the concept of *maṣlaḥa* in Islamic legal theory[30]. The main function of the process of *Taᶜlīl al-Aḥkām,* is seeking and finding the *Maqāṣid al-Sharīᶜa* (the ultimate objectives of Islamic law)[31], despite differing opinions on its validity in Islamic legal theory[32]. Again, many later jurists, such as Muḥammad Abū Zahra, are agreed that *Taᶜlīl al-Aḥkām* is the major cause in establishing the *ᶜIlm al-Maqāṣid,* the science of *Maqāṣid*[33]. Ḥammādi al-ᶜUbaydi, for example, states that the process of *Taᶜlīl al-Aḥkām* is a necessary condition for *maṣlaḥa* from al-Shāṭibi's perspective (*Ḍawābiṭ al-Maṣlaḥa ᶜind al-Shāṭibi*)[34].

Al-Shāṭibi adds that *Taᶜlīl al-Aḥkām* may be applied in various contexts including *ᶜibāda* and *muᶜāmala,* as both these concepts are referred to in the *Qur'ān* and the *Ḥadīth* where the sense of *taᶜbbūdiyya* exists[35]. In this way al-Shāṭibi highlights the universality of the concept of *taᶜbbudiyya,* as Muhammad Khalid Masᶜud observes: "*taᶜbbud* and *maᶜna/maṣlaḥa* (.....) are not opposite terms for Shāṭibi"[36]. Thus, *taᶜbbud,* is parallel with *maṣlaḥa;* the process of *Taᶜlīl al-Aḥkām* therefore becomes one of the most authoritative methods of seeking the *maqṣūd* and *ḥikma* in textual evidence. The concept of *al-Maṣlaḥa wa al-Naṣṣ* is thus seen to

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[30] al-Shāṭibi, *al-Muwāfaqāt,*v.ii,p.315
[31] *Ibid.*,,v.iii,p.146
[32] *Ibid.*, v.ii, p.391
[33] Abū Zahra, *Uṣūl,*p.293.
[34] There are five qualifications of *maslaha* from al-Shatibi's point of view: a) *al-Majāl al-Zamānī* means the scope of *maṣlaḥa* which covers wordly and hereafter, b) *al-Majāl al-Mawdūᶜi* means the application of the concept *al-Intifāᶜ*, utility in Islamic legal theory, 3) The authority of *Maqāṣid al-Sharīᶜa,* 4) *Taᶜlīl al-Aḥkām,* 5) The priority of universality into *maṣlaḥa.*
See al-ᶜUbaydī, *al-Shāṭibī,*p.139-147.
[35] al-Shāṭibi, *Op.cit.*,v.ii,p.51.
[36] On this topic, Khalid Mas'ud brought four characterizations of *ta'abbud* by various statements, which were made by Shatibi. Firstly, "*al-ruju' ila mujarrad ma haddahu al-Shari'* " (recourse only to what the Lawgiver has determined); Secondly, "*al-Inqiyad li awamir Allah*" (being bound by the commands of God); Thirdly, "*ma huwa haqqun lillah khassatan*" (that which is the exclusive right of God; Fourthly, "*raji'un ila 'adami ma'quliyat al-ma'na* (that which refers to the non-intelligibility of its reason). See Masᶜud, *Shatibi's Philosophy,* p.202

apply (together with the process of *Taᶜlīl al-Aḥkām*) in seeking the *maqṣūd* and *ḥikma* with special reference to textual evidence from the *Qur'ān* and the *Ḥadīth.*

Pending detailed discussion, it is worth noting here that most of the Māliki and Ḥanbali jurists seem to agree that there is no distinction between the *ᶜilla* and the *ḥikma*[37]. In other words, the terms of *ᶜilla* and *ḥikma* are virtually interchangeable. From this perspective, the process of *Taᶜlīl al-Aḥkām* has as its main purpose the identification and justification of *ᶜilla* or *ḥikma* by means of two indicators; firstly, the indication given by *naṣṣ,* (or textual evidence from the *Qur'ān* and the *Ḥadīth*[38]) and, secondly, the indication justified by *Ijmāᶜ* (consensus). Here *Ijtihād* will be applied through *tanqih al-manāṭ* (isolating the *ᶜilla*) as distinct from the other two methods referred to as *takhrīj al-manāṭ* (extracting the *ᶜilla*) and *tahqīq al-manāṭ* (ascertaining the *ᶜilla*) respectively[39].

The scope of this study will limit detailed consideration to the first indication, that is the purpose of identification and justification of *ᶜilla* or *ḥikma* within the process of *Taᶜlīl al-Aḥkām* given by *naṣṣ* (textual evidence) of the *Qur'ān* and the *Ḥadīth.* The second indicator justified by *Ijmaᶜ* will therefore not be referred to in this chapter.

In examining how the process of *Taᶜlīl al-Aḥkām* is applied to textual evidence in the *Qur'ān* and the *Ḥadīth,* specific factors must be taken into consideration, especially the use of certain Arabic particles, such as *kay-la* (so as not to), *li-ajli* (because of), *li, fa, bi, anna, inna, li-all, min ajli, la'allahu kadha, bi-sabab*

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[37] Abū Zahra, *Uṣūl,*p.188.
[38] al-Shawkāni, *Irshād,*p.210-212.
[39] *Ibid.*;, and Kamali, *Principles* of Islamic, p.213.

kadha, etc., all of which are key terms in the process of *Taᶜlīl al-Aḥkām*[40]. Also to be considered is the application of *istiqra' bi al-nas,* (the induction to legal texts) which is also associated with the process of *Taᶜlīl al-Aḥkām*[41]. As Ibn Qayyīm[42] and al-Shāṭibi argue, in cases where the *ᶜilla* is not indicated by textual evidence, the process of *istiqra'* using the indications of *al-kulliyāt al-istiqraᶜiyya*[43] (universal rules known inductively)[44] may be applied to seek the *maṣlaḥa* or the *ḥikma.*

3.4 The significance of *Taᶜlīl al-Aḥkām* as in relation to the theory of *al-Maṣlaḥa wa al-Naṣṣ*

To give a clear example of how the process of *Taᶜlīl al-Aḥkām* can be applied to the textual evidence of the *Qur'ān* and the *Ḥadīth* in order to seek the *ᶜilla* and the *ḥikma* in the light of the theory of *al-Maṣlaḥa wa al-Naṣṣ,* the paradigm below may be helpful.

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[40] al-Shawkāni, *Op.cit*,p.211.
[41] al-Shāṭibi, *al-Muwāfaqāt*,v.ii,p.3.
[42] According to Ḥammādi al-ᶜUbaydī, al-Shāṭibi was not the only jurist who introduced the process of *istiqrā'* into the textual evidence but also Ibn Qayyim in his work *Iᶜlām al-Muwaqiᶜīn,* emphasizes *istiqrā'* as a method of *istinbāṭ al-aḥkām,* (inferring or deducing a somewhat hidden meaning of Islamic ruling from a given text) in seeking the *maṣlaḥa* or the *ḥikma.* See al-ᶜUbaydī, *al-Shāṭibī*,p.139.
[43] *Ibid.*
[44] Masᶜud, *Shatibi's Philosophy*, p.279.

The Process of *Taᶜlīl al-Aḥkām* from the *Naṣṣ* of the *Qur'ān* or the *Ḥadīth*

a) *Naṣṣ* from the *Qur'ān* or *Ḥadīth*

↓

b) Identification of *ᶜilla* through;

b.1) certain associated Arabic particles.
or
b.2) The application of *al-kulliyāt al-istiqrā'iyya.*
or
b.3) Seeking the *ḥikma.*

c) Justification of the *ḥukm* or ruling.

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d) Finding the *maqṣūd /maqāṣid* or *maṣlaḥa*

The paradigm above shows the significance of the process of *Taᶜlīl al-Aḥkām;* it operates within a four-step juridical sequence. Step a) begins with the selection of a particular *naṣṣ* from the *Qur'ān* or the *Ḥadīth,* then moves towards the process of *Taᶜlīl al-Aḥkām* in step b. There are then three alternative processes of *Taᶜlīl al-Aḥkām* whereby identification of *ᶜilla* is: i) through the association of certain Arabic particles, or ii) the application of *al-kulliyāt al-istiqrā'iyya,* or iii) seeking the *ḥikma.* At this stage, the ruling or *ḥukm* from a particular *naṣṣ* can normally be justified by the preceding process. When the *ᶜilla* or the *ḥikma* has been identified in step b, the process continues to the final step d, which is the finding of the *maqṣūd* or *maqāṣid* or *maṣlaḥa.*

It can be seen that there are many instances of *naṣṣ* (particularly from the *Qur'ān* or the *Ḥadīth*) to which the process of *Taᶜlīl al-Aḥkām* may be applied in the framework of the steps above. As an example, these steps and processes can be applied to the Quranic text (*al-Māi'da*: 5:38) as follows;

a) ***Naṣṣ* from the *Qur'ān* :** (*al-Māi'da*: 5:38)

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ(٣٨)

(emphasis added)
Translation; "As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: and Allah is Exalted in Power. Full of Wisdom."

b) **The process of *taᶜlil al-ahkam*** by using b.1), which is the identification of ᶜ*illa* through certain associated Arabic particles. From the above verse, the particle *fa* in the term فَاقْطَعُوا indicates two things; firstly, *lil-taᶜqīb* (the punishment) and secondly, *lil-ᶜilla* (the cause)[45]. In this case, the particle *fa* indicates the cause of the punishment which logically follows the theft;. thus the theft itself is the cause of the punishment to cut off a thief's hand according to the legislation of *ḥudūd* law. To put it clearly;

The ᶜ*illa*: the theft itself is the absolute cause according to the Quranic text (*al-Māi'da*: 5:38).

c) The Justification of *ḥukm* or ruling; this is obligatory for the punishment of cutting off a thief's hand in the application of *ḥudūd* law to be carried out.

d) Finding the *maqṣūd /maqāṣid* or *maṣlaḥa*: The *ḥudūd* penalty and punishment for theft is to protect the lives and properties of the people[46].

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[45] al-Kindi, *al-Dalālāt*, p.216
[46] Kamali, *Principles*, p.208.

Many Muslim jurists are unanimous in agreeing that a great number of *Ḥadīth* have been compiled which deal both directly and indirectly with the subject of *Maṣlaḥa*[47]. From the perspective of the process of *Taᶜlīl al-Aḥkām* in the framework of the concept of *al-Maṣlaḥa wa al-Naṣṣ,* it would therefore be useful to apply the paradigm to at least one example from the *Ḥadīth,* as the secondary source in Islam after the *Qur'ān.*

a) *Naṣṣ* from the *Ḥadīth* : This *Ḥadīth* is narrated by Bukhari:5147, Muslim:3733 and Tirmidhi:1784.

قَالَ رَسُولُ اللّٰهِ صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ.

Translation;
The Prophet said," Every intoxicant is wine and every intoxicant is forbidden".

b) **The process of *Taᶜlīl al-Aḥkām*** through the *Ḥadīth* above is clearly shown by the term *muskir* (intoxicant) which becomes the obvious *ᶜilla* in the prohibition of alcohol.

c) **The Justification of *ḥukm* or ruling;** that it is forbidden to drink any kind of alcohol according to the clear *naṣṣ* of the *Ḥadīth* and from the obvious *ᶜilla,* which is stated as *muskir* (intoxicant).

d) **Finding the *maqṣūd /maqāṣid* or *maṣlaḥa;*** the ruling which forbids the drinking of alcohol or any kind of intoxicant derives from both the wisdom of

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[47] Zayd, *al-Maṣlaḥa,*p.13.

> preserving of the efficacy of the human intellect and of preventing the dysfunctional behavior that manifests itself as a consequence of alcohol [48].

Thus, applying the paradigm to these two examples demonstrates clearly how the process of *Taᶜlīl al-Aḥkām* interlocks with the concept of *al-Maṣlaḥa wa al-Naṣṣ* in the juristic process designed by Muslim jurists to seek the effective cause (*ᶜilla*) the ruling (*ḥukm*) and finally in finding the ultimate purpose or objective of Islamic law (termed variously as *maqāṣid, ḥikma* and *maṣlaḥa*). The significance for Islamic jurisprudence of *Taᶜlīl al-Aḥkām* as it relates to *Maṣlaḥa* can thus be seen.

3.5 Summary

The juristic discussion on the significance of the process of *Taᶜlīl al-Aḥkām* for the concept of *al-Maṣlaḥa wa al-Naṣṣ*, examined in this chapter highlights Islamic law as a dynamic law for humanity. Every single injunction of Islamic law deriving from the *Qur'ān* and the *Ḥadīth* has rational and reasonable sense. This conclusion has been reached through the process of *Taᶜlīl al-Aḥkām* or ratiocination; it can thus be seen that the application of Islamic law as Divine rule is based on the five constituents necessary to preserve and protect humanity. Therefore, Islamic law decrees not only correct modes of worship, but also provides the basis of human fulfilment in daily life.

Although Muslim jurists differ on the acceptance of *Taᶜlīl al-Aḥkām* as a valid process of ratiocination, it appears to be a significant method in justifying effective

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[48] al-Ghazāli, *al-Mustasfa*, vol.i, p.286.

causes, ultimate objectives and the wisdom of Islamic law. Over and above this, however, the application of *Taᶜlīl al-Aḥkām* to the *Nass* of the *Qur'ān* and the *Ḥadīth* will highlight Islamic law as a systematic law with features which differ from all other forms of law.

In order to demonstrate the systematic nature of Islamic law through the process of applying *Taᶜlīl al-Aḥkām* to the *Nass*, the following section (part B) will focus on the *Ḥadīth* and its connection with the concept of *al-Maṣlaḥa wa al-Naṣṣ*. The authenticity of the *Ḥadīth* or the *Sunna* as one of the primary sources in Islamic law apart from the *Qur'ān* will be examined. In part C the paradigm previously developed will be applied to the book of *Bulūgh al-Marām*, as one of the authentic books of the *Ḥadīth* in the framework of the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

Part B now follows, entitled 'The Authenticity of *Ḥadīth* and Introduction To The Book of *Bulūgh al-Marām*'.

PART B

THE AUTHENTICITY OF THE *ḤADĪTH* AND INTRODUCTION TO THE BOOK OF *BULŪGH AL-MARĀM*

Introduction to Part B

The *Ḥadīth* as a primary source of Islamic law after the *Qur'ān* has generated a great deal of discussion amongst Muslim scholars as well as Western scholars. Its authenticity has been juristically much examined and criticized particularly by Western scholars; *viz.* Ignas Goldziher, Guillaume, Sachau, Wensinck, Schacht and Robson[1]. Nevertheless, later Muslim jurists such as Moḥammad Muṣṭafa ᶜAẓmi[2] who has devoted a book to this subject does refute such criticisms and has verified the authenticity of the *Ḥadīth* as beyond juristic doubt[3]. Thus, attempts to disprove the *Ḥadīth* as a primary source of Islamic law after the *Qur'ān* definitely proven as false and bogus in the light of juristic discussion.

Moreover, the authenticity of *Ḥadīth* to some extent means the quality of the chain of narrators (*isnād*) and the validity of the text (*matn*)[4], which are both classified as the main elements of the *Ḥadīth.* In fact most traditionists are in agreement that these two elements can be divided into at least three levels[5]; the first is *Ṣāḥīḥ* (lit. validity), the second is *Ḥasan* (lit.fairness) and the third is *Ḍaᶜīf* (lit.weak)[6].

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[1] See ᶜAẓmi, *Studies,* p.5-10
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] Ibn Ḥajar, *Nukhba,* p.39
[6] *Ibid.*

As the first and highest level, *Ṣaḥīḥ* means that the *Ḥadīth* has a continuous chain of narrators (*isnād*) made up of the most trustworthy narrators (*ᶜadīl*), possessed of the most accurate and greatest powers of memory (*ḍābiṭ*). Simultaneously, in terms of validity of text, the *Ḥadīth* has neither irregularities (*shudhūdh*) nor defects (*ᶜilla*). This is a definition which has been juristically drawn up by traditionists, *viz.* Ibn al-Ṣalāḥ (d.643H/1245A.D)[7], al-Nawāwi (d.676H/1277A.D)[8], Ibn Ḥajar al-ᶜAsqalāni (d.852H/1449A.D)[9], al-Suyūṭi (d.911H/1505A.D)[10] and al-Qāsimi (d.1332H/1914A.D)[11]. At the same time, the above definition also demonstrates the features of *Ṣaḥīḥ*. In order to discuss these features of *Ṣaḥīḥ*, the following *Ḥadīth* is exemplified as well as its explanation;

> The prophet is narrated as having said; "My people will come on the Day of Resurrection with bright faces, hands and feet from the traces of *Wuḍū'* (ablutions or cleansing). If any of you can lengthen his brightness, let him do so"[12].

This *Ḥadīth* is derived from the two authentic books of the *Ḥadīth*, the first book (namely *Jamiᶜ al-Ṣāḥīḥ*) is compiled by Bukhārī, and the second (namely *al-Ṣāḥīḥ*) is compiled by Muslim, and is classified as *Ṣāḥīḥ* because it has the following features;

a) The *Ḥadīth* has a continuous chain of narrators (*isnād*), in accordance with the paradigm below[13];

The Prophet : Abū Huraira➔Naᶜīm➔Saᶜid➔ Khālid b. Yazīd➔. Laith b. Saᶜad➔ Yaḥya ➔Bukhārī.

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[7] Ibn al-Ṣalāḥ, *Muqaddima*, p.10.
[8] al-Nawāwi, *al-Taqrīb*, p.2.
[9] Ibn Ḥajar, *Op.cit.*, p.39
[10] Shākir, *Sharḥ*, p.3
[11] al-Qāsimi, *Qawāᶜīd*, p.79
[12] See Bukhāri, *Ṣaḥīḥ*, no.133 and Muslim, *Ṣaḥīḥ*, no.362
[13] See CD *Mawsūᶜa : al-Kutub al-Tisᶜa*

b) Every single narrator of the *Ḥadīth* is juristically identified as trustworthy (*ᶜadīl*) and possessed of the most accurate and greatest powers of memory (*ḍābiṭ*)[14].

c) The *Ḥadīth* is juristically identified as having neither irregularities (*shudhūdh*) nor defects (*ᶜilla*)[15].

The features analysed demonstrate the strict criteria in identifying the quality of the chain of narrators (*isnād*) and the validity of the text (*matn*). It can be seen that the main objective is thus to secure the authenticity of *Ḥadīth* as a primary source of Islamic law after the holy *Qur'an*[16].

The second level is *Ḥasan* (fairness), means the *Ḥadīth* which have a continuous chain of narrators (*isnād*), made up of the most trustworthy narrators (*ᶜadīl*) but possessed of less accuracy and power of memory (*khafīf ḍābiṭ*) compared with *Ṣāḥīḥ*. Simultaneously, in terms of validity of texts, the *Ḥadīth* has neither irregularities (*shudhūdh*) nor defects (*ᶜilla*). The main difference between *Ṣāḥīḥ* and *Ḥasan* is in the area of accuracy and power of memory (*ḍābiṭ*) of the narrators, whereby the first level is the more accurate while the second is less so (*khafīf al-ḍabṭ*)[17]. This second level of classification is also known as *Ḥasan lidhātih;* that is, even though *Ḥasan lighayrih* refers to the narrator who has inaccurate power of memory, this narrator is nevertheless accepted as narrator of the *Ḥadīth.* An example is as follows;

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[14] Ibn Ḥajar, *al-Iṣāba,*v.iv,p.112.
[15] *Op.cit.*,CD *Mawsūᶜa : al-Kutub al-Tisᶜa,*
[16] Ibn Ḥajar, *Nukhba,*p.42
[17] *Ibid.*,p.63 and al-Suyūṭī, *Tadrīb,*p.42

> The prophet is narrated as having said; "Whatever (portion) is cut off from an animal when it is alive is dead (meat)"[18].

The *Ḥadīth* above is derived from two other but lesser authentic books of *Ḥadīth*, the first book (namely *Sunan*) is compiled by Abū Dāwūd and the second book (namely *Sunan*) is compiled by Tirmidhi. The following points elaborate and clarify the features of *Ḥadīth Ḥasan* as discussed;

a) The *Ḥadīth* has a continuous chain of narrators (*isnād*) in accordance with the paradigm below [19];

The Prophet :ᶜAūf b. al-Ḥārith➔ᶜAṭā' b. Yassar➔Zayd b. Aslām➔ᶜAbd. Al-Raḥman➔Salma b. Rajā'➔Muḥammad ➔ Tirmidhi.

b) These narrators of the *Ḥadīth* are juristically identified as trustworthy (ᶜ*adīl*) and possessed of the most accuracy and greatest powers of memory (*ḍābiṭ*); two of them, however, are juristically identified as having less accuracy and powers of memory (*khafīf al-ḍabṭ*), i.e. °Abd. Al-Raḥman and Salma b. Rajā'[20]. Thus, the *Ḥadīth* is categorized as *Ḥasan* due to this specific feature[21].

c) The *Ḥadīth* is juristically identified as having neither irregularities (*shudhūdh*) nor defects (ᶜ*illa*)[22].

This elaboration demonstrates both the juristic process of determining the authenticity of *Ḥadīth*, and the application of strict classification criteria such as those of *Ṣāḥīḥ* and *Ḥasan*. From this process it can be seen that the authenticity of the *Ḥadīth* is verified only at the levels of *Ṣāḥīḥ* and *Ḥasan*, which are considered as the

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[18] *Op.cit.*,CD *Mawsūᶜa : al-Kutub al-Tisᶜa*
[19] Tirmidhi, *Sunan*, v.5, p.215
[20] Ibn Ḥajar, *al-Iṣāba*,v.3.p.45
[21] Ibn Ḥajar, *Bulūgh al-Marām*,p.15.
[22] *Op.cit.*,CD *Mawsūᶜa : al-Kutub al-Tisᶜa*

primary source of Islamic law after the holy *Qur'an*[23]. Thus, every single *Ḥadīth* categorized as *Ṣāḥīḥ* and *Ḥasan* is also considered as a Divine ruling of Islam, derived from the prophetic life of Muḥammad s.a.w[24].

The third level (*Ḍa^{c}īf* - lit.weak) refers to the *Ḥadīth* which have a discontinuous chain of narrators, made up of the least trustworthy, lacking in powers of memory. Simultaneously, in terms of validity of texts, most of the *Ḥadīth*s have either irregularities (*shudhūdh*) or defects (*^{c}illa*)[25]. To put it simply, *Ḍa^{c}īf* means the *Ḥadīth* which have no features such in *Ṣāḥīḥ* and *Ḥasan*. The level of *Ḍa^{c}īf* (in describing the prophetic life of Muḥammad s.a.w) exhibits a multiplicity of narrators and their chains of narration, but has no verified features such as those of the levels of *Ṣāḥīḥ* and *Ḥasan*[26].

Juristically, traditionists have drawn up many categories of *Ḍa^{c}īf*, based on the levels of discontinuity of the chain of narrators, discrepancies in levels of memory and levels of defect[27]. Ibn Ḥibban al-Busti (d.354H/965A.D)[28], for example has drawn up 49 levels or categories of *Ḍa^{c}īf*. Juristic scholars assert that under specific circumstances, the *Ḥadīth Ḍa^{c}īf* can be upgraded to the level of *Ḥasan* if supported by the quality of narration[29]. On the other hand, if the level of defect is juristically identified as high, it will be categorized as *Mawḍū^{c}* (Fabricated)[30]. This kind of categorisation is typically employed in the science of *Ḥadīth*. However, many books

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[23] Ibn Ḥajar, *Nukhba*,p.46.
[24] *Ibid.*
[25] al-Nawāwi, *Taqrīb*,p.5; al-Suyūṭī, *Tadrīb*, v.i,p.179 and Subhi, *^{c}Ulūm al-Ḥadīth*,p.165
[26] *Op.cit.*, Ibn Ḥajar,p. 48
[27] *Ibid.*, Ibn Ḥajar, p.49
[28] Ibn al-Ṣalāḥ, *Muqaddima*,p.37.
[29] *Op.cit.*, al-Suyūṭi, v.i, p.53
[30] al-Sakhāwi, *Fatḥ*,v.i,p.99.

of the *Ḥadīth* are not only compiled with numerous numbers of the *Ḥadīth Ṣāḥīḥ* and the *Ḥadīth Ḥasan*, but also numbers of the *Ḥadīth Ḍa^{c}īf*. This phenomenon raises important questions. If the *Ḥadīth Ṣāḥīḥ* and the *Ḥadīth Ḥasan* are the only authentic sources of the *Ḥadīth*, then why are the *Ḥadīth Ḍa^{c}īf* are also included?

Traditionists and Muslim jurists are in agreement that the *Ḥadīth Ḍa^{c}īf* is not the authentic *Ḥadīth* - the primary source of Islamic law after the holy *al-Qur'an*[31]. Only the *Ḥadīth Ṣāḥīḥ* and *Ḥadīth Ḥasan* are accepted as the authentic *Ḥadīth* in the light of Islamic jurisprudence[32]. Nevertheless, the *Ḥadīth Ḍa^{c}īf* is considered acceptable in limited areas, but within strict conditions, as follows;

a) The level of *Ḍa^{c}īf* does not approximate to the level of fabricated or forgery[33].

b) The ruling or injunction derived from *Ḍa^{c}īf* must be parallel with *Ṣāḥīḥ* and *Ḥasan*[34].

c) It is forbidden to believe in *Ḍa^{c}īf* as derived from the prophet Muhammad s.a.w[35].

d) Reference to *Ḥadīth Ḍa^{c}īf* is allowed only in the area of motivation for doing good and prevention from doing evil[36].

Nevertheless, despite these strict conditions, *Ḥadīth Ḍa^{c}īf* have been compiled together with *Ḥadīth Ṣāḥīḥ* and *Ḥadīth Ḥasan* in many authentic books such as *Musnad Aḥmad, Sunan Abī Dāwūd, Jāmi^{c} Abī ^{c}Isa al-Tirmīdhi, Sunan al-Nasā'i* and

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[31] al-Nawāwi, *Taqrīb*,p.5; al-Suyūṭi, *Tadrīb*,v.1,p.179 and Ibn al-Ṣalāḥ, *Muqaddima*,p.165.
[32] *Ibid.*
[33] al-Sakhāwi, *al-Qawl*,p.4
[34] *Ibid.*
[35] *Ibid.*
[36] *Op.cit.*,al-Nawāwi, p.8.

Sunan Ibn Māja. Yet there are also authentic books in which only the *Ḥadīth Ṣāḥīḥ* and the *Ḥadīth Ḥasan* appear, such as *Ṣāḥīḥ al-Bukhārī* and *Ṣāḥīḥ Muslim.* However, some traditionists make the accusation that even these are compiled with small numbers of the *Ḥadīth Ḍaᶜīf.*

Again, a book exists where *Ḥadīth Ṣāḥīḥ*, *Ḥadīth Ḥasan* and *Ḥadīth Ḍaᶜīf* are compiled together, and which also refers to those many authentic books of the *Ḥadīth* previously listed. This kind of book is entitled *Bulūgh al-Marām* - a summary of authentic books of the *Ḥadīth*, compiled with the *Ḥadīth Ṣāḥīḥ*, the *Ḥadīth Ḥasan* and the *Ḥadīth Ḍaᶜīf.*

In accordance with the science of *Ḥadīth*, part B will examine analyses of the authenticity of the *Ḥadīth* in accordance with its main references. The main points of part B have been highlighted through its introduction as previously discussed. This part B consists two chapters i.e. chapter four and chapter five. Chapter four focuses on the seven authentic books of the main references, while the book of *Bulūgh al-Marām* forms the core of the study. Chapter five therefore introduces this work of reference, while part C analyses its content as it connects with the main topic of this thesis - the concept of *al-Maṣlaḥa wa al-Naṣṣ.*

CHAPTER FOUR

THE MAIN REFERENCE SOURCES FOR THE BOOKS OF *ḤADĪTH*

4.0 Introduction

In the science of *Ḥadīth* (*ᶜUlūm al-Ḥadīth*), there are numerous references works for the books of *Ḥadīth.* Most traditionists agree that there are seven books of *Ḥadīth* which are classified as main reference sources (*viz. Ṣaḥīḥ al-Bukhārī, Ṣaḥīḥ Muslim, Musnad Aḥmad, Sunan Abī Dāwūd, Jāmiᶜ Abī ᶜIsa al-Tirmīdhi, Sunan al-Nasā'ie* and *Sunan Ibn Māja*)[1], compiled during the third century of *Hijra*[2]- the golden age of Islamic civilization[3].

Their classification as the principal reference sources is based on certain juristic features, in accordance with the levels of authenticity of the *Ḥadīth* as previously discussed. These juristic features will now be examined in detail through out this chapter to highlight the quality and value of these works of reference as primary sources of Islamic law apart from the *Qur'ān.*

The analysis will also include a brief discussion of each author's biography as well as the features of each book, focusing on incorporated levels of the *Ḥadīth Ṣaḥīḥ,* the *Ḥadīth Ḥasan* and the *Ḥadīth Ḍaᶜīf.* This analysis will be cross-referenced with the book of *Bulūgh al-Marām* in order to validate its authenticity as a definitive work of reference in this field.

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[1] Ibn Ḥajar, *Bulūgh al-Marām,* p.3.
[2] al-Zuhrāni, *Tadwīn,* p.271.
[3] Hitti, *History,* p.138

4.1 *Ṣaḥīḥ al-Bukhāri*

The author of *Ṣaḥīḥ al-Bukhāri* is 'Abū ᶜAbd Allah Muḥammad b. Ismāᶜīl b. Ibrāhim al-Mughīrah al-Bukhāri[4]. He was born in 194H/910M at Bukhāra and died in 256H/870M at Samarqand[5]. His best-known name is Imām Bukhāri[6]. Imām Bukhāri is acknowledged as one of the greatest scholars in the science of *Ḥadīth* due to his mastery in the area of memorization, knowledge of the chain of narrators of the *Ḥadīth* and the variety of their sources[7]. At the time when he lived memorization skills were highly valued; his ability to identify authentic texts among the multiplicity of the *Ḥadīth* was therefore verified by a number of tests[8]. He showed a remarkable ability to successfully differentiate between authentic and non-authentic *Ḥadīth*[9]. Indeed, it is reported that Imām Bukhāri was able to memorize one hundred thousand authentic *Ḥadīth*s and two hundred thousand non-authentic *Ḥadīth*s[10].

The title of *Ṣaḥīḥ al-Bukhāri* was assigned by traditionists to acknowledge Imām Bukhāri's efforts to compile authentic *Ḥadīth* (*Ṣaḥīḥ*) in one single book[11]. While Imām Bukhāri himself names his book *al-Jāmiᶜ al-Ṣaḥīḥ al-Mukhtar min 'umūr RasūlilLah ṣ.ᶜa.w wa sunanihi wa ayyāmihi*[12], the easier and shorter title of *Ṣaḥīḥ al-Bukhāri* is preferred by most traditionists.

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[4] Ibn Ḥajar, *al-Iṣāba*,v.i,p.47, al-Baghdādi, *Tārīkh*,v.i,p.6 and Ibn Khallikan, *Wafāyat*,v.i,p.455.
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*
[8] Ibn Ḥajar, *Huda*,v.i,p.6
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

The book of *Ṣaḥīḥ al-Bukhāri* is juristically recognized as a main reference of *Ḥadīth* due to the following features;

a) All narrators of *Ḥadīth* are juristically identified as having a continuous chain of narrators (*isnād*) through disciples of the prophet (s.a.w) and their successors, culminating in Imām Bukhāri himself. All are recognized as trustworthy (*ᶜadīl*) and possessed of the most accurate and greatest powers of memory (*ḍābiṭ*)[13].

b) It was the first book of *Ḥadīth* to be compiled as chapters and sub topics[14]. It is suggested that there are 7,275 *Ḥadīth*[15], which are divided into 77 chapters and 3,888 sub topics.

c) The book of *Ṣaḥīḥ al-Bukhārī* has been analyzed and commented by many traditionists. It contains analyses and commentaries by many traditionists, seven in all, in which every single *Ḥadīth* is analyzed from every possible scholastic perspective[16]; *viz. 'Aᶜlām al-Sunan* (Khaṭṭābi Abī Sulaiman), *al-Kawkab al-Darāri fī Sharḥ Ṣaḥīḥ al-Bukhāri* (al-Ḥāfiẓ Shamsuddin Muḥammad), *Fatḥ al-Bārī* (Imām Ibn Ḥajar al-ᶜAsqalāni), *ᶜUmda al-Qārī* (al-Ḥāfiẓ Badruddin Abī Muḥammad, *Irshād al-Sāri* (Shihābuddīn Aḥmad), *Fayḍ al-Bāri* (Sheikh Muḥammad Anwār al-Kashmeri), *Lāmiᶜ al-Darāri* (Ḥājj Rashīd Aḥmad al-Kankuhi) .

Though traditionists are mostly in agreement that the book of *Ṣaḥīḥ al-Bukhāri* is juristically recognized as a main reference for the *Ḥadīth*, some scholars doubt the validity of some texts. One of these was Imam Daraquṭni who formally

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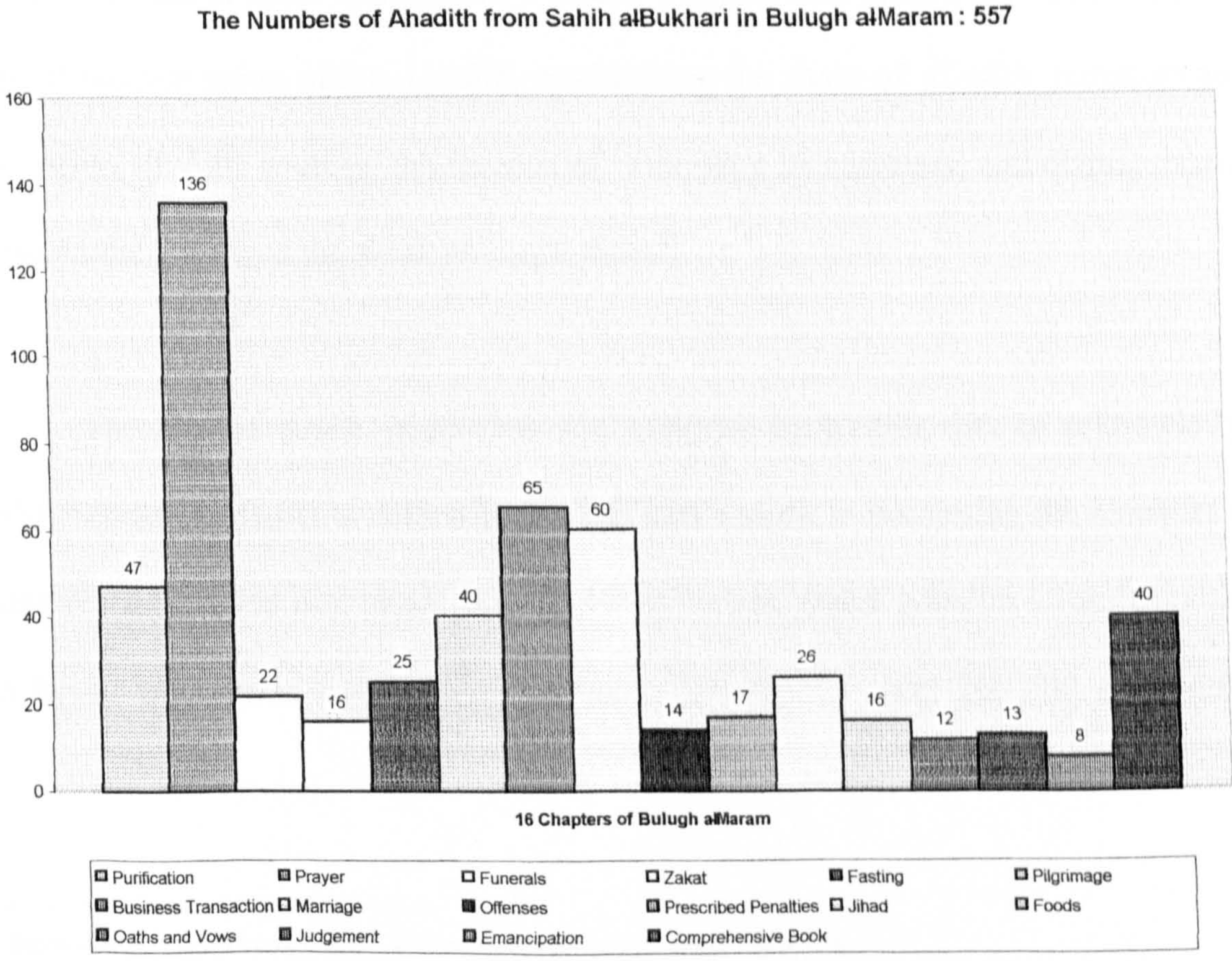
[13] Ibn Ḥajar, *al-Isaba*, v.ii, p.70
[14] Ibn Ḥajar, *Huda*, v.i, p.8.
[15] Ibn al-Ṣalāḥ, *ᶜUlūm*, p.16.
[16] al-Zuhrāni, *Tadwīn*, p.122.

criticized a few narrators, which he classified as doubtful and fraudulent in its chain of transmission[17]. Consequently, Imām Ibn Ḥajar al-ᶜAsqalānī in turn examined the accusations made by Imam Daraquṭni, rebutting his arguments as lacking in both judgment and evidence[18]. He thus strongly defended the validity of narrators in *Ṣaḥīḥ al-Bukhārī*[19].

The importance of *Ṣaḥīḥ al-Bukhārī* as the principal source for the *Ḥadīth* is further upheld by many other reference books such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 557 *Aḥādīth* are derived from *Ṣaḥīḥ al-Bukhāri,* and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (557);



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[17] Ibn Ḥajar, *Huda,*v.*i*,*p*.13.
[18] *Ibid.*
[19] *Ibid.* This kind of detailed examination and analysis can be found in many traditionists books particularly in those seven books of the commentary of *Ṣaḥīḥ al-Bukhāri*as listed above.

4.2 *Ṣaḥīḥ al-Muslim*

The author of *Ṣaḥīḥ al-Muslim* is Abū Ḥussein Muslim b. al-Ḥajjāj b. Muslim al-Qushairi al-Naiysābūri[20]. He was born at Naysābūr in 204H and died in his homeland on Sunday, in the month of *Rajab*, 261H[21]. His best-known name is Imām Muslim. He was a gifted disciple under Imām Bukhāri, and was endorsed as such by the Imām himself[22]. Thus, Imām Muslim's approach and methods followed those of Imām Bukhāri very closely.[23]

Imām Muslim is thus acknowledged as one of the greatest scholars in the science of *Ḥadīth* apart from Imām Bukhāri[24]. He is well known for mastery in the area of memorization of the *Aḥādīth*, establishing the chain of *Ḥadīth* narrators and the variety of their sources, the science of criticizing its narrators, and distinguishing between the valid and the weak amongst them[25].

The title of *Ṣaḥīḥ al-Muslim* was assigned by traditionists to acknowledge Imām Muslim's efforts to follow Imām Bukhāri's work in compiling the numbers of authentic *Aḥādīth* in one single book[26]. Nevertheless, Imām Muslim himself entitles his book *al-Musnad al-Ṣaḥīḥ*[27]. The book is compiled from 300,000 of *Aḥādīth*

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[20] Ibn al-ᶜImād, *Shadhara*, v.ii, p.144; and Ibn Ḥajar, *al-Iṣāba*, v.x, p.126.
[21] *Ibid.*
[22] *Ibid.*
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid.*
[26] al-Zuhrani, *Tadwīn*, p.125.
[27] Muslim, *Muqaddima*, p.3.

which were passed orally directly to Imām Muslim by the authentic narrators of the *Ḥadīth*[28].

The book of *Ṣaḥīḥ al-Muslim* is recognized as a main reference source for the book of *Ḥadīth* after *Ṣaḥīḥ al-Bukhāri* due to the following juristic features;

a) All narrators of *Ḥadīth* are juristically identified as having a continuous chain of narrators (*isnād*) through the disciples of the prophet (s.a.w) and their successors, culminating in Imām Muslim himself. All are recognized as trustworthy (*ᶜadīl*) and possessed of the most accurate and greatest powers of memory (*ḍābiṭ*)[29].
b) It was the second book of *Ḥadīth* to be compiled as chapters and sub topics[30]. Scholars have estimated that there are 5,362 numbers of *Ḥadīth*[31] which are divided into 56 chapters and 1,423 sub topics.
c) The book of *Ṣaḥīḥ al-Muslim* has been analyzed and commented upon by many traditionists. There are six books of commentaries in which every single *Ḥadīth* of *Ṣaḥīḥ al-Muslim* has been analyzed from every possible scholastic perspective[32] ;*viz. al-Muffahim fī Sharḥ Muslim* (°Abd al-Ghāfir b. Ismā°īl al-Fārisi,d.529H), *al-Muᶜallim fī Sharḥ Muslim* (Abī °Abdullah Muḥammad b. °Ali,d.536H), *Ikmāl al-Muᶜallim bifawai'd Sharḥ Ṣaḥīḥ Muslim* (Al-Qāḍi Abī al-Fadl ᶜIyāḍ, d.544H), *Sharḥ Ṣaḥīḥ Muslim* (Abī ᶜAmrū b. ᶜUthmān b. al-Silah,d.643H), *al-Minhāj fī Sharḥ Ṣaḥīḥ Muslim* (Abī Zakarīyya Yaḥya b.

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[28] *Ibid.*
[29] Ibn al-Ṣalāḥ, *Siyāna*,p.76.
[30] Ibn Ḥajar, *Huda*,v.i,p.8.
[31] al-Suyūṭi, *Tadrīb*,p.104.
[32] al-Zuhrāni, *Tadwīn*,p.122.

Sharp al-Nawāwi, d.676H), *Ikmāl al-Ikmāl* (Abī al-Rūḥ ᶜIsa b. Masᶜūd al-Zawāwi al-Māliki, d.744H).

As a second main reference source for the book of *Ḥadīth* after *Ṣaḥīḥ al-Bukhārī, Ṣaḥīḥ al-Muslim's* work has also generated a great deal of discussion as well as criticism amongst traditionists. Imām Abū Zarᶜah al-Rāzi was one of those who juristically criticize some narrators disqualified by Imām Muslim, such as ᶜAṭṭā' b. al-Saᶜib and Muḥammad b. ᶜAmrū b. ᶜalqamah[33]. But surprisingly, Imām Daruquṭni who vociferously criticizes some narrators validated by *Ṣaḥīḥ al-Bukhari,* nevertheless acknowledges Imām Muslim's judgement concerning the quality of all his narrators.[34] As a result, a later scholar, Dr. al-Fadhil Rabiᶜ b. Hadi al-Mudakhali has in turn undertaken research on the quality of all narrators in *Ṣaḥīḥ al-Muslim.* His studies lead him to conclude (controversially) that all narrators of *Ṣaḥīḥ al-Muslim* are qualified at the level of *Ṣaḥīḥ,* including 95 narrators held as disqualified by some traditionists[35].

As the importance main reference source for the book of *Ḥadīth, Ṣaḥīḥ al-Muslim* has been referred to more recently by many others books of *Ḥadīth,* such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 745 *Aḥādīth* are derived from *Ṣaḥīḥ al-Muslim,* and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (745):

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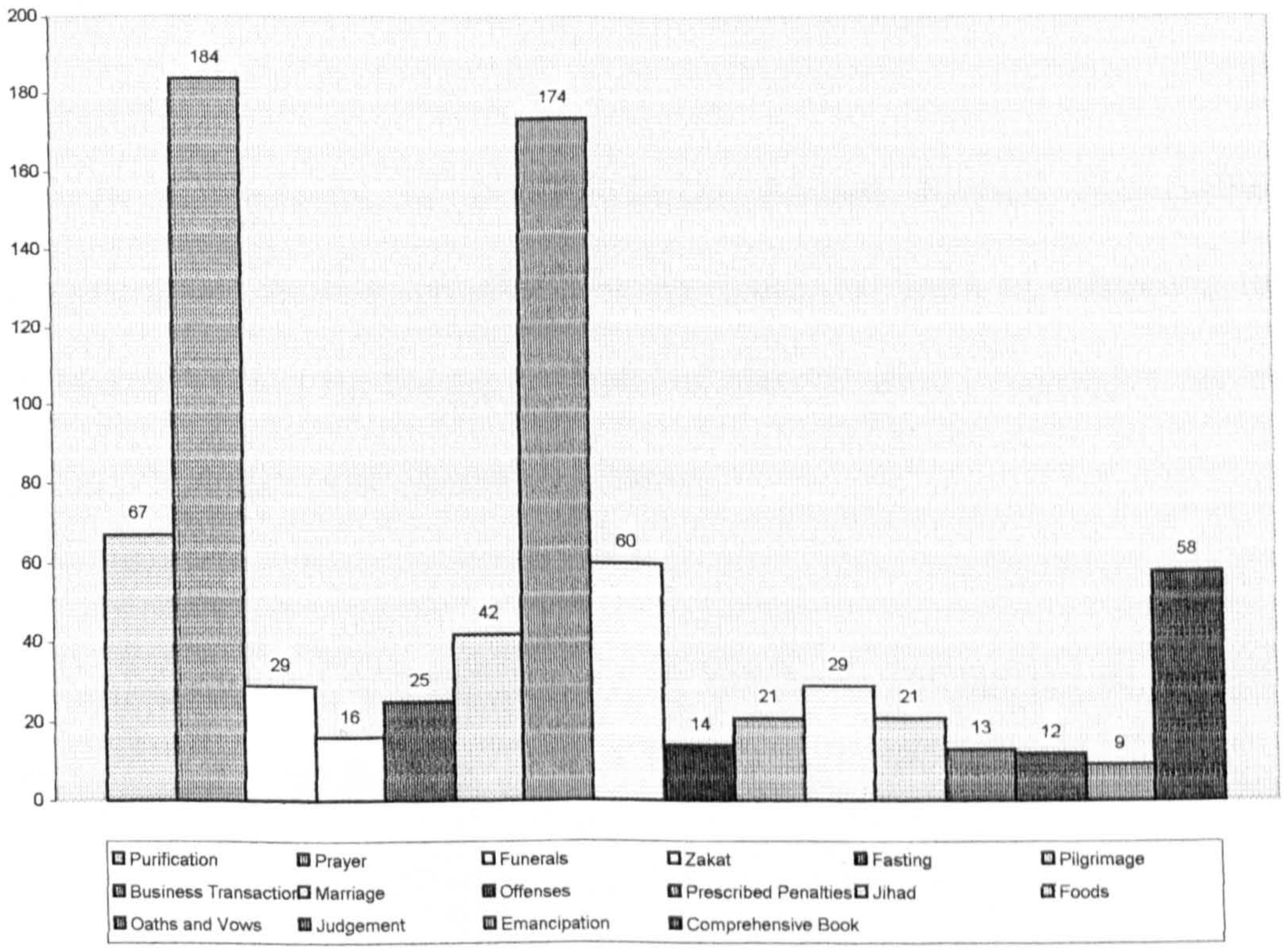
[33] al-Nawāwi, *al-Minhāj*,v.i,p.10.
[34] *Ibid.*
[35] al-Mudakhali, *Bayna*,p.15



4.3 *Musnad* Aḥmad b. Ḥanbal

The author of *Musnad* Aḥmad b. Ḥanbal is Abū ᶜAbdullah Aḥmad b. Muḥammad b. Ḥanbal b. Hilāl al-Shaybāni[36]. He was born in the month of *Rabiᶜulawwal,* 164H at Baghdad and died on Friday, 12th *Rabiᶜulawwal,* 241H[37]. His best-known name is Imām Aḥmad b. Ḥanbal. He is acknowledged as one of the greatest scholars in the area of theology, Islamic law and in the science of *Ḥadīth.*

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[36] al-Baghdādi, *Tārīkh,* v.iv,p.412; and Ibn Khalikan, *Wafayāt,* v.i,p.17.
[37] *Ibid.*

He is also known as one of the four foremost *Imam*s of the Islamic juristic school due to his contribution as the founder of the *Ḥanbal*'s juristic school (*Madhhab Al-Ḥanbaliya*)[38].

In the science of *Ḥadīth*, Imām Aḥmad showed remarkable skill in memorizing one million *Aḥadīth*[39]. Furthermore, his work of compiling the *Aḥādīth* (the *Musnad*) using his unique methods of classification - highlights his expertise in the area of the history of *Ḥadīth*'s narrators.

The book of *Musnad* Aḥmad b. Ḥanbal is recognized as one of the main reference sources for the book of *Ḥadīth* due to the following juristic features;

a) The narrators of the *Ḥadīth* are juristically divided into *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness) and *Ḍa^{c}īf* (lit.weak)[40]. It is suggested by Ibn al-Jawzi that *Musnad* Aḥmad b. Ḥanbal also contains some fabricated narrators (*Muwḍu^{c}*)[41]. Nevertheless, most traditionists agree that *Musnad* Aḥmad is still recognized as the foremost reference source for the book of *Ḥadīth* due to the large numbers of authentic narrators in its chain of transmission[42].

b) It was the first book of *Ḥadīth* to be compiled in which every single narrator is classified into many levels of disciples of the prophet (s.a.w)

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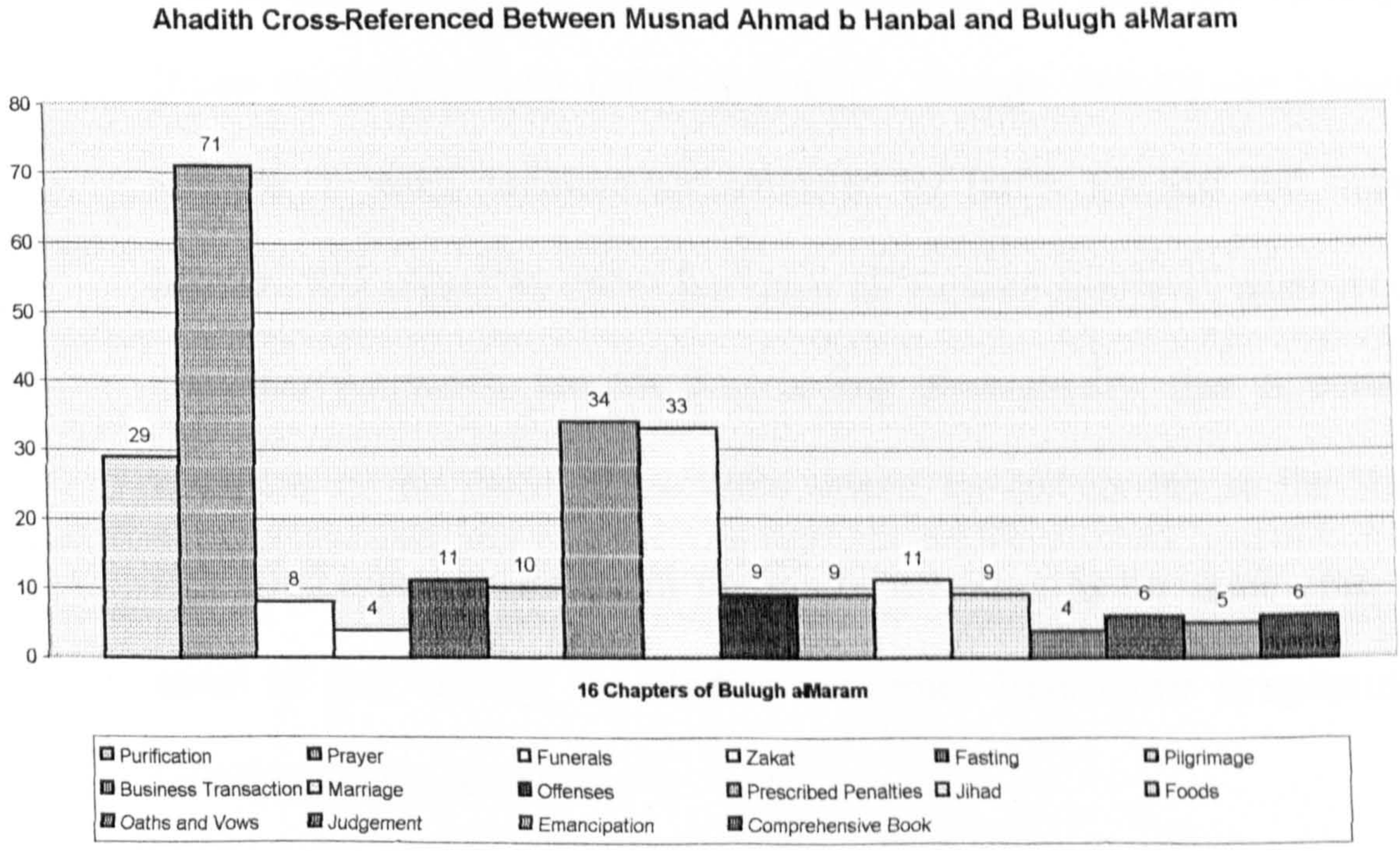
[38] *Ibid.*
[39] *Ibid.*
[40] al-Jazri, *al-Musa^{c}ad*, p.34.
[41] Ibn Taymīyya, *Majmū^{c}*, v.xviii, p.26.
[42] al-Zuhrāni, *Tadwīn*, p.107-108.

and their successors. Furthermore, some narrators are classified by the name of the place to which they are belonged [43].

c) The book of *Musnad* Aḥmad has been analyzed and commented upon by many traditionists, *viz. Khaṣā'iṣ al-Musnad* (Abī Mūsa al-Madīni), *Al-Muṣa^{c}ad al-Aḥmad* (Shamsuddin al-Jazri), *Al-Musnad al-Aḥmad* (Shamsuddin al-Jazri) and *Al-Qawl al-Musaddad fi al-Zib ^{c}an Musnad Aḥmad* (Ibn Ḥajar al-^{c}Asqalāni)[44].

The importance of *Musnad* Aḥmad b. Ḥanbal as one of the main references for the book of *Ḥadīth* is further upheld by many other reference books such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 259 *Aḥādīth* are derived from *Musnad* Aḥmad b. Ḥanbal, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (259);



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[43] *Ibid.*
[44] *Ibid.*

4.4 *Sunan* Abū Dāwūd

The author of *Sunan* Abū Dāwūd is Sulaiman b. al-Ash^{c}ath b. Ishak al-Azdi al-Sijistani. He was born in Basrah in 203H/817M, where he lived until his death on Friday in the month of *Shawwal* 275H/888M[45]. He is best-known as Abū Dāwūd, and also studied under Imām Aḥmad b. Ḥanbal along with al-Bukhārī. He later became a *Ḥadīth* scholar, teaching many scholars such as al-Tirmīdhi and al-Nasāi'e[46].

As one of the great scholars at that time, Abū Dāwūd collected 5,000,000 *Aḥādīth* but he compiled only 4,800 *Aḥādīth* in one single book entitled *al-Sunan*[47]. The book of *Sunan Abū Dāwūd* is juristically recognized as a main reference source of *Ḥadīth* due to the following features;

a) The narrators of *Ḥadīth* are juristically divided into *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness) and *Ḍa^{c}īf* (lit.weak)[48]. Though Abū Dāwūd himself referred to many narrators authenticated by Imām Bukhāri and Imām Muslim, it is argued by Imām Ibn Ḥajar al-^{c}Aqalāni that small numbers of these are juristically identified as having discontinuity; that is, certain members of the chain of narrators should be categorized as the least trustworthy and as lacking in powers of memory. At the same time, in terms of text validity, the *Ḥadīth*s concerned have either irregularities (*shudhūdh*) or defects (^{c}*illa*)[49].

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[45] al-Sam^{c}ani, *al-Anṣāb*,v.ii,p.29; al-Nawāwi, *Tahdhīb*,v.ii,,p.709; Ibn Kathīr, *al-Bidāya*,v.xi,p.55; and Ibn Khalikan, *Wafāyat*,v.i,p.271.
[46] *Ibid.*
[47] *Ibid.*
[48] al-Jazri, *al-Musa^{c}ad*,p.34.
[49] Ibn Hajar, *al-Nakt*,v.i,p.435.

b) Scholars have estimated that there are 4,590 *Aḥādīth* in the book of *Sunan Abū Dāwūd,* which are divided into 35 chapters and 1,879 sub topics.

c) The book of *Sunan Abū Dāwūd* has been analyzed and commented upon by many traditionists, *viz. Sharh Muᶜālim al-Sunan* (Abū Sulaiman Ḥamd b. Muḥammad b. Ibrāhim al-Khattabi,d.388H), *Murqāt al-Suᶜud ila Sunan Abī Dāwūd* (al-Suyūṭi,d.911H), *Fatḥ al-Wadūd ᶜala Sunan Abī Dāwūd* (Abū al-Ḥassan Muḥammad b. ᶜAbd. al-Hādi al-Sundi, d.1139H), *ᶜAwn al-Maᶜbūd Sharḥ Sunan Abī Dāwūd* (Sheikh Shamsuddin al-ᶜAẓīm Abādi, d.1329H), *Bazl al-Majhūd fī Hal Abī Dāwūd* (Sheikh Khalīl Aḥmad al-Saranguri, d.1346H)[50].

The importance of *Sunan Abī Dāwūd* as one of the main reference sources for the book of *Ḥadīth* is further upheld by many other reference books such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 444 *Aḥādīth* are derived from *Sunan Abī Dāwud,* and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (444);

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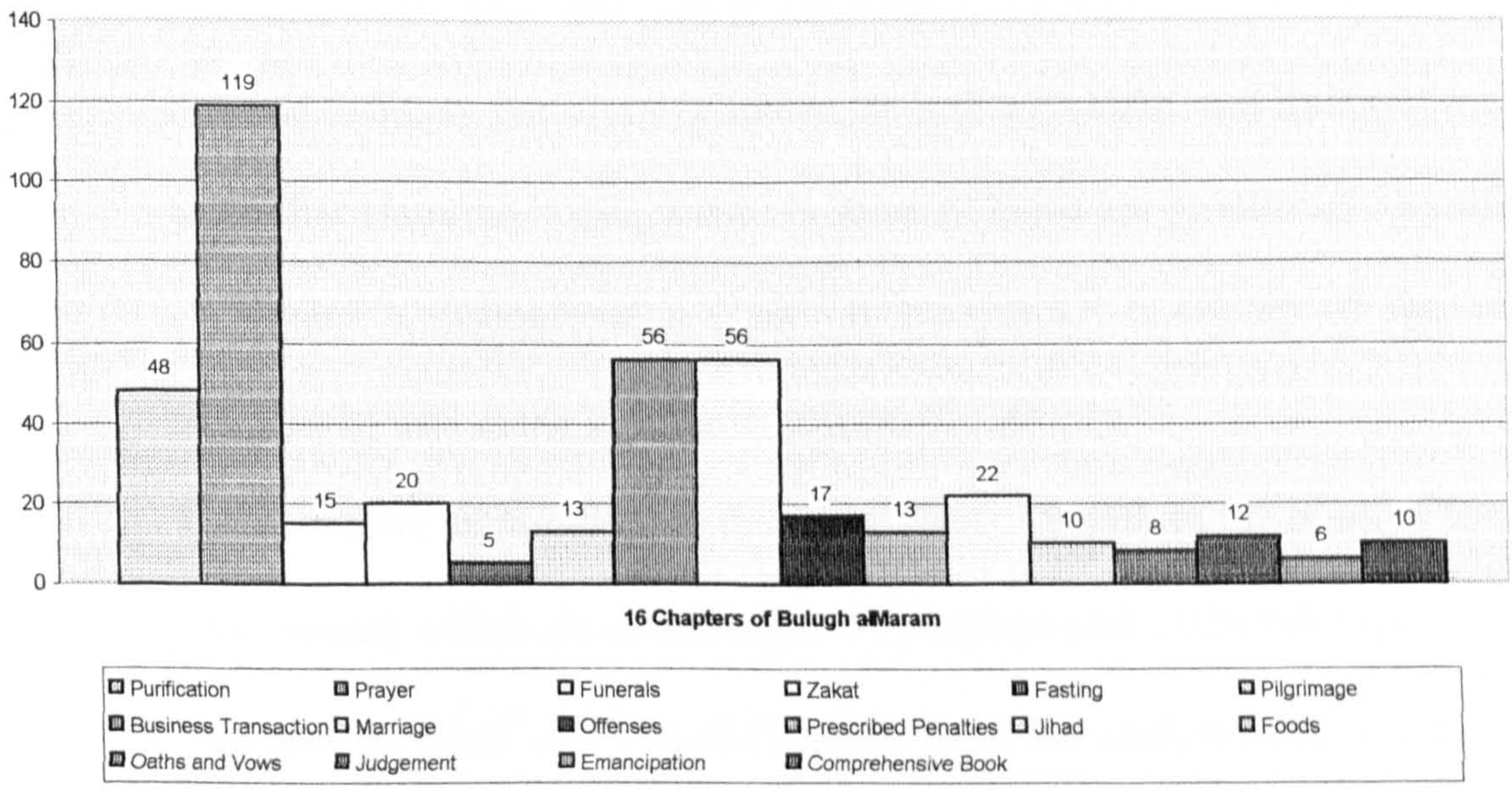
[50] al-Zuhrāni, *Tadwīn*,p.136.



4.5 *Jāmi^{c} Abī ^{c}Isa al-Tirmīdhi*

The author of *Jāmi^{c} Abī ^{c}Isa al-Tirmīdhi* was Muhammad b. ^{c}Isa b. Sūra b. Mūsa b. al-Dhahak al-Sulma al-Bughi al-Tirmīdhī[51]. He was born in the town of Tirmīdh, Uzbekistan in 209H, where he died on 13th of *Rajab* 279H[52]. He is most commonly known as al-Tirmīdhi. As a student of Imām Bukhāri, al-Tirmīdhī showed his scholastic attainment by compiling approximately 4,000 *Aḥādīth* in one single book namely *al-Jāmi^{c}*[53]. Most importantly, al-Tirmīdhi pioneered a juristic methodology to determine in *Ḥadīth* the level of *Ḥasan* (lit.fairness)[54]. He also analyzed the level of *Ḍa^{c}īf* (lit.weak) in his book on the subject of *al-^{c}Ilal*[55].

The book of *Jāmi^{c} Abī ^{c}Isa al-Tirmidhi* is juristically recognized as a main reference of *Ḥadīth* due to the following features;

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[51] Ibn Khalikan, *Wafāyat*, v.i,p.278; al-Dhahabi, *Tadhkira*, v.ii,p.635; Ibn ^{c}Imād, *Shadhara*, v.ii,p.174 and al-Zirikli, *al-'A^{c}lām*, v.7,p.213.
[52] *Ibid.*
[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid.*

(a) The narrators of *Ḥadīth* are juristically divided into *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness) and *Ḍaᶜīf* (lit.weak). Though al-Tirmīdhi himself referred to many narrators validated by Imām Bukhārī and Imām Muslim, Imām Ibn Ḥajar al-ᶜAqalāni asserts some of these are juristically identified as having a discontinuous chain of narrators, made up of the least trustworthy and those lacking in powers of memory.[56]

(b) Scholars have estimated that there are 3,965 *Aḥādīth* in the book of *Sunan Abū Dawūd,* which are divided into 47 chapters and 2,036 sub topics.

(c) The book of *Jāmiᶜ Abī ᶜIsa al-Tirmidhi* has been analyzed and commented upon by many traditionists, *viz. ᶜĀriḍa al-Aḥwāzi* (al-Ḥāfiẓ b. al-ᶜArābi al-Māliki,d.546H), *Sharḥ al-Tirmīdhi* (Ibn Rajab al-Ḥanbali,d.795H), *Tuhfa al-Aḥwāzi* (ᶜAbd al-Raḥman al-Mubarakfūri)[57].

The importance of *Jāmiᶜ Abī ᶜIsa al-Tirmidhi* as one of the main references for the book of *Ḥadīth* is further upheld by many other reference books such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 298 *Aḥādīth* are derived from *Jāmiᶜ Abī ᶜIsa al-Tirmidhi*, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (298);

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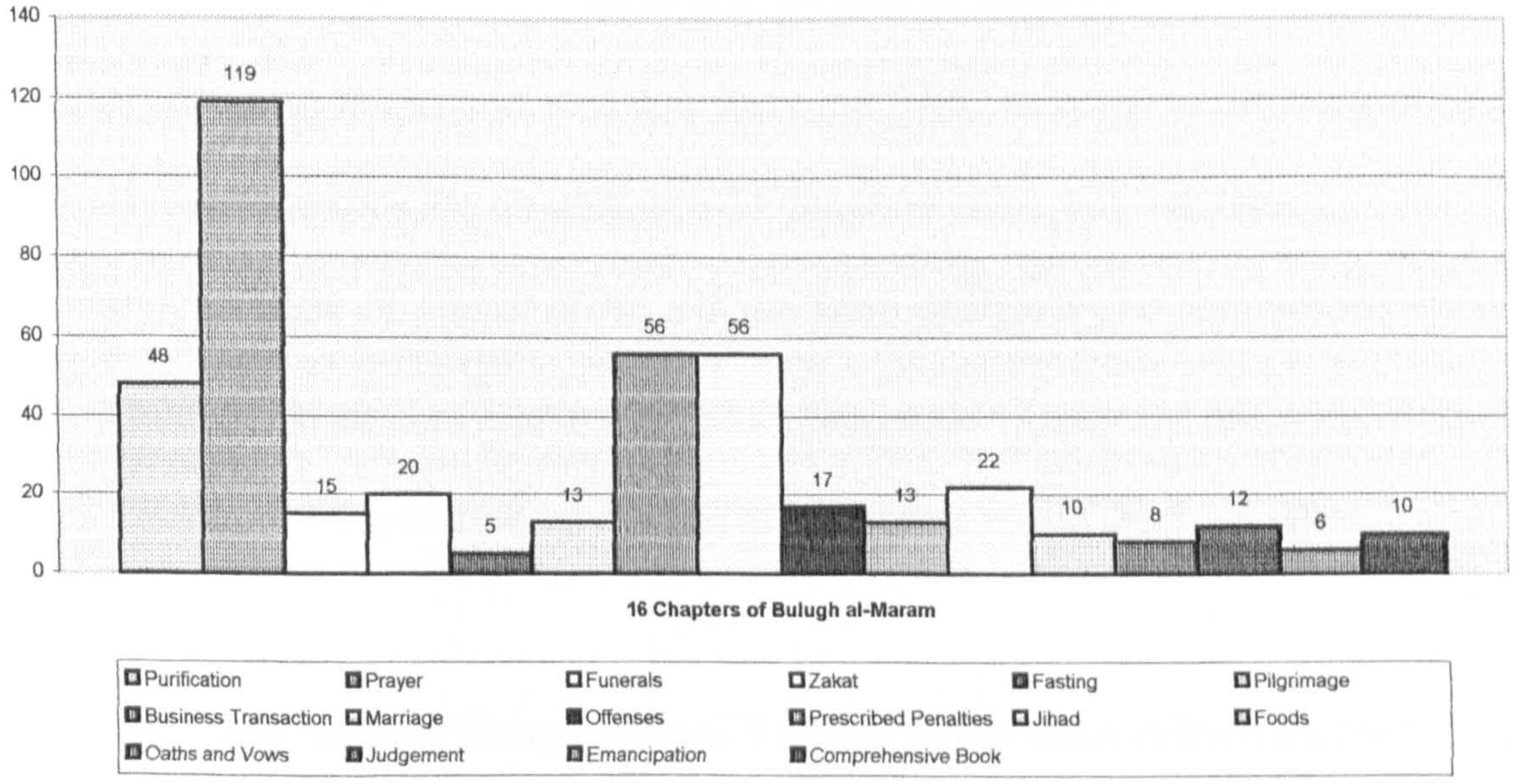
[56] Ibn Ḥajar, *al-Nakt*,v.i,p.435.
[57] al-Zuhrāni, *Tadwīn*,p.140.



4.6 *Sunan al-Nasā'i*

The author of *Sunan al-Nasā'i* was Aḥmad b. Shu^{c}aib b. ^{c}Ali Sinan Abū ^{c}Abd. Raḥman al-Nasā'i[58]. He was born in the city of Nisā' in Khurasan in 215H, where he died in the year 303H at Makka[59]. He is most commonly known as *al-Nasā'i.* As a student of Abū Dāwūd, al-Nasā'i is acknowledged as a *Ḥadīth* scholar due to his mastery in the area of memorization and his methodology of analysis of the *Ḥadīth.* *Al-Nasā'i*'s famous book of *Ḥadīth* is entitled *Sunan al-Nasā'i.*

The book of *Sunan al-Nasā'i* is juristically recognized as a main reference of *Ḥadīth* due to the following features;

(a) The narrators of *Ḥadīth* are juristically divided into *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness) and *Ḍa^{c}īf* (lit.weak). Though *al-Nasā'i* himself referred to many narrators recognized as authentic by Imām Bukhāri and Imām Muslim,

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[58] Ibn Ḥajar, *Tahdhīb,* v.i,p.266; Ibn Khalikan, *Wafāyat,*v.i,p.77; and al-Dhahābi, *Tadhkīra,*v.ii,p.270.
[59] *Ibid.*

here as elsewhere, a small number of narrators are juristically identified as the least trustworthy and also lacking in powers of memory[60].

(b) Scholars have estimated that there are 5,662 *Ahadith* in the book of *Sunan al-Nasā'i,* which are divided into 51 chapters and 2,535 sub topics.

(c) The book of *Sunan al-Nasā'i* has been analyzed and commented upon by traditionists such as *Sharḥ* (al-Sheikh Sirajuddin ᶜUmar b. ᶜAli b. al-Mulqin al-Shāfiᶜi,d.804H) and *Sharḥ* (al-Ḥāfiẓ Jalāluddin al-Suyūṭi,d.911H)[61].

The importance of *Sunan al-Nasā'i* as one of the main references for the book of *Ḥadīth* is further upheld by many other reference books such as *Bulūgh al-Marām.* For example, from 1,572 *Aḥādīth* in *Bulūgh al-Marām,* 271 *Aḥādīth* are derived from *Sunan al-Nasā'i,* and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (271);

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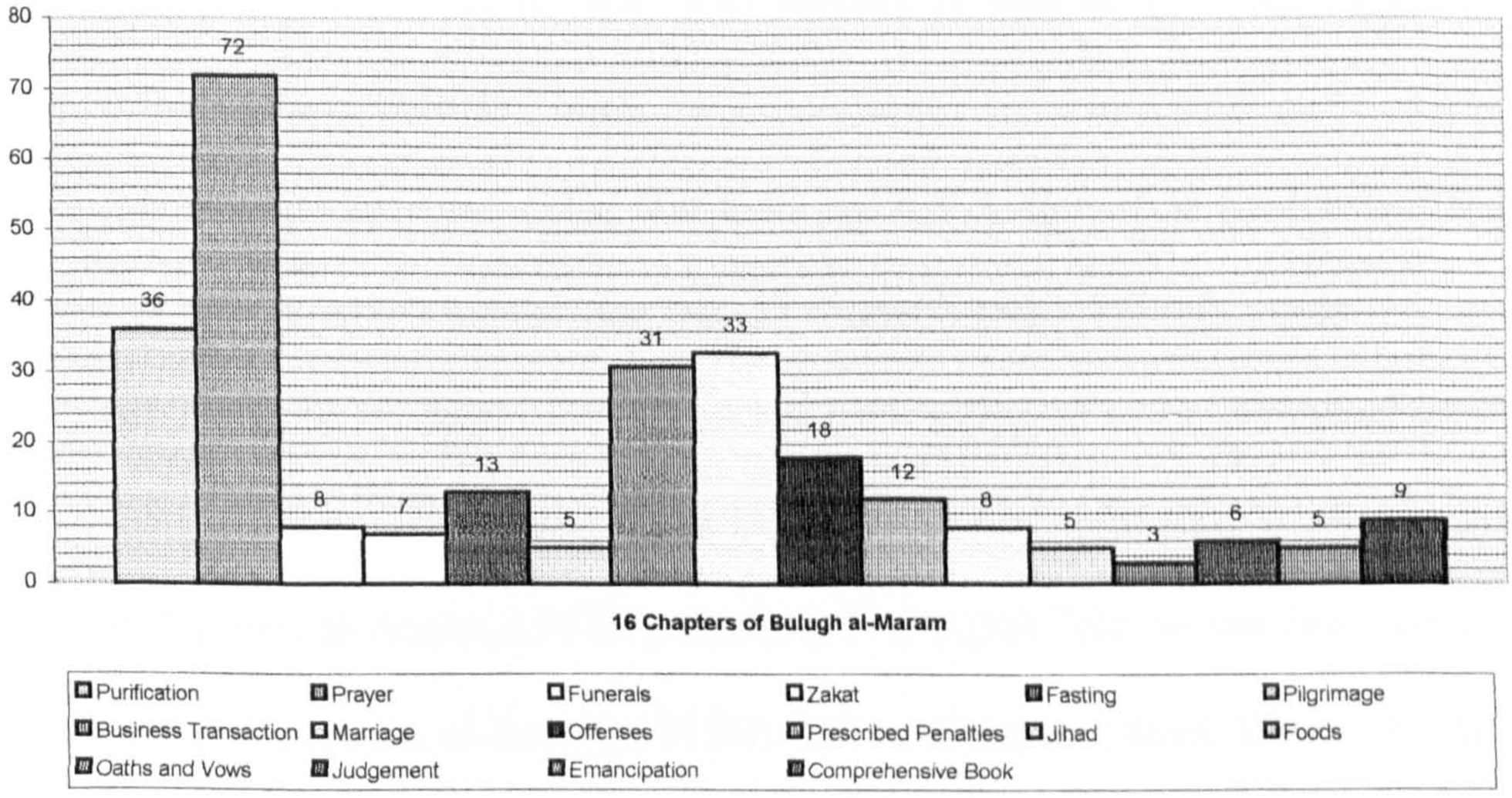
[60] Suyūṭi, *Sharḥ,*v.i,p.3-5.
[61] al-Zuhrāni, *Tadwīn,*p.143.



4.7 *Sunan Ibn Mājah*

The author of *Sunan Ibn Mājah* was Muḥammad b. Yazīd b. Maja al-Qizwini [62], born in the city of Qizwin in 207H. There he died in the month of *Ramaḍān* 273H[63]. He is best-known as Ibn Mājah. As a student of Imām Mālik and other scholars, Ibn Majah is acknowledged as a *Ḥadīth* scholar due to his skill in memorization, the history of narrators and analysis of the *Ḥadīth.* His most famous book of *Ḥadīth* is entitled *Sunan Ibn Mājah.*

The book of *Sunan Ibn Mājah* is juristically recognized as a main reference source for the *Ḥadīth* due to the following features;

(a) The narrators of *Ḥadīth* are juristically divided into *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness), *Ḍaᶜīf* (lit.weak) and *Mawḍūᶜ* (lit.fabricated). Nevertheless, many scholars argue that the book does have a discontinuous chain of

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[62] Ibn al-ᶜImād, *Shadhara,* v.ii,p.164; Ibn Khalikan, *Wafāyat,* v.iii,p.407.
[63] *Ibid.* and al-Suyūṭi, *Ṭabaqat,* v.ii,p.279.

narrators, made up of the least trustworthy and the most deficient in powers of memory[64]. At the same time, text validity is marred by either irregularities *(Shudhūdh)* or defects (*ᶜIlla)*.

(b) Scholars have estimated that there are 4,333 *Aḥādīth* in the book of *Sunan Ibn Mājah,* which are divided into 33 chapters and 1,536 sub topics.

(c) The book of *Sunan Ibn Mājah* has been analyzed and commented upon by many traditionists such as *Sharḥ* (al-ᶜAlamah Abī al-Ḥassan ᶜAli b. ᶜAbdullah b. Niᶜmah al-Anṣāri,d.567H), *Miṣbāḥ al-Zujājah ᶜala Sunan Ibn Mājah* (al-Ḥāfiẓ Jalaluddin al-Suyūṭi,d.911H) and *al-Dibājah Sharḥ Sunan Ibn Mājah* (Sheikh Kamaluddin Muḥammad b. Mūsa al-Damri al-Shāfiᶜi,d.808H)[65].

Despite the defects described, *Sunan Ibn Mājah* is upheld as one of the main reference sources for the book of *Ḥadīth.* From 1,572 *Aḥādīth* in *Bulūgh al-Marām,* for example, 240 are derived from *Sunan al-Nasā'i*, and are referred to in 16 chapters. This cross-referencing is illustrated in the diagram below (240);

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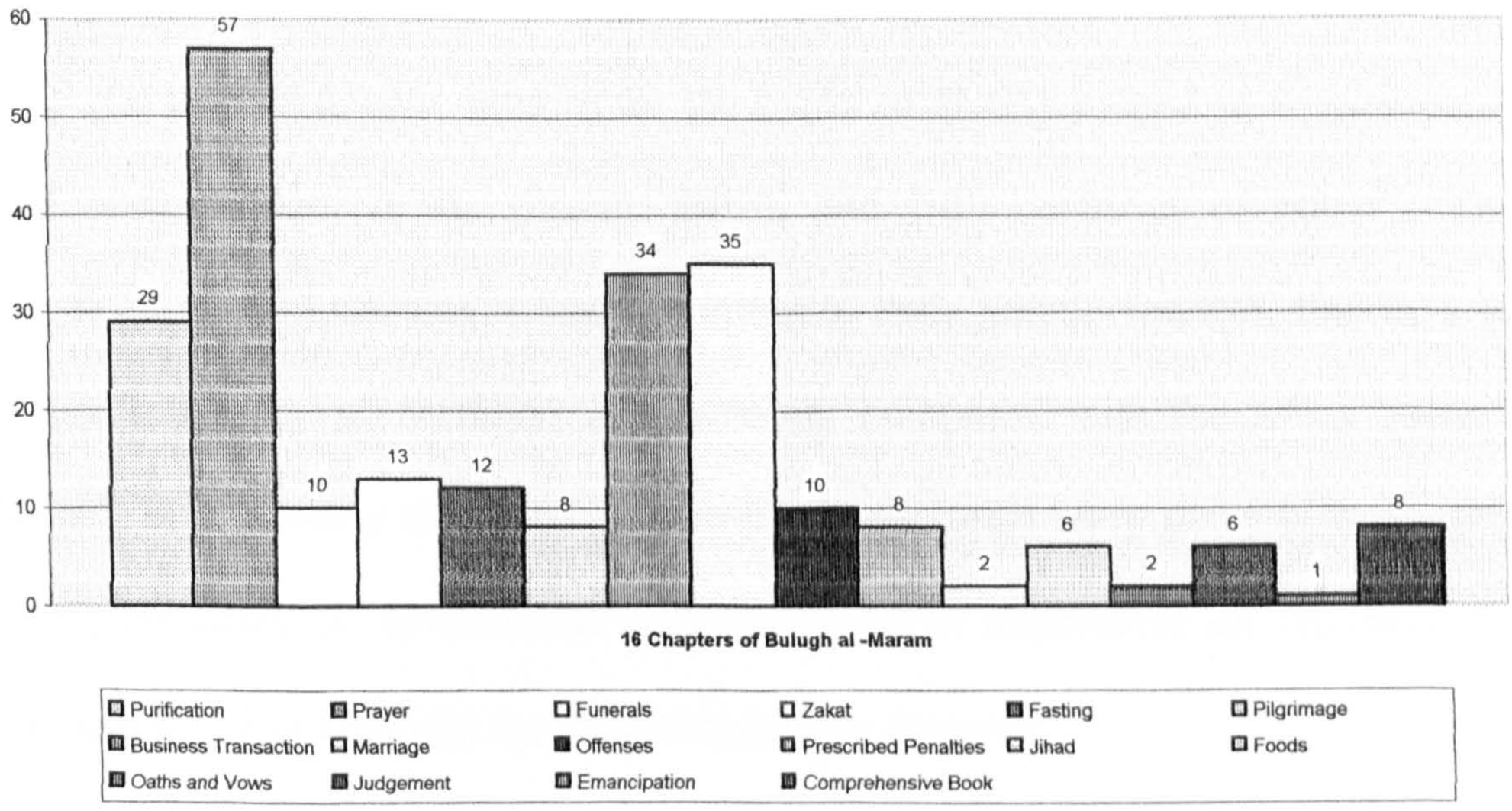
[64] al-Bāqi, *Dirāsa,* p.1519.
[65] al-Khalīfa, *Madrasa,* p.345-346.



Thus, in comparison with the other five books of *Ḥadīth, (viz. Musnad Aḥmad, Sunan Abī Dāwūd, Jāmi^{c} Abī ^{c}Isa al-Tirmidhī, Sunan al-Nasā'ie* and *Sunan Ibn Mājah*), it can be seen that *Ṣaḥīḥ al-Bukhāri* and *Ṣaḥīḥ al-Muslim* have the most authentic juristic features as source references. Nevertheless, the other five books discussed are also juristically recognized as important reference sources, although to a lesser degree.

There is, however, much cross-referencing between *Bulūgh al-Marām* and the seven books of *Ḥadīth* examined, as well as reference to other existing source material. This suggests that the book of *Bulūgh al-Marām* could not have been compiled without drawing upon the wealth of other extant and juristically accepted works. For this reason, additional source material used in compilation will now be briefly investigated.

4.8 Other Reference Sources

Of those reference sources for the books of *Ḥadīth* judged as supplementary, most were written in the second, fourth and fifth centuries of *Hijra*[66]. Their classification by traditionists was according to their juristic features; that is, a less acceptable quality of narration and narrators compared with the seven books of *Ḥadīth*[67] as previously discussed. However, although this latter material is classified as supplementary, it nevertheless continues to be of importance for reference. It is therefore useful to highlight the following juristic features;

4.8.1 *Muwaṭṭā' al-Imām Mālik*

The author of *Muwaṭṭā' al-Imām Mālik* is Abu ᶜAbdullah Mālik b. Anas al-Asbahi[68]. The book of *Muwaṭṭā' al-Imām Mālik* is juristically recognized as an important reference source for the *Ḥadīth.* Indeed, before the emergence of the works of *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim, Muwaṭṭā' al-Imām Mālik* was judged by Imām al-Shāfiᶜi to be the most authentic reference source for the *Ḥadīth* after the holy *al-Qur'ān*[69]. However, most scholars now agree that *Muwaṭṭā' al-Imām Mālik* should be ranked as only supplementary reference material since juristic features are of lower quality[70].

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[66] al-Zuhrāni, *Tadwīn*,p.271-276.
[67] *Ibid.*
[68] He was born in 84H and died in 179H. He also known as one of the leading *Imams* of the Islamic juristic school due to his role as the founder of the *Māliki* school (*Madhab al-Mālikiyya*).
[69] Ibn al-Ṣalāḥ, *ᶜUlūm*,p.14
[70] al-Zuhrāni, *Op.cit.*,p.93.

The book of *Muwaṭṭā' al-Imām Mālik* is also drawn upon for authentication by important reference books such as *Bulūgh al-Marām.* This cross-referencing reveals that in the book of *Bulūgh al-Marām,* 24 *Aḥādīth* are derived from *Muwaṭṭā' al-Imām Mālik*.

4.8.2 *Ṣaḥīḥ al-Imām Ibn Khuzaima*

The author of *Ṣaḥīḥ al-Imām Ibn Khuzaima* was Abū Bakr Muḥammad b. Ishak b. Khuzaima al-Nisaburi[71]. The book of *Ṣaḥīḥ al-Imām Ibn Khuzaima* is juristically classified as one of the supplementary sources for the *Ḥadīth* together with many other references, as suggested by Ibn al-Ṣalāḥ[72], given that its juristic features are much more similar to the seven main reference sources previously discussed.

In addition, the works of *Ṣaḥīḥ al-Imām Ibn Khuzaima* are further referred to by many source books such as *Bulūgh al-Marām,* where 20 *Aḥādīth* are derived from *Ṣaḥīḥ al-Imām Ibn Khuzaima.*

4.8.3 *Ṣaḥīḥ Ibn Ḥibban*

The author of *Ṣaḥīḥ Ibn Ḥibban* is Abū Hatim Muḥammad b. Ḥibban b. Aḥmad b. Ḥibban al-Busti[73]. As another supplementary reference source for the book of *Ḥadīth, Ṣaḥīḥ Ibn Ḥibban* has juristic features which are in many ways similar to those discussed. Nevertheless, the book of *Ṣaḥīḥ Ibn Ḥibban* emphasizes the strict

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[71] al-Dhahābi, *Tadhkira,*v.ii,p.720.
[72] Ibn al-Ṣalāḥ, *ᶜUlūm,*p.17.
[73] al-Dhahābi, *Tadhkira,*v.iii,p.924.

classification of *aḥādīth*[74]. For al-Suyūṭi, this kind of feature renders the book of *Ṣaḥīḥ Ibn Ḥibban* distinctive[75]. This distinction is further upheld by reference books such as *Bulūgh al-Marām,* where 20 *Aḥādīth* are derived from *Ṣaḥīḥ Ibn Ḥibban.*

4.8.4 *Sunan al-Daraquṭni*

The author of this reference source was Abū al-Ḥasan, ᶜAli b. ᶜUmar b. Aḥmad b. Mahdi al-Baghdadi[76]. One of its main juristic features is the explanation of the three levels by which each *Ḥadīth* which is judged (i.e. *Ṣāḥīḥ* [lit. validity], *Ḥasan* [lit.fairness] and *Ḍaᶜīf* [lit.weak])[77]. For this reason, 19 of its *Aḥādīth* are found in the book of *Bulūgh al-Marām.*

4.8.5 *Sunan al-Kubra al-Baihaqi*

The author of *Sunan al-Kubra al-Baihaqī* is Abū Bakr Aḥmad b. al-Ḥussein b. ᶜAli al-Baihaqi[78]. Like the preceding reference source, *Sunan al-Kubra al-Baihaqī* also examines the strict criteria for the determining levels within each *Ḥadīth*[79]. Sixteen of its *Aḥādīth* are therefore found in the book of *Bulūgh al-Marām.*

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[74] al-Suyūṭi, *Tadrīb*,,v.i,p.109.
[75] *Ibid.*
[76] al-Baghdādi, *Tārīkh*
[77] al-Zuhrāni, *Op.cit.*,p.173.
[78] al-Dhahābi, *Tadhkira*,v.v,p.345
[79] al-Zuhrāni, *Op.cit.*,p.175.

4.9 Summary

The foregoing examination of main reference and other supplementary *Ḥadīth* underlines their authenticity as the primary source of Islamic law apart from the *Qur'ān* on the basis of juristic evidence as shown, in line with the three juristic measures (i.e. *Ṣāḥīḥ* [lit. validity], *Ḥasan* [lit.fairness] and *Ḍaᶜīf* [lit.weak]).The principle seven books of *Ḥadīth* can thus be termed the most authentic compared with other supplementary sources with lesser juristic features. Nevertheless, these supplementary sources are alluded to at length in later works such as *Bulūgh al-Marām,* along side references to the principle seven volumes.

Indeed, a cross-referencing between the later work of *Bulūgh al-Marām,* the supplementary sources and the seven main books of *Ḥadīth* highlights the lesser juristic texts as an important source without which *Bulūgh al-Marām* could not have been compiled. The juristic features of this work and its connection with the reference sources for the book of *Ḥadīth* will therefore now be discussed in chapter five under the heading of 'introduction to the book of *Bulūgh al-Marām*'.

CHAPTER FIVE

THE INTRODUCTION TO THE BOOK OF *BULŪGH AL-MARĀM*

5.0 Introduction

The book of *Bulūgh al-Marām* is classified by many scholars as the most concise book of *Ḥadīth*[1], compiled by Ibn Ḥajar al-ᶜAsqalāni in one volume only. It therefore differs from other works of *Ḥadīth* in this, and in its divisions into 16 *Kutūb* (chapters) and 93 *Abwāb* (sub-topics) - one of its juristic features.

Why *Bulūgh al-Marām* has been collected in one single volume is interesting question of methodology – a question which will be addressed in the following analysis, together with a brief discussion of Ibn Ḥajar al-ᶜAsqalāni as an author for the book of *Bulūgh al-Marām.*

5.1 The author's biography

The author of *Bulūgh al-Marām* was Aḥmad b. ᶜAli b. Muḥammad b. Muḥammad b.ᶜAli[2]. He is best-known as Ibn Ḥajar[3] al-ᶜAsqalāni[4]. He was born in the month of *Shaᶜbān*[5], 773H at Qaherah, where he died on Saturday night of 28th of *Zulhijjah*, 852H/1449M[6].

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[1] Khalīfah, *Madrasa*,v.i,p.193

[2] Ibn Ḥajar, *Raf al-ᶜAsr*,p.36; *Anbā' al-Ghumar*,p.1-3; al-Sakhāwī, *al-Jawāhir*,p.15; *al-Ḍaw*,p.10.

[3] Ibn Ḥajar was a nickname inherited from his grandfather , Aḥmad. See al-Sakhāwi, *Ibid.*,p.15.

[4] Geographically, ᶜAsqalan refers to the highlands by the seas, located between the Gaza strip and Bayt Jibrin in Palestine. Al- ᶜAsqalāni indicates the name of the place belonging to the descendants of Ibn Ḥajar. See Yaqut, *Muᶜjam*,v.iv,p.122.

[5] Historians differ on the birthdate of Ibn Hajar. Al-Shawkāni argues for the 2nd of *Shaᶜbān* 773H, wal-Suyuti and Ibn ᶜImad al-Hanbali for the 12th of *Shaᶜbān* 773H, and Ibn Taghri Bardi for the 22nd of *Shaᶜbān* 773H. See al-Shawkāni, *al-Badr*,p.88; al-Suyūṭi, *al-Munjam*,p.130; *Nazm al-ᶜIqyān*,p.45; Ibn

Ibn Ḥajar al-ᶜAsqalāni lived in and absorbed an environment of knowledge during his childhood. He entered primary school when he was six years old and memorized the *Qur'an* at the age of nine, under the supervision Sadr al-Dīn al-Sufti (d.845H/144M)[7]. At the age of twelve, he went on a pilgrimage to Mecca with his guardian, al-Kharrūbi in the year 784H/1382M, where he stayed for two years to learn the book of *Ṣaḥīḥ al-Bukhāri* with Sheikh ᶜAfīf al-Dīn al-Nishāwari (d.790H/1388M)[8].

In the year 790H/1392M, under the tutelage of Muḥammad al-Qaṭṭān al-Miṣri (d.830H/1410M), Ibn Ḥajar al-ᶜAsqalāni learned Islamic jurisprudence, linguistics and mathematics[9]. When he was nineteen years old, he developed a great admiration for literature and wrote many volumes of poetry in anthology entitled *Diwān Ibn Hajar*[10].

At the age of twenty, in the year of 795H/1392M, Ibn Ḥajar al-ᶜAsqalāni became a scholar of Islamic jurisprudence, logic, philosophy, literature, mathematics, rhetoric, linguistics and calligraphy[11]. According to al-Sakhāwi, a year later (796H/1393M), he started his learning in the science of *Ḥadīth* from Zainuddin al-ᶜIrāqi (d.806H/1404M)[12]. He took ten years to finish his studies in the area of *Ḥadīth* and he was later known as a leading scholar in this field, as he was in others.

ᶜImād al-Ḥanbali, *Shadhra*,p.380; Ibn Taghri Bardi, *al-Nujūm*, v.xv,p.533. See also Suliaman, *Ibn Ḥajar al-ᶜAsqalāni*,p.1-12.

[6] al-Sakhāwi, *al-Jawāhir*,p.277; *al-Ḍaw*,v.ii,p.40 and al-Dhahābi, *Shadhara*,v.vii,p.273.

[7] al-Sakhāwi, *Ibid.*,p.22

[8] *Ibid.*

[9] *Ibid.*

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.*

Many books were thus written in the area of history (*Inbā' al-Ghumar bi Anbā' al-ᶜUmr, Rafᶜ al-Isr 'an Qudāt Misr* and *al-'Iᶜlām fi man walla Misr fi al-Islām*), literature (*Diwān al-Shaᶜir* and *Diwān Khutb*), *Tafsīr* (a Quranic exegesis which includes *al-Aḥkām li bayān mā fi al-Qur'an min al-Aḥkām*) and the *Ḥadīth* itself. Here, among his important works are *Bulūgh al-Marām min Adillah al-Aḥkām, Muqaddimah Fatḥ al-Bāri fi Sharḥ Ṣaḥīḥ al-Bukhāri, Nuzhah al-Naẓr fi Tawḍīḥ Nukhbah al-Fikr, Tahdhīb al-Tahdhīb, Taqrīb al-Tahdhīb, al-Iṣābah fi Tamyīz Asmā' al-Ṣaḥābah, al-Alqāb al-Ruwāt.*

The prolific nature of Ibn Ḥajar al-ᶜAsqalāni's writings in this area point to his mastery of the specialised knowledge necessary in the science of *Ḥadīth.* For this reason, his particular expertise will be examined throughout this chapter.

5.2 Meaning and significance

The term *Bulūgh al-Marām* has some significance, as indicated in the author's introduction;

'I have named it (this book) *Bulūgh al-Marām min Adillat al-Aḥkām;* and I pray to Allah not to render what we have learnt a calamity against us; but may He guide us to act according to what pleases Him – the Glorified and Exalted One'[13].

[13] See English Translation of *Bulūgh al-Marām,* 1996, Dar al-Salam, Saudi Arabia,p.9. It is referred to this chapter after this as *Eng. Trans. B.M.*

In Arabic, the term *Bulūgh* is derived from the verb *balagha,* meaning; to reach, gets to, attain, arrive at and come to[14]. Thus, the term *Bulūgh* can be translated as 'attainment' or 'achieving'[15]. The term *al-Marām* originates from the word *ramy,* meaning; intention, target, objective, purpose, aim and goal[16]. The title in its totality (*Bulūgh al-Marām min Adillat al-Aḥkām*) therefore translates as 'Attainment of the ultimate objectives according to the guidelines of the Holy Ordinances'[17].

The significance of *Bulūgh al-Marām* for its intended readership is also clearly highlighted in the introduction;

'To proceed; this is a concise book comprising the *Ḥadīth* evidence sources of the *Sharīᶜa* which I have compiled meticulously so that the one who memorizes it excels among his peers, it may assist the beginner student and the learned one seeking more knowledge may find it indispensable'[18].

Thus, one of Ibn Ḥajar al-ᶜAsqalāni's 'ultimate objectives' is seen to be to assist the early level of student to learn the *Ḥadīth* as a divine source of Islamic law[19]. The work is written in a concise manner and in only one volume for this reason. Nevertheless, despite its brevity, the book of *Bulūgh al-Marām* has valued juristic features as follows.

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[14] al-Baᶜalbaki, *al-Mawrid,*p.247.
[15] *Ibid.*
[16] *Ibid.*p.1014.
[17] The term *Bulūgh al-Marām min Adillat al-Aḥkām* has also been translated as 'Attainment of the Objective according to Evidence of the Ordinances'. See *Eng. Trans. B.M.*
[18] *Ibid.*
[19] Suliaman, *Op.cit.*,p.134.

5.3 Juristic features

As indicated elsewhere, the *Aḥādīth* of *Bulūgh al-Marām* are central to this study. For this reason, a principle aim is to determine the quality of the book of *Bulūgh al-Marām* as a definitive source of *Ḥadīth*[20]. This will be done by applying the paradigm developed to establish the three authentic levels of the *Ḥadīth* i.e. *Ṣāḥīḥ* (lit. validity), *Ḥasan* (lit.fairness) and *Ḍa^{c}īf* (lit.weak).

5.3.1 *Ḥadīth Ṣāḥīḥ*

Analysis of *Ḥadīth Ṣāḥīḥ* in the book of *Bulūgh al-Marām* will therefore focus on the numbers of *aḥādīth ṣaḥīḥ* in every chapter and sub-topic to determine validity. The method of calculation will be applied to all 1,572 *Aḥādīth*. Reference materials for *aḥādīth ṣaḥīḥ* will also be examined in order to identify the variety of their sources.

In terms of validity, then, from 1,572 *Aḥādīth* in the book of *Bulūgh al-Marām*, it is calculated that there are 1221 *Aḥādīth Ṣāḥīḥ* from 16 *Kutūb* (chapters) and 93 *Abwāb* (sub-topics). The following chart shows the numbers of *Aḥādīth Ṣāḥīḥ* from each chapter in greater detail:

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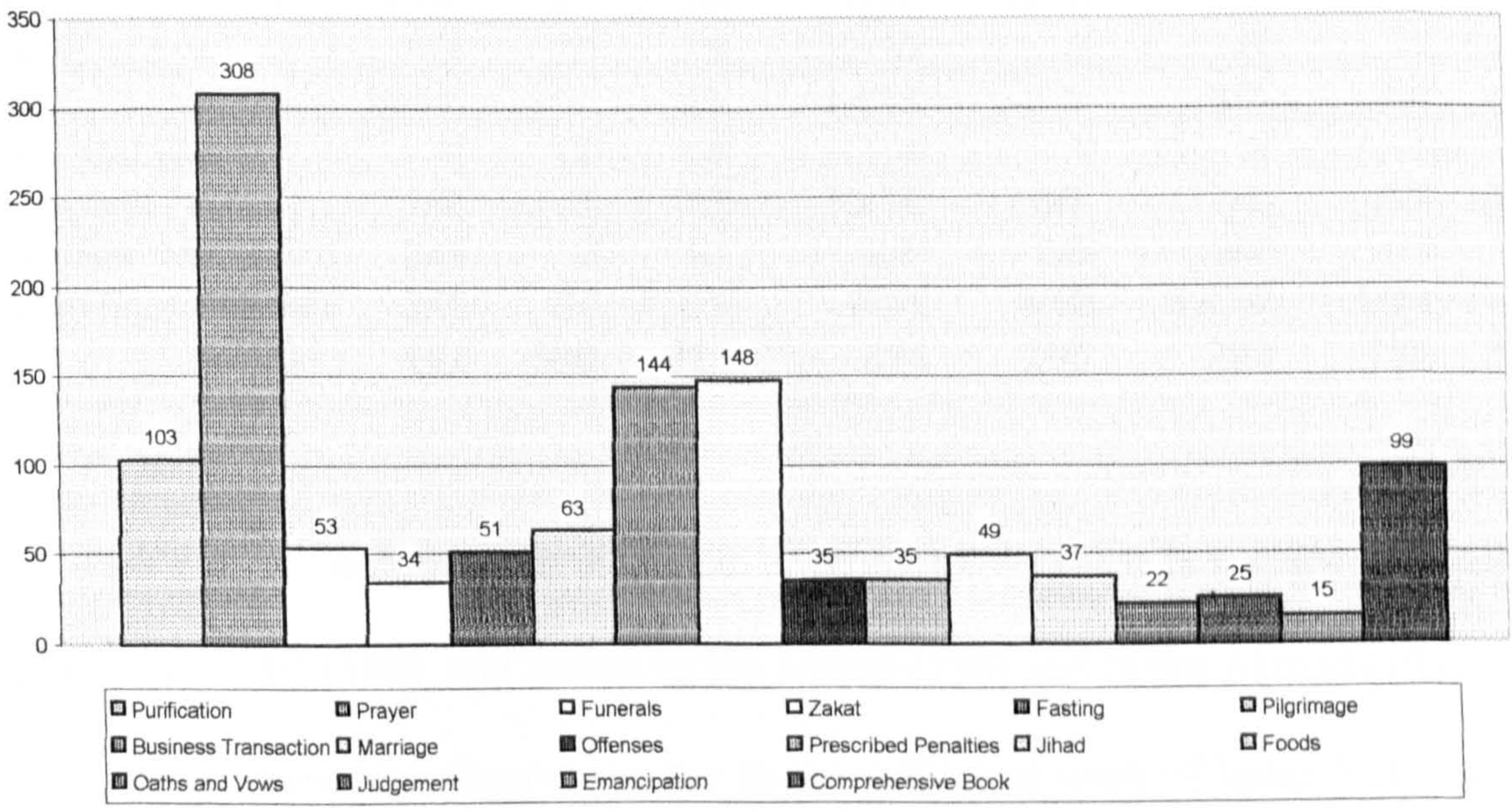
[20] Suliaman, *Op.cit.*, p.204 -208.



The above chart highlights that the chapter of prayer has the highest numbers of *Ḥadīth Ṣaḥīḥ,* calculated as 308 *Aḥādīth,* due perhaps to the seventeen sub-topics therein. It can thus be said that its juristic validity is thereby increased. In contrast, the lowest numbers of *Ḥadīth Ṣaḥīḥ* are found in the chapter of emancipation. This chapter contains only one sub-topic, calculated as 15 *Aḥādīth Ṣaḥīḥ* from the total numbers of 19 *aḥādīth.*

The numbers of *Ḥadīth Ṣaḥīḥ* in *Bulūgh al-Marām* as juristic evidence are referred to in both the seven books of *Ḥadīth* and in other reference sources. These are tabulated in greater detail below.

Chap./Ref.	Ahmad	Bukhari	Muslim	Abu Dawud	al-Nasai'e	al-Tirmidhi	Ibn Majah	Others
Purification	16/31	45	69	28/48	21/29	26/38	13/24	40/54
Prayer	52/63	139	182	76/95	50/54	52/77	27/37	79/99
Funerals	5/8	23	35	13/17	8	12/16	9/10	8/13
Zakat	4/4	8	9	11/8	5/8	4/9	2/4	13/19
Fasting	9/10	34	32	10/14	11/13	8/10	9/12	12/14
Pilgrimage	10/15	37	45	12/17	10/11	4/11	11/13	5/8
Business Transaction	28/44	71	74	36/50	28/35	24/31	23/39	45/73

Marriage	28/37	71	74	40/62	24/35	24/34	29/39	39/64
Offenses	5/8	16	20	10/17	10/16	6/10	5/10	11/19
Prescribed Penalties	4/14	21	24	7/17	6/17	5/11	5/13	5/14
Jihad	4/9	27	25	12/20	8	6	1	14/19
Foods	10/11	17	23	14/16	6	6/7	7/8	9/11
Oaths and Vows	4	12	14	4	1	2	1	5
Judgement	7/9	13	12	10/14	6/7	7/8	4/5	10/16
Emancipation	3/6	9	10	2/5	2/5	2/3	1/3	3/5
Comprehensive Book	2/7	37	63	9/14	9/12	12/29	9/14	17/27
Total :	**191**	**580**	**711**	**294**	**205**	**200**	**156**	**315**

As can be seen, juristic evidence in terms of numbers is highest in Muslim (711) and Bukhārī (580), and lowest in Ibn Mājah (156) and Imām Aḥmad (191). It is suggested that these high figures are due to the validating work of Imām Bukhāri and Imām Muslim as against a smaller degree of such work in the books of *Sunan* Ibn Mājah and *Musnad* Imām Aḥmad. Numbers for Abū Dāwūd (294), al-Nasāi'e (205), al-Tirmīdhi (200) and others (315) can also be found in the book of *Bulūgh al-Marām*, which can therefore be seen as supplementary reference sources of *Ḥadīth Ṣaḥīḥ* apart from the main works i.e. *Ṣaḥīḥ al-Bukhārī* and *Ṣaḥīḥ Muslim.*

Importantly, also found in the book of *Bulūgh al-Marām* are three modes of classifying *Ḥadīth Ṣaḥīḥ* as reference sources. The first of these was coined by Ibn Ḥajar al-ᶜAsqalāni as a definitive classification meaning 'agreed upon' (*Muttafaq ᶜalaih*) with particular reference to *Ṣaḥīḥ al-Bukhāri* and *Ṣaḥīḥ Muslim,* as in the following exemplar;

> 'Narrated Anas r.a.: Allah's Messenger s.a.w used to supplicate frequently: "Our Lord, give us good (things) in this world and good (things) in the Hereafter, and defend us from torment of [the] fire[s of hell]". [Agreed upon]'[21].

[21] Ibn Ḥajar, *Bulūgh al-Marām,*(no: 1563).

The second mode of classifying *Ḥadīth Ṣaḥīḥ* in *Bulūgh al-Marām* is based on the direct condition of *Ṣaḥīḥ* (validity), which is regularly used as a criterion to verify *aḥādīth.* This is demonstrated in following *Ḥadīth*;

> 'Narrated Jābir r.a.: Allah's Messenger s.a.w said, "If a[large] big amount of anything causes intoxication, a small amount of it is prohibited".
> [Ahmad and *al-Arbaᶜa* reported it; Ibn Ḥibbān graded it *Ṣaḥīḥ* (validity)][22].

The third method of classifying *Ḥadīth Ṣaḥīḥ* in *Bulūgh al-Marām* is an indirect version of *Ṣaḥīḥ* (validity), very occasionally used as a criterion to verify *aḥādīth,* as demonstrated in the following instance;

> 'Narrated ᶜÃisha r.a.: Allah's Messenger s.a.w used to divide visits to his wives equally and say, "O Allah, this is my division concerning what I possess, so do not blame me concerning what You possess and I do not".
> [Reported by *al-Arbaᶜa;* Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ* (validity), but al-Tirmīdhi preponderated that it is *Mursal* (non-continuous linkage)][23].

Although the above *Ḥadīth* is juristically identified as *Ṣaḥīḥ* by two traditionists (i.e. Ibn Ḥibbān and al-Ḥākim) it is nevertheless argued by al-Tirmīdhi to be invalid due to the condition of non-continuous linkage (*Mursal*) to the Prophet s.a.w. Under these circumstances, the *Ṣaḥīḥ* cited can be classified as an indirect version of *Ṣaḥīḥ* in accordance with the disagreement between traditionists.

Thus, given the sheer number of references to the *Ḥadīth Ṣaḥīḥ* in *Bulūgh al-Marām,* together with the three classification modes discussed which are used as validity criteria, it can be stated conclusively that the book of *Bulūgh al-Marām* is

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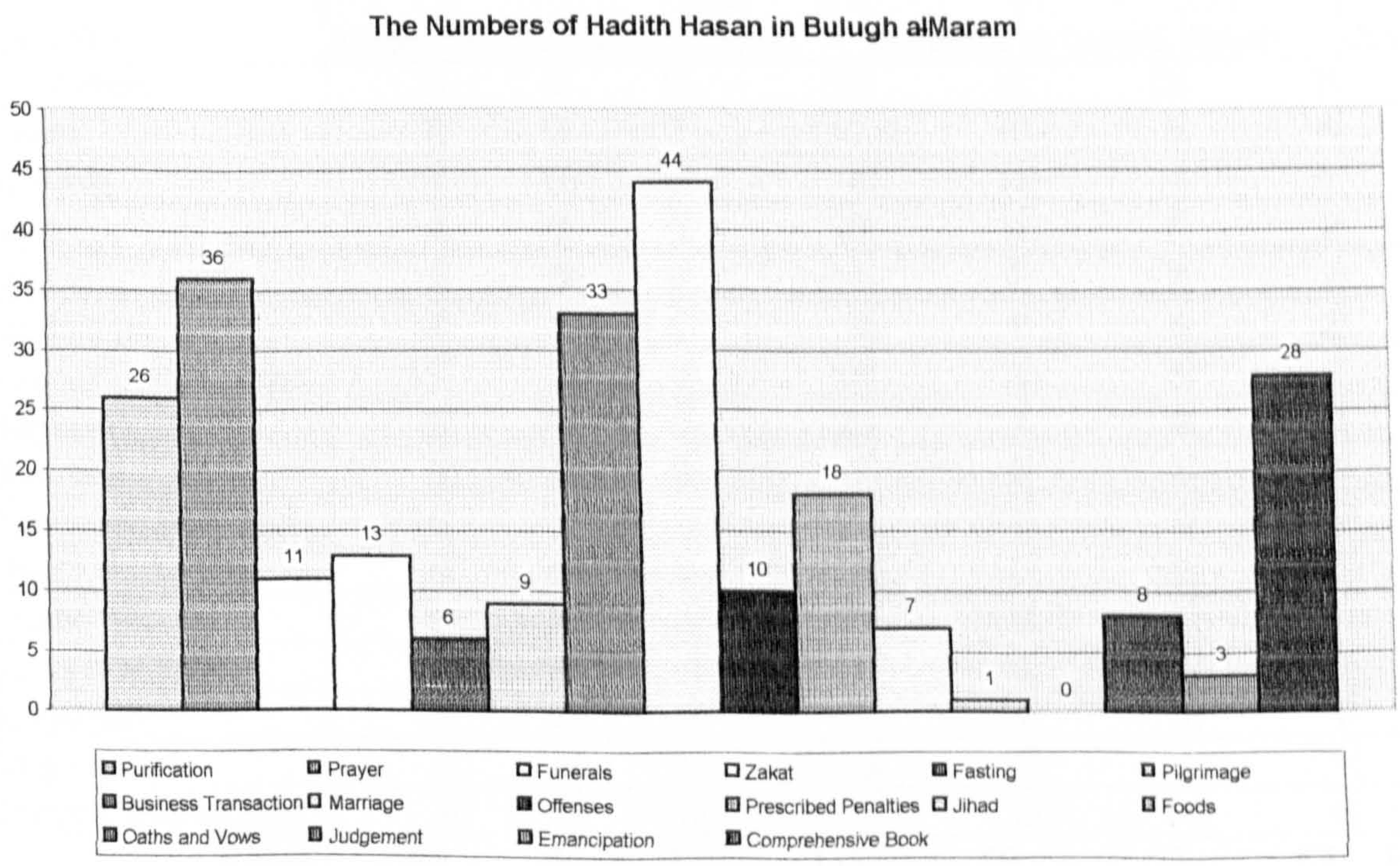
[22] Ibn Ḥajar, *Bulūgh al-Marām,*(no: 1248)
[23] *Ibid.*, (no: 1056)

proven to be authentic. These criteria, together with those examined elsewhere, will now be applied to the large numbers of *Ḥadīth Hasan* which exist aside from the *Ḥadīth Ṣaḥīḥ* in *Bulūgh al-Marām.*

5.3.2 *Ḥadīth Ḥasan*

There are 253 *aḥādīth Ḥasan* referred to in the book of *Bulūgh al-Marām* - obviously a small figure compared with the numbers of *Ḥadīth Ṣaḥīḥ* (1221 *aḥādīth*). Indeed, this contrast between numbers of references within these two levels of authenticity does suggest that it was the author's priority to seek juristic validation through compiling many *aḥādīth ṣaḥīḥ* rather than numbers of *aḥādīth ḥasan.*

These 253 *aḥādīth ḥasan* are divided into 16 *Kutūb* (chapters) and 93 *Abwāb* (sub-topics), as highlighted in the following chart;



As shown, the chapter on marriage contains the highest numbers of *Ḥadīth Ḥasan* (44) as against other chapters such as the chapter on prayer (36), on business transactions (33), on comprehensive ethics (28) and on purification (26); there are, however, no *Ḥasan* references in the chapter on oaths and vows. The lowest number (only one) is found in the chapter on food. The chart also illustrates the same pattern of low *Ḥasan* content in the chapter on emancipation (3), on fasting (6) and on prescribed penalties (7). This phenomenon underlines the low priority of *Ḥasan* in the writer's mind as against the importance of *Ḥadīth Ṣaḥīḥ*.

Despite the small numbers of *Ḥadīth Ḥasan* (253) in *Bulūgh al-Marām*, it is nevertheless helpful to tabulate the variety of references to other *Hadith* sources as follows,

Chap./Ref.	Ahmad	Bukhari	Muslim	Abu Dawud	al-Nasai'e	al-Tirmidhi	Ibn Majah	Others
Purification	8	0	0	12	4	12	8	9
Prayer	7	0	0	11	8	5	4	10
Funerals	3	0	0	4	0	4	1	4
Zakat	4	0	0	10	3	3	2	4
Fasting	1	0	0	11	2	2	2	2
Pilgrimage	4	0	0	4	1	5	2	2
Business Transaction	11	0	0	11	6	5	7	19
Marriage	9	0	0	20	11	9	9	23
Offenses	3	0	0	7	6	4	5	7
Prescribed Penalties	10	0	0	10	11	6	5	9
Jihad	0	0	0	6	0	0	0	1
Foods	0	0	0	1	0	1	1	0
Oaths and Vows	0	0	0	0	0	0	0	0
Judgement	2	0	0	4	1	1	1	4
Emancipation	3	0	0	3	3	1	1	1
Comprehensive Ethics	4	0	0	5	3	14	5	9
Total :	**69**	**0**	**0**	**119**	**59**	**72**	**53**	**104**

It can be observed from the above table that the highest number of *Ḥasan* references are to Abū Dāwūd (119), to 'others' (104), to al-Tirmīdhi (72), to Aḥmad (69), to al-Nasāi'e (59) and to Ibn Mājah (53). Interestingly, the table also highlights the absence of *Ḥasan* references to al-Bukhāri and Muslim, the most juristically authentic compilers of *Ḥadīth.*

Although the small numbers of *Ḥadīth Ḥasan* (253) suggest their low priority in terms of material, according to the three modes of internal classification described, significant juristic features do occur. For example, the first pattern of *Ḥadīth Ḥasan* is a cross-category between *Ḥasan* and *Ṣaḥīḥ*, as illustrated;

> 'Narrated Anas bin Mālik r.a: Allah's Messenger s.a.w was asked about making vinegar out of wine. He said, "No (it is prohibited)".[Reported by Muslim, and al-Tirmīdhī and the latter graded it *Ḥasan-Ṣaḥīḥ*(fairness-validity)'][24].

Muslim assigns to this pattern the term of *Ṣaḥīḥ*, while al-Tirmīdhi downgrades the material slightly to *Ḥasan-Ṣaḥīḥ*, thus creating this type of juristic cross-category. The *Ḥadīth* is in this way juristically authenticated at a level which nearly approximates to that of *Ṣaḥīḥ*, but not quite.

The second mode of classification is not an indirect, but a direct version of *Ḥasan*, which is exemplified as follows;

> 'Narrated Abū Huraira r.a.: The Prophet s.a.w said, "A believer's soul is attached to his debt till it is paid on his behalf".[Reported by Ahmad and al-Tirmīdhi who graded it *Ḥasan*][25].

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[24] Ibn Ḥajar, *Bulūgh al-Marām*,(no: 22)
[25] *Ibid.*,(no:529)

Apart from this direct type, *Bulūgh al-Marām* also applies a third indirect verifying criterion of *Ḥasan,* which is illustrated in the following example;

> 'Narrated Muadh bin Jabal r.a.: Allah's Messenger said; "If anyone disgraces his brother for a sin, he will not die before committing it himself". [Al-Tirmīdhī reported it saying it is a *Ḥasan* but a *Munqaṭiᶜ* (disconnected)][26].

This type of *Ḥadīth* is firstly juristically categorized by al-Tirmīdhi as authentically *Ḥasan,* but nevertheless disconnected in its chain of transmission (*Munqaṭiᶜ*).Secondly, *Bulūgh al-Marām* downgrades the *Ḥadīth* to the level of *Ḍaᶜīf* (weak). Thirdly, the science of *Ḥadīth* regards the occurrence of *Munqaṭiᶜ* as a disqualifying factor. This means that the *Ḥadīth* will be unanimously rejected by traditionists as neither *Ṣaḥīḥ* nor *Ḥasan.* Fourthly, al-Tirmīdhi does suggest that the *Ḥadīth* has certain juristic features which at least qualify it for the level of *Ḥasan.* For these reasons, this pattern of *Ḥadīth* can be classified as an indirect version of *Ḥadīth Ḥasan.*

The book of *Būlūgh al-Marām* is therefore shown to be of the most importance as a reference source of *Ḥadīth,* as it provides a sophisticated classification model to grade the quality of each legal text within the level of *Ḥadīth Ḥasan.* Apart from *Ḥadīth Ḥasan,* small numbers of *Ḥadīth Ḍaᶜīf* are also found in this book, which will now be discussed.

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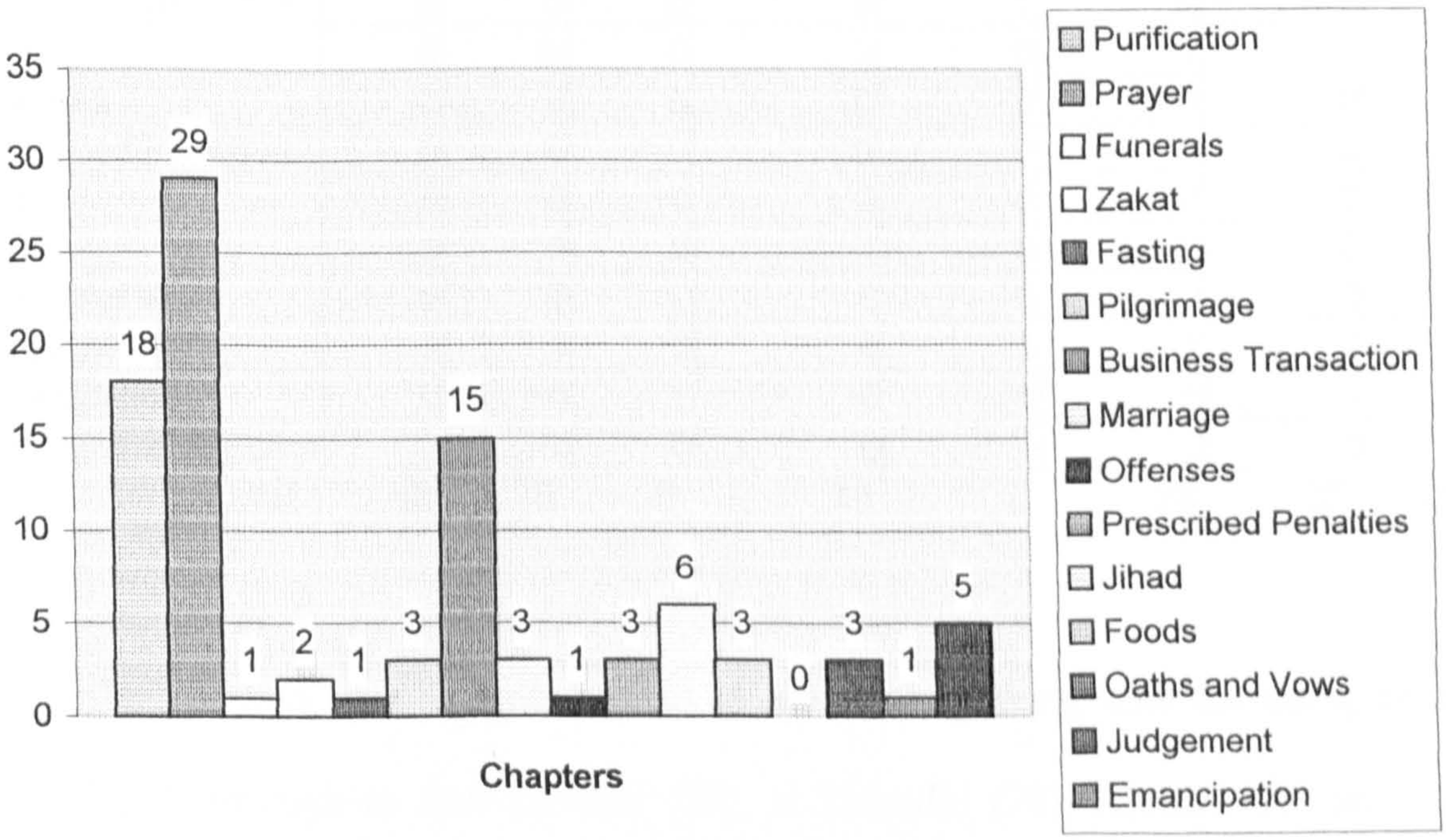
[26] Ibn Ḥajar, *Bulūgh al-Marām,*(no:1516)

5.3.3 *Ḥadīth Ḍa^{c}īf*

The numbers of *Ḥadīth Ḍa^{c}īf* (99) in the book of *Bulūgh al-Marām* are very small indeed compared with those of *Ḥadīth Ḥasan* (253) and *Ḥadīth Ṣaḥīḥ* (1221), underlining their lesser importance in terms of juristic validity. These 99 *aḥādīth Ḍa^{c}īf* are scattered throughout 16 *Kutub* (chapters) and 93 *Abwāb* (sub-topics), shown schematically as follows;



The bar chart form shows clearly that only three chapters contain more than 10 *aḥādīth Ḍa^{c}īf;* 18 in the chapter on purification, 29 in that on prayer and 15 in that on business transaction. In other chapters, numbers of *Ḍa^{c}īf* are even smaller; in that on funeral rites only 1, *zakat* 2, fasting 1, pilgrimage 3, marriage 3, offences 1, prescribed penalties 3, *jihad* 6, food 3, judgement 3, emancipation 1, comprehensive ethics 5, yet none at all in the chapter on oaths and vows.

Thus, it can be inferred that in terms of juristic validity *Ḥadīth Ḍa^{c}īf* are relatively unimportant in the book of *Bulūgh al-Marām*, as is reflected throughout all other volumes of *Ḥadīth.* The table below shows this pattern diagrammatically;

Chap./Ref.	Ahmad	Bukhari	Muslim	Abu Dawud	al-Nasai'e	al-Timidhi	Ibn Majah	Others
Purification	8	0	0	9	0	7	7	4
Prayer	3	0	0	7	0	13	2	11
Funerals	0	0	0	0	0	0	0	1
Zakat	0	0	0	0	0	2	0	2
Fasting	0	0	0	0	0	0	1	0
Pilgrimage	1	0	0	1	0	2	0	1
Business Transaction	5	0	0	3	1	2	9	9
Marriage	0	0	0	2	0	1	1	2
Offenses	0	0	0	0	0	0	0	1
Prescribed Penalties	0	0	0	0	0	0	3	0
Jihad	5	0	0	2	0	0	0	4
Foods	1	0	0	1	0	0	0	2
Oaths and Vows	0	0	0	0	0	0	0	2
Judgement	2	0	0	4	1	1	1	4
Emancipation	0	0	0	0	0	0	1	1
Comprehensive Ethics	1	0	0	0	0	0	0	1
Total :	**26**	**0**	**0**	**29**	**2**	**28**	**25**	**45**

This pattern here is from highest to lowest, beginning with the category of 'others' (45) through to Abū Dāwūd' (29), al-Tirmidhi (28), Aḥmad (26) and Ibn Mājah (25). Only two *Ḥadīth Ḍa^{c}īf* are referred to in al-Nasāi'e, and none at all in either al-Bukhāri or Muslim, confirming their juristic validity.

Within these *Ḥadīth Ḍaᶜīf,* there are three internal modes of classification (identified elsewhere). The first of these is definitive and is exemplified as follows;

> 'Narrated Ibn ᶜUmar r.a: Allah's Messenger s.a.w said, "Two types of dead animals and two types of bloods (*sic*) have been made lawful for us, the types of dead animals are locusts and fish (seafood), while the two types of bloods are the liver and the spleen". [Reported by Aḥmad and Ibn Mājah, and this *Ḥadīth* has some weakness.]'[27]

The second mode of classifying is based on a multiplicity of factors, among which is quality of narration, as the following example shows:

> 'Narrated Ubai bin ᶜImara r.a.: I asked, "O Messenger of Allah, may I wipe over the *Khuffain* (leather socks)?" The Prophet s.a.w replied, "Yes". I asked, "For one day?", He replied, "For one day". I again asked, "And for two days?" He replied, "For two days too". I again asked, "And for three days?", He replied, "Yes as long as you wish". [Reported by Abū Dāwūd, who said, "It is not strong"]'[28]

According to Imām al-Nawāwi one of the multiple classifying factors here is the untrustworthy nature of narrators, juristically identified by traditionists as 'disqualified'. For this reason, the content itself is juristically classified as invalid and unsound[29].

The third classification mode is based on indirect conditions, as demonstrated in the following instance:

> 'Narrated 'Abdullah bin Abu Bakr r.a: The book written by Allah's Messenger s.a.w for ᶜAmr bin Ḥazm also contained: "None except a pure person should touch the *Qur'ān*".[Reported by Mālik as a *Mursal* and by al-Nasāi'e and Ibn Ḥibban as *Mawṣūl.* And it is graded as *Maᶜlūl* (defective)][30]

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[27] Ibn Ḥajar, *Bulūgh al-Marām,*(no:11)
[28] *Ibid.,*(no : 64)
[29] Ṣanᶜāni, *Subul al-Salām,*v.i,p.34.
[30] Ibn Ḥajar, *Op.cit.,* (no: 75)

Here traditionists identify the indirect condition as 'non-continuous linkage of narrators' (*Mursal*) between the reporting disciple and the Prophet s.a.w. Himself. Nevertheless, al-Nasāi'e, Ibn Ḥibbān and Haithami grade this *Ḥadīth* as *Mawṣūl* – 'connected linkage' as well as qualified narrators[31]. Aside from this difference of opinion, the majority of traditionists agree on a classification of *Ḍa^{c}īf*, with defective narrators in the chain of transmission[32].

Analyses here (and indeed throughout this thesis) demonstrate how the classification model developed by the writer can be used as an instrument to determine the quality of each *Ḥadīth*. Thus, while the low juristic priority of *Ḍa^{c}īf* is affirmed, despite their small number these *Ḥadīth* do have complementary value as reference sources, along with the *Ḥadīth Ṣaḥīḥ* and the *Ḥadīth Ḥasan*.

As discussed previously, the concise nature of the book of *Bulūgh al-Marām* raises the interesting question of the author's compilation methodology. To a discussion of this, the writer now turns.

5.4 Compilation methodology

In this slim volume, Ibn Ḥajar al-^{c}Asqalāni has laid down a defining compilation methodology in terms of those *Ḥadīth* selected for inclusion[33]; the clear arrangement of general topic chapters (16) and sub-topic divisions within those chapters (93); and, thirdly, a specific and highly economical system of referencing

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[31] San^{c}āni, *Op.cit.*, ,v.i,p.70.
[32] *Ibid.*
[33] Suliaman, *Op.cit.*,p.170.

across all volumes of *Hadith.* Each of these compilation elements will now be discussed in turn.

5.4.1 Numbers of *Ḥadīth*

Unusually, Ibn Ḥajar al-ᶜAsqalāni does not appear to regard either numerical sequencing of *Ḥadīth* or their actual numbers as significant, unlike previous and more recent compilers. Perhaps this was considered unimportant at that time. A personal count shows, however, that there are 16 *Kutūb* (chapters) and 93 *Abwāb* (sub-topics).

For many later traditionists, as for compilers prior to Ibn Ḥajar al-ᶜAsqalānī, sheer numbers of *Ḥadīth* would point to both the quality and the juristic features in each book of *Ḥadīth.* Thus, some have calculated the *aḥādīth* in *Bulūgh al-Marām* using their own method of calculation. Muhammad Rashad Khalīfah for example claims a total of 1,373 *aḥādīth*[34] and Abū Zahw 1,400[35], whereas Muhammad Ḥāmid al-Fiqi has come up with 1,569[36].

Why, then, does this discrepancy exist? It seems that different calculating systems are used by different scholars, depending on what they wish to prove on the basis of either inclusion or omission of *Ḥadīth*[37]. That is, some *Ḥadīth* are repeated in many chapters and sub-topics, while others are not. For this reason, discrepancies will occur when repeated *Ḥadīth* are included in some final numbers but not in others.

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[34] Khalīfa, *Madrasa,*p.447.
[35] Abū Zahw, *al-Ḥadīth,*p. 347
[36] Ibn Ḥajar, *Bulūgh al-Marām,* p.214.
[37] Suliaman, *Op.cit.*,p.170.

However, in order to specify exact numbers of *Ḥadīth* in *Bulūgh al-Marām*, every *Ḥadīth* should be calculated within each chapter and sub-topic regardless of repetition. The writer considers such methodology to be fair and just, since no single *Ḥadīth* is in this way ignored. By way of illustration, this methodology has been used to tabulate the numbers of *Ḥadīth Ṣaḥīḥ*, *Ḥasan* and *Ḍa^{c}īf* in *Bulūgh al-Marām*, shown below.

Chap./Numbers	Overall	Sahih	Hasan	Da^{c}if
Purification	147	103	26	18
Prayer	373	308	36	29
Funerals	65	53	11	1
Zakat	49	34	13	2
Fasting	58	51	6	1
Pilgrimage	75	63	9	3
Business Transactions	191	143	33	15
Marriage	195	148	44	3
Offenses	46	35	10	1
Prescribed Penalties	56	35	18	3
Jihad	62	49	7	6
Foods	41	37	1	3
Oaths and Vows	22	22	0	0
Judgement	36	25	8	3
Emancipation	19	15	3	1
Comprehensive Ethics	132	99	28	5
Total :	**1572**	**1220**	**253**	**99**

It will be seen that each chapter and sub-topic has been analysed to show totals of *Ḥadīth Ṣaḥīḥ* as against *Ḥasan* and *Ḍa^{c}īf* . Out of the total number of *Ḥadīth* of 1572, the very high figure of 1220 are *Ḥadīth Ṣaḥīḥ*, whereas only 253 are *Ḥasan* and 99 are *Ḍa^{c}īf*. Percentage-wise, these figures are calculated as 77.6%, 16.08% and 6.29% respectively. The dominance of *Ḥadīth Ṣaḥīḥ* thus demonstrates conclusively the juristic value of *Bulūgh al-Marām* as a reference source for the *Ḥadīth*, while the small numbers of *Ḥasan* and *Ḍa^{c}īf* provide important supplementary variety of reference.

Aside, then, from the unusual disregard for both numbering sequences and actual numbers of *Ḥadīth*, the succinct arrangement of chapters and sub-topics within them is another unique aspect of *Bulūgh al-Marām* and of its compilation methodology. To an analysis of this the writer now turns.

5.4.2 Arrangement of chapters and sub-topics

A significant feature of the compiler's layout methodology for the 16 chapters and 93 sub-topics is that of terminology. Firstly, each chapter topic is assigned the term *Kitāb* (meaning 'book'); within these, all the *aḥādīth* are categorized into specific sub-topics or *Bāb*. Thus, as an example, *Kitāb al-Ṭahāra fī Kitāb Bulūgh al-Marām* would translate literally from the Arabic as 'Book of Purification in the book of *Bulūgh al-Marām'*. In the writer's opinion, however, academic specificity demands the term 'chapter' rather than 'book', since the latter implies too much generality.

As for the interesting term '*Bāb*', the compiler uses this as a kind of frame within which to group sub-topics; a metaphorical or symbolic dimension is thus added to the concept of 'door'. This literary device is noted by al-Ṣanᶜāni, for whom the term *Bāb* is a metaphor which indicates the launch point for discussion of a particular juristic theme within each chapter[38]. Put another way, the 'door' acts as a 'portal' or 'doorway', leading through into a kind of discussion forum. However, in line with academic specificity, the term *Bāb* can perhaps best be translated as 'sub-topic'. An

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[38] al-Ṣanᶜāni, *Subul al-Salām*, v.i, p.14., Suliaman, *Op.cit.*,p.171.

example of this *'Kitab'* and *'Bab'* structure is shown below, to demonstrate how this methodology works in practice:

The Chapter on Purification :

Sub-topic 1. Water
Sub-topic 2. Utensils
Sub-topic 3. The nature and cleansing of impurities
Sub-topic 4. Ablutions
Sub-topic 5. Wiping of leather socks
Sub-topic 6. The nullification of ablutions
Sub-topic 7. The manner of dealing with natural body functions
Sub-topic 8. Taking baths and precepts regarding sexual impurity
Sub-topic 9. Purification with soil
Sub-topic 10. Menstruation

Secondly, each of these chapters and sub-topics is set out in accordance with principles for holy living and worship as laid down in the *Qur'an* – as a kind of practical instruction manual. Further, these instructions start with the most basic requirement for the Muslim way of life, that of 'purification', with its 10 sub-topics. 'Prayer' then logically follows, containing 17 sub-topics[39]. Next comes the discussion forum on 'funerals'; here (interestingly) there are 65 *Ḥadīth*, yet no sub-topic arrangement[40].

Another important practical area of the Muslim way of life then follows - that of *Zakāt* - setting out instructions for financial assistance for the poor. Here within 49 *Ḥadīth*,only 24 *aḥādīth* are categorized into 3 sub-topics; i.e., *Ṣadaqat al-Fiṭr*,

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[39] The following list is 17 sub-topics of the chapter on prayer;
Sub-topic 1. The times of prayers
Sub-topic 2. The call to prayer
Sub-topic 3. The conditions of prayer
Sub-topic 4. *Sutra* (screen) in prayer
Sub-topic 5. Humility in prayer
Sub-topic 6. Mosques
Sub-topic 7. The description of the prayer
Sub-topic 8. Prostration due to forgetfulness in prayer
Sub-topic 9. Voluntary Prayer
Sub-topic 10. Prayer in congregation and the imamate
Sub-topic 11. The prayer of a traveler and a patient
Sub-topic 12. *Al-Jumu'a* (Friday) prayer
Sub-topic 13. Prayer in the time of fear
Sub-topic 14. The prayers of the two *'Eid*s
Sub-topic 15. The prayer at an eclipse
Sub-topic 16. Prayer for rain
Sub-topic 17. The manners of clothing

[40] See Part C for full analysis.

voluntary alms and the division of *Ṣadaqat.* As for the remaining (unclassified) 25 *aḥādīth,* these can be divided in terms of known juristic areas; the obligatory *Zakāt*[41], the measurement of seeds and plantations[42] and inherited wealth[43].

The chapter on fasting then follows *Zakāt,* consisting of 58 *aḥādīth.* 22 only of these are divided into 2 sub-topics; i.e., firstly; voluntary fasting and the prescribed days of prohibited fasting, and, secondly; keeping vigil in the mosque to offer voluntary prayers during the nights of *Ramaḍān.* The remaining 26 *aḥādīth* are non-categories, but do concern matters such as sighting of the crescent moon of *Ramaḍān*[44], prohibited fasting on non-sighting days[45], intention to fast[46] and *Sahūr* (taking a meal before fasting)[47].

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[41] The exemplified *Ḥadīth* as follows;
'Narrated Ibn 'Abbas r.a.: The Prophet s.a.w sent Mu'adh r.a. to Yemen – he mentioned the rest of the *Hadith* which has: "Allah has made obligatory for them, in their wealth, a *Sadaqa* to be taken from their rich and handed over to their poor. [Agreed upon and the version is of Al-Bukhari]'
See Ibn Ḥajar, *Bulūgh al-Marām,* (no: 586)

[42] The exemplified *Ḥadīth* as follows;
'Narrated Sahl bin Abu Hathma r.a.: Allah's Messenger s.a.w ordered us, "When you estimate (the *Sadaqa* of fruits like dates) take them leaving a third; and if you do not leave a third, leave a quarter (of the estimated *Sadaqa* for the owners)". [Reported by *Al-Khamsa* except Ibn Majah. Ibn Hibban and Al-Hakim graded it *Ṣaḥīḥ*].
Ibid., (no : 604)

[43] The exemplified *Ḥadīth* as follows;
'Narrated 'Amr bin Shu'aib on his father's authority from his grand father r.a.: Allah's Messenger s.a.w said, regarding a treasure which was found by a man in a wasted place – "If you find it in an inhabited village, a fifth is payable on it and on buried treasure". [Ibn Majah reported it through a a good chain of narrators].
Ibid., (no : 611)

[44] The exemplified *Ḥadīth* as follows;
' Narrated Ibn 'Umar r.a.: The people tried to sight the new moon and he informed the Prophet s.a.w that he had seen it, so he fasted and commanded the people to fast. [Abū Dāwūd reported it and al-Ḥākim and Ibn Ḥibbān graded it *Ṣaḥīḥ*].
Ibid., (no : 639)

[45] The exemplified *Ḥadīth* as follows;
'Narrated 'Ammar bin Yasir r.a.: He who fasts on a day that (the starting of Ramadan) is doubted has disobeyed Abu al-Qasim s.a.w. [Al-Bukhari mentioned it as a *Mu^{c}allaq,* but *al-Khamsa* traced it back to the Prophet s.a.w as a *Mawṣūl* and Ibn Hibban graded it *Ṣaḥīḥ*].
Ibid., (no : 636)

Next comes the doorway into 'pilgrimage', with its 75 *aḥādīth* within 6 sub-topics[48], followed by the chapter on 'business transaction' (191 *aḥādīth*). The 22 sub-topics in this latter chapter cause it to be considered as the biggest sub-topic in *Bulūgh al-Marām* [49], although the discussion forum on 'marriage' has 195 *aḥādīth* – the highest number compared with other chapters.

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[46] The exemplified *Ḥadīth* as follows;
'Narrated Hafsa r.a., Mother of the Believers: The Prophet s.a.w said, "No fasting is accepted from the one who does not commit his intention to fast before dawn". [Reported by *Al-Khamsa,* Al-Tirmīdhī and al-Nasā'i preponderate (*sic.*) it as *Mawqūf,* Ibn Khuzaima and Ibn Ḥibbān authenticated it as *Marfūᶜ*.
Ibid., (*Ḥadīth*: 641)

[47] The exemplified *Ḥadīth* as follows;
'Narrated Anas bin Malik r.a.: Allah's Messenger s.a.w said, "Take a meal (just) before dawn, for there is a blessing in *Sahūr* (taking a meal) at the time". [Agreed upon]'
Ibid., (*Ḥadīth*: 645)

[48] The following list is 6 sub-topics of the chapter on pilgrimage;
Sub-topic 1. Its merit and the definition of those to whom it was prescribed
Sub-topic 2. *Mawāqit* (time and location)
Sub-topic 3. Manners and nature of the *Iḥrām*
Sub-topic 4. The *Ihram* and its related activities
Sub-topic 5. The nature of the pilgrimage and entering *Makka*
Sub-topic 6. Missing the pilgrimage and being detained

[49] The following list is 22 sub-topics of the chapter on business transactions;
Sub-topic 1. Conditions of business transactions and those which are forbidden
Sub-topic 2. Conditional bargains
Sub-topic 3. Usury
Sub-topic 4. Permission regarding the sale of *al-ᶜArāyā* and the sale of trees and fruits
Sub-topic 5. Payment in advance, loans and pledges
Sub-topic 6. Bankruptcy and seizure
Sub-topic 7. Reconciliation
Sub-topic 8. The transfer of a debt and surety
Sub-topic 9. Partnership and agency
Sub-topic 10. Confession
Sub-topic 11. *al-'Aariya* (the loan)
Sub-topic 12. Wrongful appropriation
Sub-topic 13. Option to buy neighbouring property
Sub-topic 14. *al-Qirāḍ*
Sub-topic 15. *al-Musaqat* and *al-Ijāra* (tending palm-trees and wages)
Sub-topic 16. The cultivation of barren lands
Sub-topic 17. Endowment
Sub-topic 18. Gifts, life-tenancy, and giving property which goes to the survivor
Sub-topic 19. Lost and found items
Sub-topic 20. Bequests
Sub-topic 21. Wills and testaments

'Marriage'has 14 sub-topics[50], although 31 *aḥādīth* within these are non-categories. A logical arrangement would be sub-topics such as motivation for marriage[51], choosing a wife[52], the marriage sermon [53], the engagement[54], the dowry[55], conditions of marriage[56] and the temporary marriage[57].

Sub-topic 22. Trusts

[50] The following list is 14 sub-topics of the chapter on marriage;
Sub-topic 1. Equality in marriage and right of choice
Sub-topic 2. Relations with wives
Sub-topic 3. The jointure (*Mahr*)
Sub-topic 4. The wedding feast
Sub-topic 5. Division of visits to each wife
Sub-topic 6. Separating from a wife and compensation
Sub-topic 7. Divorce
Sub-topic 8. *Al-Raj'a*
Sub-topic 9. *Al-'Iyla'*, *al-Zihar* and *al-Kaffara*
Sub-topic 10. Invoking curses
Sub-topic 11. *Al-'Iddah, al-Ihdad, Al-Istibra'*, and other pertaining matters
Sub-topic 12. *Al-Rida'*
Sub-topic 13. Maintenance
Sub-topic 14. Guardianship

[51] The exemplified *Ḥadīth* as follows;
'Narrated (Anas bin Malik) r.a.: Allah's Messenger s.a.w used to command us to marry and forbid severely celibacy and say, "Marry women who are very prolific and loving, for I shall outnumber the Prophets by you on the Day of Resurrection." [Reported by Ahmad and Ibn Hibban graded it *Sahih*). The aforesaid *Ḥadīth* has an authority by Abu Dawud, al-Nasa'ie and Ibn Hibban from Ma'qal bin Yassar's *Ḥadīth.*
See Ibn Ḥajar, *Bulūgh al-Marām*, (no: 962&963)

[52] The exemplified *Ḥadīth* as follows;
'Narrated Abu Huraira r.a.: The Prophet s.a.w said, "A woman may be married for four qualities, for her property, her rank, her beauty and her religion; so get the religious one and prosper." [Agreed upon; with the rest of *al-Sab^{c}a*].
Ibid., (no: 964)

[53] The exemplified *Ḥadīth* as follows;
'Narrated 'Abdullah bin Mas'ud r.a.: Allah's Messenger s.a.w taught us *al-Tashahhūd* in case of some need, which is: "Praise is due to Allah Whom we praise and from Whom we ask help and pardon. We seek refuge in Allah from the evils within ourselves. He whom Allah guides has no one who can lead him astray, and he whom He leads astray has no one to guide him. I testify that there is no god but Allah, and I testify that Muhammad is His slave and Messenger." And recited three verses. [Reported by Ahmad and *al-Arba^{c}a;* al-Tirmīdhī and al-Ḥākim graded it *Ḥasan*].
Ibid., (no: 966)

[54] The exemplified *Ḥadīth* as follows;
'Narrated Ibn 'Umar r.a. Allah's Messenger s.a.w said, "One of you must not ask a woman in marriage when his brother has done so already, until the suitor giver her up before him or gives

This chapter then leads into that on 'offences' consisting of 46 *aḥādīth* within 4 sub-topics; i.e., types of blood money, accusations of murder and taking oaths, killing of transgressors and fighting against offenders and killing apostates. Here, the 16 *aḥādīth* which are non-categories could be arranged into sub-topics such as *Qiṣāṣ*[58], rulings on offences[59] and reconciliation in *Qiṣāṣ*[60].

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him permission."[Agreed upon. The version is of al-Bukhārī].
Ibid., (no: 971)

[55] The exemplified *Ḥadīth* as follows;
'Abū Dāwūd reported this *Ḥadīth* from Abu Huraira r.a.: He asked, "What do you memorize?" He replied, *"Sura al-Baqara* and the one that follows it." He then said, "Get up and teach her twenty verses."
Ibid., (no: 972)

[56] The exemplified *Ḥadīth* as follows;
'Narrated Abu Burda bin Abu Musa on the authority of his father; Allah's Messenger s.a.w said, "There is no marriage without a guardian." [Ahmad and *al-Arbaᶜa* reported it; Ibn al-Madini, al-Tirmīdhī and Ibn Ḥibbān graded it *Ṣaḥīḥ*, but it was regarded defective for being *Mursal*]'.
Ibid., (no: 975, 976)

[57] The exemplified *Ḥadīth* as follows;
'Narrated 'Ali r.a.: Allah's Messenger s.a.w forbade the temporary marriage in the year of *Khaibar*. [Agreed upon]'.
Ibid., (no: 991)

[58] The laws of equality in punishment for wounds etc. in retaliation. The exemplified *Ḥadīth* on this regard as follows;
'Narrated Ibn Mas'ud r.a.: Allah's Messenger s.a.w said, "The blood of a Muslim who testifies that, 'there is no god but Allah and that I am Allah's Messenger' may not be lawfully shed but for one three reasons: a married man who commits fornication; a life for a life; and one who turns away from his religion and abandons the community." [Agreed upon].'
Ibid., (no: 1156)

[59] The exemplified *Ḥadīth* as follows;
'Narrated Samura r.a.: Allah's Messenger said, "If anyone kills his slave we will kill him, and if anyone maims his slave we will maim him." [Reported by Ahmad and *al-Arba'a*; al-Tirmidhi graded it *Hasan*, and it is from Hasan al-Basri's version on the authority of Samura, but it was disagreed upon whether he has heard from Samura or not].'
Ibid., (no: 1159)

[60] The exemplified *Ḥadīth* as follows;
'Narrated Anas r.a. : al-Rubaiyi' daughter of al-Nadr – his paternal aunt – broke the front tooth of a girl and they (the people of al-Rubaiyi') asked the girl's people to pardon her, but they refused; then they offered a fine, but they refused, and they went to Allah's Messenger s.a.w but they refused any offer but retaliation. So Allah's Messenger s.a.w ordered retaliation to be taken. Then Anas bin al-Nadr said, "O Allah's Messenger, will the front tooth of al-Rubaiyi be broken? No, by Him Who has sent you with the Truth, her front tooth will not be broken." Allah's Messenger s.a.w then replied, "O Anas, Allah's Decree is retaliation." But the people agreed to pardon her, so Allah's Messenger s.a.w said, "Among Allah's slaves are those who, if one adjured Allah, He would Consent to it." [Agreed upon; the wording being of al-Bukhārī]'.

'Offences' then into connects with 'prescribed penalties' which has 56 *aḥādīth* divided into 4 sub-topics; i.e., prescribed punishment for committing fornication, for foul accusation, for theft and for drinking of alcohol, followed by explanation of the terms 'intoxication' and flogging and ordinances regarding assailants.

The discussion forum on '*Jihād*' then follows consisting of 62 *aḥādīth*, which incorporate 2 sub-topics; i.e., head tax and truce, and racing and shooting. The 43 *aḥādīth* which are non-categories could perhaps be arranged in sub-topics such as obligatory *Jihād*[61], categories of war[62], the methods of war[63], war hostages[64] and *Jihād* as its applies to women[65].

Ibid., (*Ḥadīth*: 1168)

[61] The exemplified *Ḥadīth* as follows;

'Narrated Abu Huraira r.a: Allah's Messenger s.a.w said, "He who dies without having gone or thought of going out for *Jihad*, will die guilty of a kind of hypocrisy." [Reported by Muslim].'

Ibid., (no: 1258)

[62] The exemplified *Ḥadīth* as follows;

'Narrated Anas r.a.: The Prophet s.a.w said, "Use your property, your selves and your tongues in striving against the polytheists." [Ahmad and al-Nasa'ie reported it; Al-Hakim graded it *Sahih*].'

Ibid., (no: 1259)

[63] The exemplified *Ḥadīth* as follows;

'Narrated Sulaiman bin Buraida on his father's authority (from 'Aisha r.a.): Whenever Allah's Messenger s.a.w appointed a commander over an army or a *Sariya*, he instructed him to fear Allah Himself and consider the welfare of the Muslims who were with him. He then used to say, "Go out For *Jihad* in Allah's Name in Allah's Path and fight with those who disbelieve in Allah. Go out for *Jihad* and do not indulge in *Ghulu* (stealing the war booty before its distribution), or be treacherous, or mutilate anyone, or kill a child. When you meet your enemy – the polytheists, summon them to three things, and accept whichever of them they are willing to agree to, and leave them alone: Call them to Islam, and if they agree accept it from them, and summon them to leave their abodes and transfer to the abode of *al-Muhajirin* (the Emigrants). But if they refuse, then tell them they will be like the desert Arab Muslims, thus they will have no *Ghanima* or *Fai'* unless they participate in the *Jihad* with the Muslims. If they refuse Islam, demand the *Jizya* from them. If they refuse seek Allah the Most High's help against them and fight with them. When you besiege a fortress, and its people wish you to grant them the protection of Allah and His Prophet, grant them neither but grant them your protection, for it is less serious to break your guarantee of protection than to break that of Allah And if they offer to capitulate and have the matter referred to Allah's judgement, do not grant this, but let them have the matter referred to your judgement, for you do not know whetheher or not you will concur with Allah the Most High's Judgement regarding them." [Muslim reported it].'

Ibid., (no: 1268)

The chapter on 'foods' which follows has 41 *aḥādīth* and 3 sub-topics within these; i.e., hunting and animals which may be slaughtered, sacrifices and *al-ᶜaqiqa*. The 12 *aḥādīth* which are found as non-categories in this chapter could be divided into 2 supplementary sub-topics; i.e., food which are suitable[66] or unsuitable[67] for human consumption.

'Oaths and vows' then follows, with 22 *aḥādīth* (here without sub-topics) leading to the doorway into 'judgement'. This consists of 36 *aḥādīth* divided into 2 sub-topics; i.e., testimonies, and claims and related evidence. For the 13 *aḥādīth* which remain as non-categories, new sub-topics are suggested such as the specific role of judge[68], the legal reasoning of judges[69] and the suitability of women as judges[70].

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[64] The exemplified *Ḥadīth* as follows;
'Narrated 'Imran bin Hussain r.a.: Allah's Messenger s.a.w exchanged two Muslim men from captivity with a *Mushrik* man." [Al-Tirmīdhī reported it, he graded it *Ṣaḥīḥ* (sound). Its origin is in *Ṣaḥīḥ* Muslim].'
Ibid., (no: 1284)

[65] The exemplified *Ḥadīth* as follows;
'Narrated 'Aisha r.a.: I said, "O Allah's Messenger, is *Jihād* prescribed to women?" He replied, "Yes", a *Jihād* which is without fighting; it is the pilgrimage (*Hajj*) and the *'Umra*", [Reported by Ibn Majah and its origin is in *Ṣaḥīḥ al-Bukhārī*]'.
Ibid., (no: 1260)

[66] The exemplified *Ḥadīth* as follows;
'Narrated Ibn Abu Aufa r.a.: We went on seven expeditions with Allah's Messenger s.a.w and we ate locuts. [Agreed upon]'.
Ibid., (no: 1323)

[67] The exemplified *Ḥadīth* as follows;
'Narrated Jabir r.a.: On the day of Khaibar, Allah's Messenger s.a.w forbade the flesh of domestic asses, but permitted horse flesh. [Agreed upon]. A version by al-Bukhari has: "He gave permission".
Ibid., (no: 1322)

[68] The exemplified *Ḥadīth* as follows;
'Narrated Buraida r.a. Allah's Messenger s.a.w said: "Judges are of three types, two of whom will go to Hell and one to Paradise. The one who will go to Paradise is a man who knows what is right and gives judgement accordingly; but a man who knows what is right and does nor give judgement accordingly and acts unjustly in his judgement will go to Hell, and a man who does not know what

'Emancipation' is next introduced with 19 *aḥādīth* consisting of only one sub-topic; i.e., matters pertaining to *Mudabbar, Mukātab* and *Umm al-Walad.* Since 9 *aḥādīth* are non-categories, new sub-topics are suggested such as priority for the freedom of slaves[71], provisions for freeing slaves[72], and wealth due to freed children[73].

The final discussion forum is on 'comprehensive ethics', with 132 *aḥādīth* integrating 6 sub-topics; i.e., good behaviour, kindness and joining the ties of relationship, ascetism and piety, cautioning against mischievous conduct, exhortations to good character, remembrance of Allah and supplications.

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is right and judges people with ignorance will go to Hell." [Reported by *al-Arba'a*, and al-Hakim graded it *Ṣaḥīḥ*]'.
Ibid., (no: 1383)

[69] The exemplified *Ḥadīth* as follows;
'Narrated 'Amr bin al-'As r.a.: He heard Allah's Messenger s.a.w says, "When a judge gives a ruling having tried his best to decide correctly and is right, he will have a double reward; and when he gives a ruling having tried his best to decide correctly and is wrong, he will have a single reward" [Agreed upon]'.
Ibid., (no: 1386)

[70] The exemplified *Ḥadīth* as follows;
'Narrated Abu Bakar r.a.: The Prophet s.a.w said, "A people who make a woman their ruler will never prosper." [Reported by al-Bukhari]'.
Ibid., (no: 1395)

[71] The exemplified *Ḥadīth* as follows;
'Narrated Abu Huraira r.a.: Allah's Messenger s.a.w said, "If a Muslim man emancipates a Muslim man, Allah will set free from Hell an organ of his body for every organ of his (the emancipated man's body)". [Agreed upon]'.
Ibid., (no: 1419-1421)

[72] The exemplified *Ḥadīth* as follows;
'Narrated Safina r.a.: I was a slave of Umm Salama r.a., and she said, "I shall emancipate you, but on condition that you serve Allah's Messenger s.a.w as long as you live." [Reported by Ahmad, Abu Dawud, al-Nasa'ie and al-Hakim].'
Ibid., (no: 1428)

[73] The exemplified *Ḥadīth* as follows;
'Narrated 'Aisha r.a.: Allah's Messenger s.a.w said, "The right of inheritance from an emancipated slave belongs to the one who set him free." [Agreed upon, in a long *Hadith*].'
Ibid., (no: 1429)

The significant question addressed throughout this chapter, then, has been that of 'selection'. That is, in selecting specific topics and sub-topics from the wealth of Islamic jurisprudence, Ibn Ḥajar al-ᶜAsqalāni has clarified the order of priority for the basics of Islam. At the same time, he has introduced a standard compilation methodology for the inclusion of many *Ḥadīth* in one volume. This he achieves through the metaphor of a 'portal' or 'doorway' leading through into a kind of discussion forum on a theme.

An important part of this method is its sheer economy. Not only an economy of selection, but also an economy of cross referencing between this and other volumes of *Ḥadīth.* That is the author of *Bulūgh al-Marām'* has coined specific terms to refer to specific groups of narrators, thus eliminating the need for elaborate individual acknowledgement. At the same time, this extensive cross referencing marks out *Bulūgh al-Marām* as the most authentic compilation of *Ḥadīth* in terms of authenticity. To a discussion of this the writer now turns.

5.4.3 The specific terms of reference sources

For the first ever in the science of *Ḥadīth, Bulūgh al-Marām* initiates the specific terms of reference sources for the *Ḥadīth*[74]. There are six specific terms that have been introduced by the author to demonstrate the reference sources for most of the *Ḥadīth* in *Bulūgh al-Marām'*. The six specific terms are *al-Sabᶜa, al-Sitta, al-*

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[74] Suliaman, *Op.cit.*,p.190.

Khamsa, al-Arba^{c}a, al-Thalatha, al-Muttafaq ^{c}alaih. In the introduction of his book, the author clarifies the significance of these specific terms as follows;

> 'I have indicated at the end of every *Ḥadīth,* the *Imam* who collected it, in order to be honest to the (Muslims) *Umma.* And therefore, *al-Sab^{c}a* (the Seven) stands for Aḥmad, al-Bukhāri, Muslim, Abū Dāwūd, al-Nasā'i , al-Tirmīdhi and Ibn Mājah. *Al-Sitta* (the Six) stands for the rest excluding Aḥmad. *Al-Khamsa* (the Five) stands for the rest except al-Bukhāri and Muslim or I may say *Al-Arba^{c}a* (the Four) and Aḥmad. I mean by *Al-Arba^{c}a* (the Four) the rest except the first three (i.e. Aḥmad, al-Bukhāri and Muslim), and by *Al-Thalatha* (the Three) I mean the rest except the first three and the one. I mean by *al-Muttafaq ^{c}alaih* (the Agreed upon) al-Bukhāri and Muslim, and I might not mention with them anyone else and any other thing apart from these clarifications is clear'.[75]

Importantly, each term shows the reference source for the *Ḥadīth* and clarifies it level of authenticity of *Ḥadīth.* For these two reasons, the examination will be made on each term which in line with the *Ḥadīth* in *Bulūgh al-Marām,* as follows;

5.4.3.1 *Al-Sab^{c}a*

The term *al-Sab^{c}a* has been used by the author to illustrate the reference source for 10 *aḥādīth* in *Bulūgh al-Marām.* In provisos of validity of the *Ḥadīth,* the term *al-Sab^{c}a* verifies the most authenticity due to the collective agreement between seven narrators i.e. Imām Aḥmad bin Ḥanbal, Bukhārī, Muslim, Abū Dāwūd, al-Tirmīdhi, al-Nasā'i, Ibn Mājah. There are two patterns of *al-Sab^{c}a* which are established in *Bulūgh al-Marām.*

The first pattern is called as a definitive *al-Sab^{c}a.* In terms of numbers, there are 9 *āḥadīth* in this pattern, which can be exemplified as one of them below;

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[75] Ibn Ḥajar, *Bulūgh al-Marām,* p.3.

> 'Narrated Anas r.a.: The Prophet s.a.w on entering the lavatory used to say: "O Allah, I seek refuge with You from devils – males and females (or all offensive and wicked things, evil deeds and evil spirits, ect.)". [Reported by *al-Sabᶜa*][76].

The second pattern is termed as indirect *al-Sabᶜa* which indicates only one *Ḥadīth* as follows;

> 'Narrated 'Ali r.a: At the battle of *Khaibar*, the Prophet s.a.w forbade the temporary marriage of women, and eating the flesh of domestic asses. [*Al-Sabᶜa* except Abū Dāwūd reported it].'[77]

Although the above *Ḥadīth* is referred to *al-Sabᶜa*, the author nevertheless made the exception of reference to Abū Dāwūd. In general, this provision can be understood that without the reference to Abū Dāwūd, it will therefore six narrators only for the *Ḥadīth* (*al-Sitta*). However, the author does mention in the above quotation regarding the stand of *al-Sitta* is for the rest of seven narrators excluding Ahmad. For this ground, the statement of '*al-Sabᶜa* except Abū Dāwūd reported it' - is not the same as the term *al-Sitta.*

5.4.3.2 *Al-Sitta*

According to Ibn Ḥajar al-ᶜAsqalāni, the term *al-Sitta* is applied to the *Ḥadīth* which is referred to the six narrators of *Ḥadīth* i.e. al-Bukhāri, Muslim, Abū Dāwūd, al-Nasā'i, al-Tirmīdhi and Ibn Mājah. This term can be seen as the second most authenticity after *al-Sabᶜa* due to the collective concurrence in terms of narration. However, none at all of the *Ḥadīth* in *Bulūgh al-Marām* is referred to the term *Al-*

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[76] *Ibid.*, (no: 86)
[77] *Ibid.*, (no: 992)

Sitta. At this stage, the author can be seen as ignoring to demonstrate the *Ḥadīth* of *al-Sitta* although it is mentioned at a first place in his introduction.

5.4.3.3 *Al-Khamsa*

The term *al-Khamsa* means the narration of *Ḥadīth* which is referred to the five narrators i.e. Aḥmad, Abū Dāwūd, al-Nasā'i, al-Tirmīdhi and Ibn Mājah. Two narrators are excluded in this term i.e. Bukhāri and Muslim. In terms of numbers, there are 60 *aḥadīth* that are in line with the term *al-Khamsa,* which can be divided into 3 patterns as follows;

The first pattern is classified as definitive *al-Khamsa* which is exemplified in the following *Ḥadīth;*

> 'Narrated (ᶜĀisha) r.a.: When the Prophet s.a.w came out of the privy, he used to say, "*Ghufranaka* (O Allah! Grant me Your forgiveness)." [Reported by *al-Khamsa.* Abū Ḥātim and al-Ḥākim graded it *Ṣaḥīḥ*].'[78]

The second pattern is indirect of *al-Khamsa* that is illustrated below;

> 'Narrated ᶜĀisha r.a.: The Prophet s.a.w said, "The prayer of a woman, who has reached puberty, is not accepted unless she is wearing a *Khimar* (cover)." [Reported by *al-Khamsa* except al-Nasāi'e. And Ibn Khuzaima graded it *Ṣaḥīḥ*].'[79]

The third pattern is based on disapproval *al-Khamsa* as demonstrated in the following instance:

> 'Narrated (Abū Huraira) r.a.: Allah's Messenger s.a.w said: "When the (month of) Shaᶜbān is halfway, do not fast." [Reported by *al-Khamsa.* Aḥmad disapproved it].'[80]

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[78] *Ibid.*, (no: 98)
[79] *Ibid.*, (no: 204)
[80] *Ibid.*, (no: 676)

5.4.3.4 *Al-Arbaᶜa*

Al-Arbaᶜa is a term which has been used to indicate the *aḥādīth* that are referred to the four narrators i.e. Abū Dāwūd, al-Nasā'i, al-Tirmīdhi and Ibn Mājah. In this term, three narrators are eliminated i.e. Aḥmad, Bukhārī and Muslim. For the term *al-Arbaᶜa*, there are 59 *aḥādīth* which are referred to and they are classified into two patterns as follows;

The first pattern is classified as definitive *al-Arbaᶜa*, which can be exemplified in the following *Ḥadīth;*

> 'Narrated Jābir r.a.: Allah's Messenger s.a.w said, "If anyone says when he hears the *Adhān* : 'O Allah! Lord of this perfect call and of the regular prayer which is going to be established! Kindly give Muhammad s.a.w. the right of intercession and superiority, and send him (on the day of Judgement) to the best and the highest place in Paradise which You promised him', he will be assured of my intercession." [Reported by *al-Arbaᶜa*].'[81]

The second pattern in based on indirect version of *al-Arbaᶜa*, as in the following exemplar;

> 'Narrated Ibn ᶜAbbās r.a.: The Prophet s.a.w used to say between the two prostrations: "(O Allah, forgive me, have mercy on me, guide me, heal me, and provide sustenance for me)." [Reported by *al-Arbaᶜa* except al-Nasā'i, and this is the version of Abū Dāwūd and al-Hākim graded it *Ṣaḥīḥ*].'[82]

5.4.3.5 *Al-Thalātha*

For the author, the term *al-Thalātha* means the *Ḥadīth* which is referred to the three narrators i.e. Abū Dāwūd, al-Nasā'i and al-Tirmīdhi. Four narrators are

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[81] *Ibid.*, (no: 202)
[82] *Ibid.*, (no: 299)

disregarded in this term i.e. Aḥmad, Bukhārī, Muslim and Ibn Mājah. There are 14 *aḥādīth* which are in accordance with the term *al-Thalātha* that has one pattern only in terms of narration. The pattern is called as definitive *al-Thalātha* which is exemplified as follows;

> 'Narrated Abū Sa^{c}īd al-Khudri r.a.: Allah's Messenger s.a.w said, "Water is pure and nothing can make it impure." [Reported by *al-Thalātha,* and Aḥmad graded it *Ṣaḥīḥ*].'[83]

5.4.3.6 *al-Muttafaq ^{c}alaih*

The term *al-Muttafaq ^{c}alaih* means the reference source for the *Ḥadīth* is agreed upon only by the two most respected scholars i.e al-Bukhāri and Muslim. The *Ḥadīth* which is referred to this term is juristically considered the most authentic *Ḥadīth.* In the book of *Bulūgh al-Marām,* there are 435 *aḥādīth* which are in line with the term *al-Muttafaq ^{c}alaih.*

In terms of pattern, there is only one pattern in the term *al-Muttafaq ^{c}alaih* which is exemplified as follows;

> 'Narrated Hudhaifa bin al-Yaman r.a.: Allah's Messenger s.a.w said, "Do not drink in silver or gold utensils, and do not eat in plates of such metals, for such things are for them (the disbelievers) in this worldly life and for you in the Hereafter." [Agreed upon].'[84]

Apart from the term *al-Muttafaq ^{c}alaih,* the author regularly refers either to al-Bukhāri or Muslim in separate term, which demonstrates below;

> 'Bukhāri's version adds: "Then perform ablutions for every prayer".[85]

> 'In the version of Muslim: "I used to scrape it (the semen) off the garment of Allah's Messenger s.a.w and then he offered prayer with it".[86]

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[83] *Ibid.*, (no: 2)
[84] *Ibid.*, (no: 14)
[85] *Ibid.*, (no: 66)

The coining of the six specific terms in line with the referencing across all important books of *Ḥadīth* can be stated conclusively as the remarkable compilation methodology of *Bulūgh al-Marām.* Importantly, some of these six specific terms have been referred and utilized by many latter jurists in their books particularly in terms of referencing across all volume of *Ḥadīth.* It will therefore be concluded that the book of *Bulūgh al-Marām* can be considered a first model of concise book of *Ḥadīth* which has been followed by many other books later on.

5.5 Summary

This chapter juristically shows the author's biography of *Bulūgh al-Marām* and more importantly the significance and features in which the book is considered as a concise book of *Ḥadīth.* The analytical approach has been applied to examine the three authenticity levels of *Ḥadīth* i.e. *Ṣaḥīḥ, Ḥasan* and *Daᶜīf.* As a result, the book of *Bulūgh al-Marām* authentically consists of 77.6% *Ṣaḥīḥ,* 16.08% *Ḥasan* and 6.29% *Daᶜīf.* These figures of percentage-wise prove the quality and significance of *Bulūgh al-Marām* as the importance reference source for Islamic legal texts of the *Ḥadīth.*

The examination of compilation methodology of *Bulūgh al-Marām* academically verifies a defining approach within three main elements i.e. numbers of *Ḥadīth,* arrangement of chapters and sub-topics and specific terms of cross-referencing. Moreover, this pattern of compilation methodology has been followed by many later jurists as a benchmark approach to compile the legal texts of *Ḥadīth.*

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[86] *Ibid.*, (no: 25)

To further analysis of *Bulūgh al-Marām,* the next part C will examine the legal texts of *Ḥadīth* in the framework of juristic concept of *al-Maṣlaḥa wa al-Naṣṣ.* This analyse part will explore conceptually the significance of public interest through the Islamic legal texts of *Ḥadīth.* To a discussion of this the writer now turns.

PART C

ANALYSIS OF THE *ḤADĪTH*

Introduction to Part C

The *Aḥādīth* of *Būlūgh al-Marām* have been analysed and commented upon by many jurists. Muḥammad Rashad Khalīfa,[1] for example, states that there are at least seven jurists who undertook this task. The most well-known of these is al-Imām Muḥammad b. Ismāᶜīl al-Ṣanᶜāni (d.1182H), who entitles his book *Subul al-Salām.* The six remaining jurists include al-Qāḍi Sharfuddin al-Ḥusein (d.1119H), whose works (*al-Badr al-Tamam*) were written in manuscript, al-Sheikh Abū al-Khayr Nūr al-Ḥasan Khān, who wrote a commentary of *Būlūgh al-Marām* (*Fatḥ al-ᶜAllām*) and al-ᶜAllāma Abū Ṭaib Ṣadiq Ḥassan Khān, whose analyses of the *Aḥādīth* of *Būlūgh al-Marām* were written (interestingly) in Persian. As yet, there is no known title for this later work. al-ᶜAllāma Aḥmad Ḥasan al-Dahlāwi has produced two volumes of *Muntakhab,* while other commentators are al-Sheikh Muḥammad ᶜĀbidīn Aḥmad al-Anṣāri (d.1257H) and al-Sheikh Muḥammad ᶜAli Aḥmad, lecturer in *Uṣūluddīn* at al-Azhār University, for whose works there is also no title, perhaps due to unavailable or unpublished material.

Significantly, these seven books mostly have a very similar pattern in terms of analytical methodology. For instance, *Subul al-Salām* falls into three parts: definitions of terminologies used in the *Ḥadīth*, followed by a biography of each narrator, then concluding with a juristic discussion on Islamic rulings contained therein. This three-part pattern can be classified as the classical approach.

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[1] Khalīfa, *Madrasa,* v.2, p.202

Methodology of Analysis

In part C, the writer will apply the contemporary approach to analyse the *Aḥādīth* in *Būlūgh al-Marām*, particularly that chapter termed *Kitāb al-Buyūᶜ*, because of its central importance to the focus of the present study. Nevertheless, those classical commentaries already discussed will be referred to in this analysis, particularly the book of *Subul al-Salām*, written by al-Ṣanᶜāni. The contemporary approach suggested differs from the traditional method in that the concept of *al-Maṣlaḥa wa al-Naṣṣ* will be applied to this analysis. That is, the *Ḥadīth* will be examined through the 'juristic themes' as set out in the book of *Būlūgh al-Marām.* This examination aims to pinpoint the significant principles of public interest (*Maṣlaḥa*) which emerge from the Islamic rulings enclosed within it.

More specifically, these principles will be determined through the process of ratiocination (*Taᶜlīl al-Ahkām*). That is, the examination will focus on the effective causes of Islamic rulings, applying both linguistic and inductive methods, followed by simple and concise elaboration .

In other words, this section will analyse the objectives of Islamic rulings as laid down in the *Aḥādīth* of *al-Buyūᶜ* in *Būlūgh al-Marām* . For example, in the sub topic of 'usury', the discussion will single out those objectives which are in line with the concept of public interest (*Maṣlaḥa*). Each *Ḥādīth* in turn will then be scrutinised for those rulings and teachings which are in accordance with the principle of public interest (*Maṣlaḥa*). In order to do so, the process of ratiocination (*Taᶜlīl al-Ahkām*) will be applied to identify the main objectives of Islamic law, also termed in Islamic

jurisprudence *Maqāṣid al-Sharīʿa.* For some jurists, these objectives are synonymous with the term *ḥikma,* the wisdom of the Divine Commandments. To this analysis, the writer now turns.

CHAPTER SIX

KITĀB AL-BUYŪ^{c} : APPLICATION OF THE CONCEPT OF *AL-MAṢLAḤA WA AL-NAṢṢ* TO THE *AḤĀDĪTH* OF *AL-BUYŪ^{c}*

6.0 Introduction

This chapter forms the heart of the present study, building a specific methodology within the juristic framework of public interest in legal texts (*al-Maṣlaḥa wa al-Naṣṣ*) for the analysis of *Kitāb al-Buyū^{c}* according to the practical principles drawn up from the 22 juristic 'themes' or sub topics therein. The process of ratiocination (*ta^{c}līl al-aḥkām*) is applied to identify the main objectives of Islamic law as set out in *Kitāb al-Buyū^{c}*.

Prior to this analysis, the definition and significance of *al-Buyū^{c}* will be examined as the first sub topic of this chapter, with the aim of justifying both its inclusion and the way in which rulings and teachings are set out in accordance with the juristic principle of public interest (*al-Maṣlaḥa wa al-Naṣṣ*). In addition, juristic features of the *Aḥādīth* from each sub topic of *al-Buyū^{c}* will be highlighted to verify their authenticity .

6.1 Definition and Significance of *al-Buyū^{c}*

In terms of a literal definition, the book of *Subul al-Salām* defines the term *al-Buyū^{c}* (sing.*al-Bay^{c}*) as (*tamlīk māl bi-māl*) or 'conveyancing property by property[1]' where the term 'conveyancing' is translated from the Arabic '*tamlīk*'. In the *al-Mawrid* dictionary, the term *tamlīk* is translated literally as 'investment with

[1] al-San^{c}āni, *Subūl*,v.2,p.449

ownership, putting in possession transfer (of ownership), conveyance (of property), alienation, making over, assignment, delivery and cession'[2], which demonstrates its strong connection with the subject of property. As further verification of this strong link, Collins Cobuild Learner's Dictionary defines conveyancing as 'the process of transferring the legal ownership of property'[3], which underlines the sense of 'ownership of property' to which the term *tamlīk* refers.

In the English language, the term *al-Buyūᶜ* (sing.*al-Bayᶜ*) translates in several ways; this is seen, for example, in Rayner[4], where the term is defined as 'the contract of sale' in a comprehensive discussion in the chapter entitled 'The Theory of Contracts in Islamic law'. *Kitāb al-Buyūᶜ* is thus translated by Rayner as 'Chapter on Sales'. Interestingly, however, scholars do translate this differently. The English translation for the book of *Bulūgh al-Marām,* as a further example, defines *Kitāb al-Buyūᶜ* as 'The Book of Business Transactions'. At this stage, the term *al-Buyūᶜ* means business transaction and the term *Kitāb* is literally translated as the book.

Selecting an accurate translation for the two terms discussed is thus not an easy task. However, in view of the numerous types of business transaction listed within each sub topic under the heading of *al-Buyūᶜ*, it is clearly preferable in the context of this study to choose the term 'business transactions' rather than 'sales'. As for the term *Kitāb,* although the meaning here is literally 'the book', to translate as 'the book of business transactions in the book of *Bulūgh al-Marām*' nevertheless seems strange. For this reason, 'chapter' is preferred to 'book' for the term *Kitāb.*

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[2] al-Baᶜalbaki, *al-Mawrid*,p.372.
[3] Cobuild, *Learner's Dictionary*, p.239.
[4] Rayner, *The Theory*, p.103-143.

Accordingly, from hereon 'chapter on business transactions' will refer specifically to *Kitāb al-Buyūᶜ*.

In juristic terminology, the term *al-Buyūᶜ* is defined as 'offer and acceptance on two types of property'; however, this type of transaction does not include donations or gifts, and specifically excludes the context of 'dealing and giving'[5]. Elsewhere the term *al-Buyūᶜ* is defined as the 'exchange' of property (as against 'offer and acceptance') which also excludes both donations and 'giving'[6]. Importantly for this study, the first of these definitions (the condition of 'offer and acceptance') is in line with the principle laid down in the *Qur'ān* which insists on 'mutual consent' as a fundamental ethic when engaging in trading or in business transactions[7]. The preferred definition thus embodies a classic Islamic principle when interpreting the term *al-Buyūᶜ*, on which many jurists are in agreement[8].

Furthermore, many jurists agree that the principle of 'offer and acceptance' within the fundamental ethic of mutual consent as applied to the contract of *al-Buyūᶜ* is equally applicable to other contracts, particularly those in areas such as marriage, family, descendants, finance and court judgements[9], as argued for example by Ibn ᶜĀshūr[10]. The main objective of this legal principle is thus to preserve the rights of interested parties involved in any contract or transaction. It is for this reason that the section concerning *al-Buyūᶜ* is chosen for analysis, since it embodies a vital legal principle (that of 'mutual consent') laid down between contracting parties.

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[5] *Op.cit.*, al-Sanᶜāni, p.449.
[6] *Ibid.*
[7] Allah s.w.t says; 'O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. (*Al-Nisa'*: 29).
[8] al-Jaziri, *Kitāb al-Fiqh*,v.2, p.147.
[9] *Ibid.*
[10] Ibn ᶜĀshūr, *Maqāsid*,p.302.

This view is upheld by the book of *Subul al-Salām* as the definitive textual analysis for the *Aḥādīth* of *Bulūgh al-Marām,* where the importance of *al-Buyūᶜ* is highlighted as forming a fundamental part of human life. For al-Ṣanᶜāni, business transactions act as a medium through which human objectives are legitimately attained in a straightforward manner[11]. In other words, incorporated into this important area of human activity are principles and methods for business transactions as laid down by the Prophet s.a.w in many authentic *Aḥādīth,* with the objective of guiding humanity towards dealing uprightly and legally in business transactions[12]. These significant principles of business transactions will thus now be further discussed within the framework of juristic concept of *al-Maṣlaḥa wa al-Naṣṣ.*

6.2 Chapter on Business Transactions

In the book of *Bulūgh al-Marām,* the chapter on business transactions is the largest compared with others, particularly in terms of sub topics. There are 22 sub topics, including specific numbers of the *Aḥādīth* as follows; conditions of business transactions and those which are forbidden (44 *aḥādīth*); options of transaction (3 *aḥādīth*); usury (17 *aḥādīth*); permission regarding the sale of *al-ᶜArāyā* and the sale of trees and fruits (7 *aḥādīth*); payment in advance, loans and pledges (8 *aḥādīth*); bankruptcy and seizure (8 *aḥādīth*); reconciliation (3 *aḥādīth*); the transfer of a debt and ṣurety (4 *aḥādīth*); partnership and agency (8 *aḥādīth*); confession (1 *aḥādīth*); loan (4 *aḥādīth*); *al-Ghasb* (5 *aḥādīth*); option to buy neighbouring property (5 *aḥādīth*); *al-Qirāḍ* (2 *aḥādīth*), tending palm-trees and wages (9*aḥādīth*), developing

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[11] al-Sanᶜāni, *Subul,*v.3,p.3-4
[12] *Ibid.*

barren lands (9 *aḥādīth*); endowments (3 *aḥādīth*), gifts, life-tenancies and giving property for the recipient's life time (11 *aḥādīth*); lost and found items (6 *aḥādīth*); shares of inheritance (13 *aḥādīth*); wills and testaments (5 *aḥādīth*) and trusts (1 *aḥādīth*).

6.2.1 Conditions of business transactions and those which are forbidden

As the first sub topic in the chapter on *al-Buyūᶜ* or business transactions, this is the largest sub topic because its consists of 44 *Aḥādīth* that are encompassed 37 *Ṣaḥīḥ*,4 *Ḥaṣan* and 3 *Ḍaᶜīf*. In terms of reference, this sub topic is referred to authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 14 *Aḥādīth*), Bukhāri (narrated 18 *Aḥādīth*), Muslim (narrated 18 *Aḥādīth*), Abū Dāwūd (narrated 11 *Aḥādīth*), al-Nasā'i (narrated 9 *Aḥādīth*), al-Tirmīdhi (narrated 10 *Aḥādīth*), Ibn Mājah (narrated 10 *Aḥādīth*), and others[1] (narrated 16 *Aḥādīth*).

This sub topic has two interrelated main points to highlight i.e. i) conditions of business transactions ii) those which are forbidden to deal in business transactions. There are 35 *Aḥādīth* in line with the conditions of business transactions and 9 *Aḥādīth* in connection with the particular items which are forbidden to deal with business transactions. However, the former and the latter are interrelated to each other in specific topic.

To begin with, those 35 *Aḥādīth* in conjunction with the conditions of business transactions will be examined within the framework of juristic concept of *al-Maṣlaḥa wa al-Naṣṣ*.

The first *Ḥadīth* that in line with the conditions of business transactions emphasises on two types of work that are earning the best i.e. a mans's work with his

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[1] In this chapter, the term 'others' is referred to scholars of *Ḥadīth* such as Mālik, al-Shāfi'i, Abū Hātim, Ibn Khuzaimah, Ibn Ḥibbān and al-Ḥākim.

hand and every business transaction which is approved[2]. For al-Ṣanᶜāni[3], this *Ḥadīth* is a proof on the reward of the effort of work. Since there are only two types of work laid down in the *Ḥadīth,* some jurists differ to interpret a type of profitable work and to determine which is the best one. For al-Mawardi, a type of profitable work refers to farming, business and manufacturing. At this stage, al-Nawāwi highlights farming is the best profitable work because it would gain a sense of reliance to Allah almighty. However, Shāfiᶜi's scholars prefer business as a profitable work compared with the others[4]. These arguments can be understood simply that practical work is a juristic cause to gain profitable. The best of practical work is either physical work or business. In line with juristic concept of *Maṣlaḥa* or public interest, both physical work and business would benefit the life of humanity. In terms of profitable for humanity, business is the best because of its feature that can be related to many areas such as agricultural business, industrial business, educational business and so on. However, those types of business must in line with Islamic principle that aims to preserve the right of both parties either seller or buyer. This condition has been underlined by the Prophet s.a.w in the third *Ḥadīth* of this sub topic.

In the third *Ḥadīth,* the Prophet s.a.w underlines a solution for two people who are arranging a business transaction disagree and there is no proof to arbitrate between them, the seller's word is final, or they may break the deal[5]. For the author of *Subul al-Salām,* this *Ḥadīth* is a proof to endorse the authority and right of seller either to

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[2] 1) Narrated Rifāᶜ b. Rāfiᶜ رضى الله عنه: The Prophet صلى الله عليه وسلم was asked, 'What type of earning is best?' He replied, "A man's work with his hand and every business transaction which is approved." (Reported by al-Bazzār; al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[3] al-Ṣanᶜāni, *Subul,*v.2,p.452.

[4] *Ibid.*,

[5] 3) Narrated Ibn Masᶜūd رضى الله عنه: I heard Allah's Messenger صلى الله عليه وسلم saying, "When two people who are arranging a business transaction disagree and there is no proof to arbitrate between them, the seller's word is final, or they may break the deal." (Reported by *al-Khamsa* and validated by al-Ḥākim).

persist or break a deal in the transaction for particular reason such as disagreement with buyer[6]. This provision is in line with the concept of public interest in which the right of ownership is preserved from loss and damage of his wealth or property. Furthermore, in the case of disagreement between seller and buyer, the Islamic principle of claims and proofs must be applied to gain justice and right for both parties. This is in line with the *Ḥadīth* of the Prophet s.a.w; 'the proof lies on the plaintiff and the oath must be taken by him who rejects the claim'[7]. The juristic principle in this *Ḥadīth* clearly provides justice and right for both parties who are in disagreement by proving the proof for plaintiff and confessing the oath for defendant. This juristic principle is in line with the basic fundamental necessity of public interest in Islam whereby the preservation of wealth is undertaken by implementing the principle of justice and right for both parties who are engaging the business transaction.

Within the fifth *Ḥadīth* of this sub topic, the Prophet s.a.w demonstrates how to deal with a sale that binds within the condition of *al-Istithnā'* or exception. In the fifth *Ḥadīth,* the Prophet s.a.w has returned the camel and its price of which he bought from the buyer who gave a condition in the transaction that the camel should be allowed to ride it to his home[8]. In the examination of this *Ḥadīth,* Muslim jurists

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[6] *Op.cit.*, al-Ṣanᶜāni, v.2,p.457.

[7] عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللهُ تَعَالَى عَنْهُمَا، أَنَّ النَّبِيَّ صلى الله عليه وسلم قَالَ: لَوْ يُعْطَى النَّاسُ بِدَعْوَاهُمْ لادَّعَى نَاسٌ دِمَاءَ رِجَالٍ وَأَمْوَالَهُمْ وَلَكِنَّ الْيَمِينَ عَلَى الْمُدَّعَى عَلَيْهِ. مُتَّفَقٌ عَلَيْهِ.
وَلِلْبَيْهَقِيِّ بِإِسْنَادٍ صَحِيحٍ: الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ

[8] 5) Narrated Jābir b. Abdullah رضى الله عنهما : I was travelling on a camel of my own which had grown jaded and I intended to let it off. The Prophet صلى الله عليه وسلم followed me and made supplication for me and struck it, then it went as it had never done before. He then said, "Sell it to me for one Uqiya." I replied, "No." He again said, "Sell it to me." So I sold it to him for one Uqiya, but conditioned that I should be allowed to ride it to home. Then when I reached (home), I took the camel to him and he paid me its price in ready money. I then went back and he sent someone after me. (When I came), he said, "Do you think that I asked you to reduce the value of your camel's price to take it? Take your camel and your coins; for it is yours." (Agreed upon; and this is Muslim's version).

differ on the legality of condition of *al-Istithnā'* that includes in the contract of sale. For Imām Aḥmad and Mālik, the contract is legal and valid if the buyer knows clearly on the condition of *al-Istithnā'* that is dealt with[9]. However, most jurists of Shāfi°i and Ḥanafi reject the contract that binds with the condition of *al-Istithnā'* due to its uncertain and doubt[10]. This *Ḥadīth* and its rulings form a legal choice for the buyer either to proceed the transaction with the knowledge of the condition of *al-Istithnā'* or to cancel this type of transaction. In line with the concept of public interest, either seller or buyer would have a legal choice of transaction that deals with this type of contract.

In dealing with the buyer of sale, the sixth *Ḥadīth*[11] of the Prophet s.a.w underlines a bankcruptcy is a particular characteristic of buyer that is not allowed to invole in the sale[12]. However, a leader or government of state can be appointed as a representative for a bankcruptcy in dealing for any transaction. It is obvious that the reason behind this is to preserve the interest of seller from loss in the transaction with a bankruptcy buyer. A detail discussion on this regard and its connection with the concept of public interest will take place in the sub topic six.

The seventh, eighth and ninth *Ḥadīth* in this sub topic deal with the topic of animals in connection with food and business transaction. In the seventh[13] and eight[14]

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[9] al-Ṣan°āni, *Subul*,v.2,p.459.
[10] *Ibid.*
[11] 6) Narrated (Jābir bin Abdullah) رضى الله عنهما: A man of us declared that a slave of his own would be free after his death, but he had no other property. The Prophet صلى الله عليه وسلم sent for him and sold him. (Agreed upon).
[12] al-Ṣan°āni, *Subul*, v.2,p.461.
[13] 7) Narrated Maimuna رضى الله عنها, the wife of the Prophet صلى الله عليه وسلم : A mouse fell into some ghee and died. The Prophet صلى الله عليه وسلم was asked about it and he replied, "Throw it and what is surrounding it away and eat it (the ghee)." (Reported by al-Bukhāri; Aḥmad and al-Nasā'i added: "into a solid ghee.")

Ḥadīth, both discuss the mouse that falls into ghee which is solid, must be thrown and what is surrounding it away; but if it is in a liquid state do not go near it. In connection with the chapter on *al-Buyūᶜ* or business transactions, these two *aḥādīth* have no significant at all. In the analysis of these two *aḥādīth,* the book *Subul al-Salām* has no elaboration that relates to the topic on *al-Buyūᶜ*. However, al-Ṣanᶜani does relate the seventh *Ḥadīth* to the juristic concept of public interest. For al-Ṣanᶜani, this *Ḥadīth* emphasises on the application of attaining benefit for humanity in case if a solid ghee is entered by a mouse, thus, the mouse should be thrown and what is surrounding it away. Accordingly, the solid ghee is safety to eat. However, the eight *Ḥadīth* underlines the application of avoiding harmful to humanity whenever the Prophet s.a.w disallows to eat a liquid ghee if it is entered by a mouse[15].

Many jurists discuss both *aḥādīth* in reasonable chapters such as chapter on food and chapter on purification. None of primary sources for the book of *Ḥadīth* arranges the aforementioned *Ḥadīth*[16] in the chapter on *al-Buyūᶜ* except in the book of *Bulūgh al-Marām.* Only Ibn Ḥajar al-ᶜAsqalāni as an author could give reasonable reasons on why both seventh and eight *aḥādīth* are arranged in the chapter on *al-Buyūᶜ*.

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[14] 8) Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "If a mouse falls into ghee which is solid, throw the mouse and what is surrounding it away; but if it is in a liquid state do not go near it." (Aḥmad and Abū Dāwūd reported it; al-Bukhāri and Abū Ḥātim ruled it to be misconceived).

[15] al-Ṣanᶜāni, *Subul,*v.2,p.461.

[16] The aforementioned *Hadith* has been arranged by al-Tirmīdhi, Abū Dāwud and al-Dārimi in the chapter on food. Al-Dārimi also categorises this *Hadith* in the book on purification (831).

In the ninth *Ḥadīth*[17], a topic on cats and dogs have been highlighted by the Prophet s.a.w by which it is not allowed to sale except for domestic purpose such as hunting and the like. Some jurists such as Abū Hurairah, Ṭāwūs and Mujāhid state the ruling for selling dog or cat is forbidden[18]. The fourth[19] *Ḥadīth* also encompasses in this regard. However, most jurists agree that it is permissible to sale both for domestic reason such as hunting and guarding[20]. This ruling is in line with the principle of juristic concept of public interest in which the interest of humanity is preserved and the benefit of animals are utilised for sensible reasons.

Further discussion on the preservation of the life of humanity has been detailed within six-separated *Aḥādīth* but interrealated to each other regarding specific topic on the sale of slave. These six *Aḥādīth* are the tenth, eleventh, twelfth, sixteenth, thirtieth and thirty-first.

Prior to the prohibition of slave in Islam, those four *Aḥādīth* discuss on the condition of the sale of slave. The tenth *Ḥadīth*[21] rules the legitimacy of recorded or

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[17] 9) Narrated Abū Zubair رضى الله عنه: I asked Jābir (رضى الله عنه) about the payment for cats and dogs and he replied, "The Prophet صلى الله عليه وسلم rebuked that." (Reported by Muslim and al-Nasā'i; the latter added: "except a hunting dog.")

[18] al-Ṣanᶜāni, *Subul*,v.2,p.464

[19] 4) Narrated Abū Masᶜūd al-Anṣāri رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer." (Agreed upon).

[20] *Ibid.*

[21] 10) Narrated ᶜA'Īsha رضى الله عنها: Barīra came to her and said, "I had arranged to buy my freedom for nine Uqiya; one to be paid annually, so help me." ᶜA'Īsha رضى الله عنها replied, "If your people are willing that I should count them out to them, and I shall have the right to inherit from you, I shall do so." Barira went to her people and told them about it, but they refused the offer. When she came back Allah's Messenger صلى الله عليه وسلم was sitting (in the house). She said, "I offered that to them, but they insisted that the right to inherit from me should be theirs." The Prophet صلى الله عليه وسلم heard that and ᶜA'Īsha رضى الله عنها told him about it, so he said to ᶜA'Īsha رضى الله عنها, "Take her on the condition that the right to inherit from her will be yours, for the right of inheritance belongs only to the one who has set a slave free." ᶜA'Īsha رضى الله عنها did so. Allah's Messenger صلى الله عليه وسلم then stood up among the people, and after praising and extolling Allah, he said, "To proceed; what is the matter with some men who make conditions which are not in Allah's Most High Book? Any condition which is not in Allah's Book is worthless. Even if there are a hundred conditions, Allah's Decision is more valid and Allah's Condition is more binding. The right of inheritance belongs only to the one who has set a slave

written contract for liberation of a slave by paying money to his master. For those who pay for liberation of a slave, they have the right of inheritance of slave. For Imām Aḥmad and Mālik, this ruling is classified permissible if both parties satisfied on the written contract[22]. However, for Abū Ḥanifa it is not permissible to sell a slave because it would lose the ownership of master[23].

Regarding the right of inheritance of freed slave, in the sixteenth[24] *Ḥadīth*, the Prophet s.a.w reminds that the inheritance is forbidden to be sold or gifted because by analogy its part of slave's lineage. It can be learned that this stipulation was applied on that time to preserve the inheritance of wealth of freed slave.

The specific discussion on selling a salve and its conditions has been prolonged in the eleventh[25], twelfth[26], thirtieth[27] and thirty-first[28] *Ḥadīth*. In terms of selling a slave women who had borne children, the eleventh *Ḥadīth* rules as forbidden whereas the twelfth *Ḥadīth* constitutes as permissible. For al-Ṣanᶜāni, the ruling of forbidden in the eleventh *Ḥadīth* has been abrogated by the ruling in the twelfth

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free." (Agreed upon; the version is of al-Bukhāri). A version by Muslim has: "Buy her, set her free and make the stipulation that the right to inherit from her will be yours."

[22] al-Ṣanᶜāni, *Subul*,v.2,p.466-467.

[23] *Ibid.*

[24] 16) Narrated (Ibn ᶜUmar) رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade selling or giving away the right of inheritance from a freed slave. (Agreed upon).

[25] 11) Narrated Ibn ᶜUmar رضى الله عنهما: ᶜUmar (رضى الله عنه) forbade the sale of the slavewomen who have given birth to children (of their owners) and said, "She is not to be sold, bestowed as a gift or inherited; but he (the owner) enjoys her as long as he lives and when he dies, she becomes free." (Reported by Mālik and al-Bayhāqi).

[26] 12) Narrated Jābir رضى الله عنه: We used to sell our slavewomen who had borne children when the Prophet صلى الله عليه وسلم was alive and he saw no harm in that. (Reported by al-Nasā'i, Ibn Mājah and al-Daraqutni and Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).

[27] 30) Narrated Abū Ayyūb al-Anṣāri رضى الله عنه: I heard Allah's Messenger صلى الله عليه وسلم saying, "If anyone separates a mother from her child, Allah will separate him from his beloved ones on the Day of Resurrection." (Reported by Aḥmad; al-Tirmīdhi and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[28] 31) Narrated ᶜAli b. Abū Ṭālib رضى الله عنه: Allah's Messenger صلى الله عليه وسلم commanded me to sell two youths who were brothers. I sold them and separated between them. When I made mention of that to the Prophet صلى الله عليه وسلم , he said, "Find them out and get them back; and do not sell them but together." (Reported by Aḥmad) And the narrators of this version are reliable, and indeed Ibn Khuzaima, Ibn al-Jārūd, Ibn Ḥibbān, al-Ḥākim, al-Ṭabarāni and Ibn Qattān graded it *Ṣaḥīḥ* (sound).

Ḥadīth in which it is permissible to sell a slave women who had borne children. It suggests that this ruling would give freedom for a slave from slavery and he would gain the rights as humanity. However, in the thirtieth *Ḥadīth,* the Prophet s.a.w rules that it is forbidden to separate a mother from her child in the case of selling a slave women. The same principle applies into the thirty-first *Ḥadīth* in which the Prophet s.a.w underlines the prohibited of selling separately two slave youth of brotherhood. This ruling is applied on that time in order to preserve the lineage and humankind. The discussion on slavery transactions in this topic is changed into discussion on selling transaction that regards on the significance of measurement and weighting of goods or foods, which takes place in the eighteenth *Ḥadīth.*

The condition of measurement and weighting of goods or foods must be given priority by seller prior to the sale. This condition has been emphasised by the Prophet s.a.w in the eighteenth[29] *Ḥadīth* of this sub topic. The purpose of this condition is to give quality and quantity value of goods or foods for purchaser in the sale. This purpose is in line with the juristic concept of public interest in which the right of purchaser is preserved to buy the goods or foods with theirs quality as well as quantity. Furthermore, the Qur'an reminds the punishment in the Day of judgement for those who deal in fraudulent transactions[30].

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[29] 18) Narrated (Abū Huraira) رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "If anyone buys grain he must not sell it till he weighs it." (Reported by Muslim).

[30] Allah s.w.t says; 'Woe to *al-Muṭaffifūn* (those who give less in measure and weight). Those who, when they have to receive by measure from men, demand full measure. And when they have to give by measure or weight to (other) men, give less than due. Do they not think that they will be resurrected (for reckoning), On a Great Day?'. (1-5 : *Sura al-Muṭaffifin*).

In connection with fraudulent transactions, within the nineteenth[31] and twentieth[32] *Ḥadīth* there are four types of fraudulent transactions i.e. i) the condition of a loan combined with a sale, ii) two conditions relating to one transaction, iii) the profit arising from something which is not in one's charge, iv) selling what is not in one's possession. This four conditions or types of fraudulent transactions are prohibited to deal with. The juristic reasons of prohibition on these four types of transactions because the interrelated features to uncertainty conditions of contract that may cause loss and damage for one party. These four unlawful transactions have no sense of preservation of public interest due to unfair and fraudulent elements in its transactions. Furthermore, the Islamic transaction emphasises on the condition of *al-Qabḍ* or certainty of delivery of good of purchase within the contract of sale. The third and fourth conditions of the above fraudulent transactions clearly indicates the absence of *al-Qabḍ* or certainty delivery of good of purchase.

The discussion on the condition of *al-Qabḍ* or certainty of delivery of good of purchase has been extended in the twenty-second and twenty-third *Ḥadīth* of this sub topic. For al-Ṣanᶜāni, the twenty-second[33] *Ḥadīth* is a proof to indicate the void selling of which the commodities such as oil or fruits to be sold on the spot where

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[31] 19) Narrated (Abū Huraira) رضى الله عنه: Allah's Messenger صلى الله عليه وسلم forbade two transactions combined in one. (Reported by Aḥmad and al-Nasāi, al-Tirmīdhi and Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).
Abū Dāwūd has: "If anyone makes two transactions combined in one he must confirm that of a lower price, or he is involved in committing usury."

[32] 20) Narrated ᶜAmr b. Shuᶜaib on his father's authority from his grand father (رضى الله عنهم): Allah's Messenger صلى الله عليه وسلم said, "The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction, nor the profit arising from something which is not in one's charge, nor selling what is not in your possession." (Reported by al-Khamsa. al-Tirmīdhi, Ibn Khuzaima and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[33] 22) Narrated Ibn ᶜUmar رضى الله عنهما: I bought some oil in the market and when I came to receive it, a man met me and offered to give me good profit for it; and when I was about to seize the price from him, a man caught hold of my hand from behind. So I turned and found that he was Zayd b. Thābit (رضى الله عنه). He said, "Do not sell it in the place where you have bought it from, till you take it to your dwelling; for Allah's Messenger صلى الله عليه وسلم forbade the commodities to be sold on the spot where they were bought from, till the traders take them to their dwellings." (Reported by Aḥmad and Abū Dāwūd; the version is of the latter; Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

they were bought from, till the traders take them to their dwellings[34]. It appears that this type of commodities needs a proper place before selling as requirement of *al-Qabḍ*. However, in the twenty-third *Ḥadīth*[35], the Prophet s.a.w underlines the valid selling for golden dinars, takes silver dirhams, and vice versa, provides this exchange is concluded at the current rate. For Shāfi°i's jurists, this transaction is in line with the condition of *al-Qabḍ* because the features of dinar and dirham currency are certainty delivery and transferable commodity[36]. This provision is in line with the juristic concept of public interest in which the condition of *al-Qabḍ* is applied to the transaction that aims to preserve the right of ownership for purchaser.

Another discussion on condition of transactions takes place in the twenty-seventh and twenty-eighth *Ḥadīth* of this sub topic. In the twenty-seventh[37] *Ḥadīth*, the Prophet s.a.w emphasises on unethical manner of broker who takes advantage from village supplier who are unaware of the market price of their merchandise. However, in the twenty-eighth[38] *Ḥadīth*, the Prophet s.a.w warns unethical manner of supplier who takes advantage to manipulate the market price by controlling the terms of demanding and supply. If this were the case for the purchaser, it would be suggested to deal with the form of *al-Khiyār* or option by canceling the transaction. In this *Ḥadīth*, the preservation of traders is given priority at this stage by which the

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[34] al-Ṣan°āni, *Subul*,v.2,p.481-482

[35] 23) Narrated (Ibn °Umar) رضى الله عنهما: I said, "O Allah's Messenger, I sell camels at al-Bāqi°. I sell for Dinars and take Dirhams (for them), and sell for Dirhams, and take Dinars (for them), I take this for that and give that for this." Allah's Messenger صلى الله عليه وسلم replied, "There is no harm in taking them at the current rate so long as you do not separate leaving something still to be settled." (Reported by al-Khamsa and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[36] *Op.cit.*, al-Ṣan°āni, p.481.

[37] 27) Narrated Ṭāwūs from Ibn °Abbās رضى الله عنهما, Allah's Messenger صلى الله عليه وسلم said, "Do not go out to meet riders (to conduct business with them), and a towner must not sell for a man from the desert." I asked Ibn °Abbās رضى الله عنهما "What did he mean by 'A towner must not sell for a man from the desert.'" He replied, "He should not act as a broker for him." (Agreed upon; the version is of al-Bukhāri).

[38] 28) Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Do not go out to meet what is being brought (to market for sale). If anyone has met so and some of it is bought, when its owner comes to the market he has the choice (of cancelling the deal)." (Reported by Muslim).

suppliers should not manipulate the price of market because of over demanding factor. At this stage, the priority of public interest goes to the traders or purchasers and not to the suppliers.

Furthermore, in the thirty-third *Ḥadīth*[39], the Prophet s.a.w forbade *al-Iḥtikār* or storing goods for future profit particularly made by suppliers. For Abū Yussūf, this ruling is applied to all types of goods that may leads to harmful effects of the interest of humanity[40].

In the analysis of the twenty-seventh *Ḥadīth*, Muslim jurists differ to determine the ruling of unethical manner of broker who takes advantage from village supplier who is unaware of the market price of his merchandise. For Imām al-Haramain, the ruling is forbidden for the broker to practice with such unethical manner. However, for Imām Abū Ḥanifah and al-Awzā^{c}i, it is permissible for broker to deal with the market price of merchandise from village supplier within the condition of unharmed effect to the consumers. For Hadāwiyya and Shāfī^{c}is, this dealing is bonded with the condition of *al-Khiyār* or option of transaction; either to cancel or proceed. Importantly, al-Ṣan^{c}āni highlights the significance of the concept of public interest in dealing with the rulings of both *aḥādīth*. The twenty-seventh *Ḥadīth* signifies the preservation of consumers as well as village suppliers from the unethical manner of broker who takes advantage to set high price of goods in the market.

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[39] 33) Narrated Ma^{c}mar b. ^{c}Abdullah رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "None keeps goods till the price rises but a sinner." (Reported by Muslim).

[40] al-Ṣan^{c}āni, *Subul*,v.2,p.498.

The discussion on unethical manner of transactions has been extended and asserted in the twenty-ninth[41] *Ḥadīth*. In this *Ḥadīth*, the Prophet s.a.w forbade five types of transaction or criteria of dealer of which few of them have been discussed above as follows; i) unethical broker, ii) unethical bidder, iii) sale of overbidding, iv) to propose an engagement to engaged women, v) a woman to ask to have her sister divorced for the purpose of wealth. The ruling of forbidden is applied to those types of transaction due to juristic reasons of injustices such as deceit, cheating, peril and loss for one party in such transactions. The ruling of those types of transactions verifies the prevention of harmful effects for one party, whilst simultaneously affirming the preservation of justice and interest for both parties of transactions. This principle obviously refers to the theme of public interest in Islam.

In line with the preservation of consumers, the thirty-fourth[42] *Ḥadīth* also highlights in this matter by applying the form of *al-Khiyār* or option within three days to return the goods because of their defects. In returning the defected goods particularly in the purchase of a dairy cattle, the thirty-fifth[43] *Ḥadīth* rules the payment should be made as compensation for the seller on the amount of a *Sa'* (2.6 kg.) of any kind of grains. It suggests that this is because the dairy cattle may be utilised by the buyer prior to its returning. Thus, the seller is entitled to get

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[41] 29) Narrated (Abū Huraira) رضى الله عنه: Allah's Messenger صلى الله عليه وسلم forbade, a towner to sell for a man from the desert; one to bid against another; a man to buy in opposition to his brother, to propose a woman after his brother has done so, or a woman to ask to have her sister divorced in order to deprive her of what belongs to her. (Agreed upon). Muslim has: "A Muslim must not offer a price above that offered by another Muslim."

[42] 34) Narrated Abū Huraira رضى الله عنه: The Prophet صلى الله عليه وسلم said, "Do not tie up the udders of camels and goats, for he who buys them after that (has been done) has two choices open to him after milking them: he may keep them if he wishes, or may return them along with one Sa' of dates." (Agreed upon). Muslim has: "He has three days in which to decide whether to keep them or not." A version by Muslim which al-Bukhāri termed as Mu^{c}allaq has: "He must return with it one Sa' of any grain but wheat." (al-Bukhāri said, "One Sa' of any dates" is mentioned in many *aḥādīth*).

[43] 35) Narrated Ibn Mas^{c}ūd رضى الله عنه: If anyone buys a goat whose udder has been tied up and he returned it, he must return with it one Sâ'. (Reported by al-Bukhāri). Al-Isma^{c}ili added: "of dates."

compensation such a certain amount of *Sa'* that laid down in the thirty-fifth *Ḥadīth*. In accepting the returning of the defected goods, the last *Ḥadīth*[44] in this sub topic highlights the blessing and forgiveness from Allah almighty for the seller who sticks to the contract of sale. However, during the time given of returning the purchase, the buyer entitles to get any profit of the goods and take responsibility of any loss. This provision is ruled in the thirty-eighth[45] of *Ḥadīth Daᶜīf* which is juristically classified the weak quality of authenticity of the *Ḥadīth*.

For Sanhūrī[46], the thirty-fourth *Ḥadīth* also indicates the fraudulent transaction on the sale of *Muṣarrāt* (animals whose udders have been tied). For Ḥanafis, this type of transaction is forbidden whereas Shāfi'is and Ḥanbalis consider that to be deception (*Ghushsh*)[47]. These provisions are ruled to preserve the interest of consumers in dealing with the fraudulent transactions. This principle also applies to the transaction of *al-Ghish* or cheating of which the Prophet s.a.w describes this as forbidden in the thirty-sixth[48] *Ḥadīth* of this sub topic. In line with the fraudulent transactions, in the fifteenth[49], seventeenth[50], twenty-first[51], twenty-fourth[52] twenty-

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[44] 44) Narrated (Abū Huraira) رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Whoever accepts back what he had sold to a Muslim, Allah will forgive his fault." (Reported by Abū Dāwud and Ibn Majah and validated by Ibn Ḥibbān and al-Ḥākim).

[45] 38) Narrated ᶜA'īsha رضى الله عنها: Allah's Messenger صلى الله عليه وسلم said, "Any profit goes to the one who bears responsibility." (Reported by al-Khamsa; al-Bukhāri and Abū Dawūd graded it *Ḍaᶜīf*. al-Tirmīdhi, Ibn Khuzaima, Ibn al-Jārūd, Ibn Ḥibbān, al-Ḥākim and Ibn al-Qattān graded it *Ṣaḥīḥ* (sound)).

[46] Sanhūri, *Maṣādir*,v.2,p.183.

[47] *Ibid.*

[48] 36) Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم once came upon a heap of grain, and when he put his hand inside it, his fingers felt some dampness, so he asked the owner of the grain, "What is this, O owner of the grain?" He replied, "Rain had fallen on it, O Allah's Messenger." He said, "Why did you not put it (the damp part) on the top of the foodstuff so that people might see it? He who deceives has nothing to do with me." (Reported by Muslim).

[49] 15) Narrated (Ibn ᶜUmar) رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade the transaction called Habalal Habala' which was one entered into in the Jahiliya era, whereby a man bought a she-camel which was to be the offspring of a she-camel which was still in its mother's womb. (Agreed upon, and this version is of Bukhāri).

[50] 17) Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم forbade a transaction determined by throwing stones, and the transaction which involves some uncertainty (or cheating). (Reported by Muslim).

fifth[53] and twenty-sixth[54] *Ḥadīth,* the Prophet s.a.w forbade the transaction of *al-Ḥabl al-Ḥabla, Ḥaṣāt, al-Gharār, al-Najsh, Muḥaqala, Muzābana, Mukhabara, Thunya, Mukhadara, Mulāmasa,* and *Munābadha.*

In the analysis of those types of fraudulent transactions, it is interesting to highlight the work of Ahmad Hidayat, a later scholar who examines the prohibiton of *gharār* and its connection with the above prohibited transactions. The examination of literal meaning of the term *gharār* covers some adjectives of negative elements such as deceit, cheating, danger, peril and risk that might lead to destruction and loss[55]. For Ahmad Hidayat, the prohibition of *gharār* that derives from the *Ḥadīth* can be divided into two categories i.e. i) incorporated the element of *gharār* with the *gharār* sale such as the *Ḥabl al-Ḥabla* sale and the *Ḥaṣāt* sale, ii) incorporated the element of *gharār* without *gharār* sale such as *Thunya, Munābadha, Mulāsama, Mukhādara, Mukhābara, Muzābana* and *Muhāqala.* However, the transaction of *al-Najsh* is found not to be categorised in both categories of the prohibition of *gharār.*

The prohobition of *Ḥabl al-Ḥabla* can be deduced from the explanation of text of the seventeenth *Ḥadīth* in which indicates the absolute futurity and uncertainty of delivery of the contract. For Imām Mālik, Shāfi°i and Jama°a, the juristic cause for this type of *Jahilīyya* transaction is the ignorance of definite time of delivery, whereas

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[51] 21) Narrated (°Amr b. Shu°aib on his father's authority from his grand father رضى الله عنهم): Allah's Messenger صلى الله عليه وسلم forbade the type of transaction in which earnest money was paid. (Reported by Mālik, who said, "I was told on the authority of °Amr b. Shu°aib that" i.e., the aforesaid *Ḥadīth*).

[52] 24) Narrated (Ibn °Umar) رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade bidding against one another. (Agreed upon).

[53] 25) Narrated Jābir b. Abdullah رضى الله عنهما: The Prophet صلى الله عليه وسلم forbade *Muhāqala, Muzābana,* and *Mukhābara.* He also forbade *Thunya* making an exception unless it was explicit. (Reported by al-Khamsa excluding Ibn Mājah; al-Tirmīdhi graded it *Ṣaḥīḥ* (sound)).

[54] 26) Narrated Anās رضى الله عنه: Allah's Messenger صلى الله عليه وسلم forbade *Muhāqala, Mukhādara, Mulāmasa, Munābadha* and *Muzābana.* (Reported by al-Bukhāri).

[55] Buang, *The Prohibition,* p.131-132.

Imām Aḥmad, Isḥāk and Jamāᶜa indicate the sale of nonexistent goods and the sense of *gharār* as the juristic causes for this prohibited transaction[56]. Although the transaction of *Ḥabl al-Ḥabla* physically different with *Ḥaṣāt* by which literally known as pebble throwing trade, but both is having the same juristic causes.

In the contract of *Thunya* , *Munābadha* and *Mulāmasa*, the same juristic reason of prohibition is applied to these contracts that is the unknown of knowledge regarding the nature of the object of the sale. In terms of practice of *Jahilliyya*, *Thunya* is referred to the sale of goods with the exempted part of it is unknown. The only difference between *Munābadha* and *Mulāmasa* is a degree of acting. The former is dealt with the act of throwing something whereas the latter by touching the object. In dealing with both transactions, the purchaser has no right to inspect thoroughly the object of sale.

For the prohibited transactions such as *Mukhādara*, *Mukhābara*, *Muzābana* and *Muhāqala*, it appears that the general juristic cause for the prohibition is want of knowledge in the quantity as well as quality. Although the practice of those transactions differ to each other but they have the same cause and effect in terms of transaction. In the practice of *Mukhādara*, the purchaser cannot be guaranteed by the seller the quantity of the goods because the contract is agreed prior to the time of consumption of the goods[57]. The transaction of *Mukhābara* refers to a lease contract of agricultural land where the lessee cultivates the crops for himself and for the lessor[58]. The conflict might occur between both parties if they got differently in terms of the quantity and quality of the crops. In the transaction of *Muzābana* and

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[56] al-Ṣanᶜāni, *Subul*,v.2,p.474.
[57] Shawkāni, *Nayl*,v.5,p.151 and Saᶜati, *al-Fatḥ*,v.15,p.43.
[58] Ibn Daqiq ᶜId, *Ihkām*,v.3,p.131.

Muhāqala, both refer to the barter sale of the crops which are still on the tree[59]. The former refers to barter sale of dried dates for fresh dates whereas the latter refers to barter sale of harvested crops with crops.

The observation on those prohibited transactions clearly indicates theirs juristic cause is want of knowledge in the quantity as well as quality of the goods within the contract. From those prohibited transactions, the purchaser or lessee is due to have loss, damage and injustice.

The same degree of injustice exists in the transaction of *al-Najsh* of which similar to auction or bidding that purely aims to increase the value of price of the goods and not genuinely to sell them[60]. For Ibn Baṭṭāl, the unethical bidder is considered disobedient and the selling of *al-Najsh* is classified void in the perspective of *Muḥaddithūn.* However, for Māliki, the transaction of auction is bonded with the condition of option (*al-Khiyār*) that is juristically justified on the intention of bidder[61]. Importantly, unethical bidder signifies the sense of deception (*khidāᶜ*) and deceiving (*gharūr*)[62]. The prohibition of this transaction aims to preserve the interest of purchasers as well as ethical bidders. Apart from the preservation of their interest, the thirtieth-second *Ḥadīth* verifies the preservation of the interest of traders.

In connection with the interest of traders, the thirtieth-second[63] *Ḥadīth* underlines the preservation of the interest of traders by imposing unfixed price of the

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[59] Saᶜati, *al-Fath,*v.15,p.44.
[60] al-Ṣanᶜāni, *Subul,*v.2,p.473.
[61] *Ibid.*
[62] *Ibid.*
[63] 32) Narrated Anās b. Mālik رضى الله عنه: When prices were high in Medina in the time of The Prophet صلى الله عليه وسلم , the people said, "O Allah's Messenger, prices have become high, so fix them for us".

market. For al-Ṣanᶜāni, this *Ḥadīth* indicates a proof that fix price is an injustice particularly for traders. Thus, the ruling of injustices is forbidden. However, under reasonable circumstances, for Imām Mālik, the fix price is permissible particularly for basic necessities of humanity such as foods. This ruling is applied to prevent the harmful effect of humanity due to high price of basic necessities. At the meantime, the application of this provision is to preserve the interest of consumers as well as their life.

The preservation of wealth of fundraiser and its interest has been affirmed in the thirtieth-ninth[64] *Ḥadīth* in this sub topic. This *Ḥadīth* also rules the principle of approval from the owner of property prior to the selling. This principle aims to preserve the wealth of owner from loss in such selling. Furthermore, this *Ḥadīth* also rules that no personal profit could be gained from the selling of sacrificial animals, although it is permissible. The profit from this type of selling must be given to charity or public purposes.

Apart from the preservation of interest of humanities such as consumers, traders and suppliers, the thirtieth-seventh *Ḥadīth* underlines the importance of the preservation of religion in the business transactions. In this *Ḥadīth*[65], the Prophet

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Allah's Messenger صلى الله عليه وسلم replied, "Allah is the One Who fixes prices, Who withholds, gives lavishly and provides, and I hope that when I meet Allah the Most High, none of you will have any claim on me for an injustice regarding blood or property." (Reported by al-Khamsa excluding al-Nasā'i; Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).

[64] 39) Narrated ᶜUrwa al-Bāriqi رضى الله عنه: The Prophet صلى الله عليه وسلم gave him a Dinar to buy a sacrifice or a goat. He bought two goats with it, sold one of them for a Dinar and brought him a goat and a Dinar. So he invoked a blessing on him in his business dealings, and he was such that if he had bought dust he would have made a profit from it. (Reported by al-Khamsa except al-Nasā'i; al-Bukhāri also recorded it within another *Ḥadīth* and did not report its version).

[65] 37) Narrated Abdullah b. Buraida on his father's authority رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "Whoever hoards grapes in the vintage season till he sells them to those who get wine out of them, has hastily thrown himself into Hell-fire with clear knowledge." (al-Ṭabarāni reported it in al-Awsat with a good chain of narrators)

s.a.w warns the punishment of Hell-fire for those who involve in the transaction of selling grapes to make wine. Most jurists in agreement that this kind of transaction is forbidden due to the consuming of alcohol or the like such wine[66]. There are two juristic causes for this ruling; firstly, *al-Khamr* or alcohol is classified impurity and secondly, the effect of intoxicant of consuming alcohol[67]. In line with the concept of public interest, the application of this ruling will preserve the interest of religion, life and intellect.

In the second part of this sub topic, the examination will focus on nine *aḥādīth* that relate to the ruling of forbidden in dealing with particular types of transactions. There are four types of transactions that can be divided in this regard as follows; i) prohibited contracts related to animals and theirs goods, ii) prohibited contracts related to humanity, iii) prohibited contracts related to agricultural transactions, iv) prohibited contracts related to natural resources.

Under the type of prohibited contracts related to animals and theirs goods, there are eight transactions that have been highlighted by the Prophet s.a.w in the second[68], fourth[69], fourteenth[70], fortieth[71], fortieth first[72], fortieth second[73] and fortieth

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[66] al-Ṣanᶜāni, *Subul*,v.2,p.504.
[67] *Ibid.*
[68] 2) Narrated Jābir b. Abdullah رضى الله عنهما: I heard Allah's Messenger صلى الله عليه وسلم saying in the year of the Conquest when he was in Makka, "Allah and His Messenger have forbidden the sale of wine, dead animals, swine and idols." He was asked, "O Allah's Messenger, what about the fat of a dead animal for it is used for caulking ships, greasing skins, and making oils for lamps?' He replied, "No, it is unlawful." Allah's Messenger صلى الله عليه وسلم then added: "May Allah curse the Jews, when Allah the Most High declared the fat of such animals unlawful they melted it, then sold it and enjoyed the price they received." (Agreed upon).
[69] 4) Narrated Abū Masᶜūd al-Anṣāri رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer." (Agreed upon).
[70] 14) Narrated Ibn ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade the sale of a stallion's semen. (Reported by al-Bukhāri).
[71] 40) Narrated Abū Saᶜīd al-Khudri رضى الله عنه: The Prophet صلى الله عليه وسلم forbade buying what is in the wombs of domestic animals till they give birth, or selling what is in their udders, buying a

third[74] *Ḥadīth* as follows; i) selling dead animals, ii) selling swine, iii) the price paid for a dog, iv) the sale of a stallion's semen, v) buying an animal's fetus, vi) selling the milk that still in the udders of an animal, vii) selling the fur that still on the back of an animal, viii) buying the fish that still in the water.

The juristic reasons of the prohibited of eight transactions can be concisely stated as follows; the impurities of the dead animals, swine and dog as juristic reasons of prohibited transaction for type one, two and three as mentioned above[75]. However, for Ibn Ḥajar al-ᶜAsqalāni and al-Nawāwi, the exemption is given to the utilization of a dead animal's skin that has been tanned as refers to the transaction of type one[76]. The uncertainty of delivery in terms of quality and quantity is a common juristic reason for the prohibited transactions of type four, five, six, seven and eight as mentioned above[77].

The above discussion on juristic reasons of the prohibited of eight transactions that laid down by the *aḥādīth* of the Prophet s.a.w highlights the reasonable approach of application of Islamic rulings to the life of Muslim believers. Conceptually, the preservation of interested parties of business transaction is given priority by Islamic law to ensure the achievement of justice and rights within its application to humanity.

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runaway slave, buying booties before they are divided, buying *Ṣadaqat* before they are received and the lucky stroke of a diver. (Ibn Mājah, al-Bazzār and al-Daraqutni reported it with a weak *Isnād*).

[72] 41) Narrated Ibn Masᶜūd رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Do not buy fish which is in the water, for it involves uncertainty." (Reported by Aḥmad who said it is correctly *Mawquf* (untraceable)).

[73] 42) Narrated Ibn ᶜAbbās رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade the selling of a fruit till it becomes ripe, or the selling of fur which is (still) on the back (of an animal) or milk which is (still) in the udder. (Reported by al-Ṭabarāni in al-Awsaṭ. Al-Daraqutni reported it too. Abū Dāwūd reported in the Marasil of 'Ikrima and al-Bayhāqi endorsed it).

[74] 43) Narrated Abū Huraira رضى الله عنه: The Prophet صلى الله عليه وسلم forbade the sale of what is in the womb of a domestic animal or the semen that is in the body of a stallion. (Reported by al-Bazzār and there is weakness in its *Isnād*)

[75] al-Ṣanᶜāni, *Subul*,v.2,p.454.

[76] *Ibid.*

[77] *Ibid.*

Under the type of prohibited contracts related to humanity, there are two transaction that have been underlined by the Prophet s.a.w in the fourth[78] *Ḥadīth* as follows; i) the payment made to a prostitute and ii) the gift given to a soothsayer. The juristic reason of both prohibited transactions is the immorality of prostitution and the falsification of the activity of soothsayer[79]. In line with the concept of public interest, both transactions are prohibited because the harmful effects to the religion, life and honour of humanity.

The type of prohibited contract related to agricultural transactions that can be examined in this sub topic is the selling of unripe fruit that still on trees which has been underlined by the Prophet s.a.w in the fortieth second[80] *Ḥadīth.* The main juristic reason of this prohibited selling of unripe fruit that still on trees is because the uncertainty of delivery in terms of quality and quantity. The purchaser might have damage and loss of the fruits on the day of delivery. This provision may prevent the deception of such transaction and whilst simultaneously preserves the ineffective cost of purchaser.

In this sub topic, the prohibited contract related to natural resources refers to the selling of excess water that has been verified by the Prophet s.a.w in the thirteenth [81]of *Ḥadīth* in this sub topic. The prohibition of this transaction applies to the activity

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[78] 4) Narrated Abu Masᶜūd al-Anṣāri رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم prohibited the price paid for a dog, the payment made to a prostitute, and the gift given to a soothsayer." (Agreed upon).

[79] al-Ṣanᶜāni, *Subul*,v.2,p.458

[80] 42) Narrated Ibn ᶜAbbās رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade the selling of a fruit till it becomes ripe, or the selling of fur which is (still) on the back (of an animal) or milk which is (still) in the udder. (Reported by al-Ṭabarāni in *al-Awsat*. Al-Daraqutni reported it too. Abū Dāwūd reported in the Marasil of 'Ikrima and al-Bayhāqi endorsed it).

[81] 13) Narrated Jābir b. Abdullah رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم prohibited the sale of excess water. (Reported by Muslim). In a version, he added: "And hiring a camel to impregnate a she-camel."

of withholding or selling surplus water than needed whether it sources from a well or spring and regardless the ownership of the land of sources. However, it is permissible to sell personal stored water[82]. The juristic reason of this prohibited selling of surplus water refers to its feature as a basic necessity of human life[83] which is obviously in line with the theme of the concept of public interest in Islamic law of which to preserve the life of humanity.

In dealing with the sub topic on conditions of business transactions and those which are forbidden, the above examination on 44 *aḥādith* within the framework of the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* conclusively signifies a dynamic living source of the *Ḥadīth* as primary source of Islamic law after the Holy Qur'an, in line with the preservation of the interest of humanity. The significant principles of public interest in the conditions of business transactions have been identified through the analysis on 35 *aḥādith* of this sub topic. Those 35 *aḥādith* clearly signify the preservation of interested parties in business transactions such as traders, sellers, buyers, brokers, suppliers, consumers and the like. Furthermore, the prohibition of fraudulent transactions, which has been discussed within those 35 *aḥādith*, highlights its juristic reasons that have been identified by jurists of which demonstrate their connection with the concept of public interest.

The examination on the remaining 9 *aḥādith* of this sub topic juristically underlines the prohibited transactions related to particular parties such as animals and theirs goods, humanity, agricultural transactions and natural resources. In terms narrations, although 3 of 9 *aḥādith* are classified *Ḍa^{c}īf* (weak) but their juristic rulings

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[82] al-Ṣan^{c}āni, *Subul*,v.2,p.471.
[83] *Ibid.*

are similar to the numbers of authentic *Ḥadīth* such as *Ṣaḥīḥ* and *Ḥasan* particularly in the examination of prohibited transactions. The prohibition on those particular transactions indicates the relation between the preservation of religion and the preservation of life of humanity.

To some extent, this first sub topic demonstrates an introduction and general themes of the chapter on business transactions. Further discussion will focus on the particular topic of *al-Khiyār* or options of transaction which has also been discussed generally in this sub topic.

6.2.2 *Al-Khiyār* or Options of transaction

The sub topic of *al-Khiyār* consists of 3 *aḥādīth* that are encompassed 2 *Ṣaḥīḥ* and 1 *Ḥasan.* In terms of reference, this sub topic is referred to many authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 2 *aḥādīth*), Muslim (narrated 2 *aḥādīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Nasā'i (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), al-Dāraquṭni (narrated 1 *Ḥadīth*), Ibn Khuzaima (narrated 1 *Ḥadīth*) and Ibn al-Jārūd (narrated 1 *Ḥadīth*).

In the *fiqh* literature, the subject of *al-Khiyār* has been discussed juristically by jurists particularly in terms of its categorisations. There are at least five categories of *al-Khiyār* i.e. *Khiyār al-Majlis, Khiyār al-Sharṭ, Khiyār al-'Aib, Khiyār al-Ru'yat* and *Khiyār al-Taᶜyīn.* In a simple definition, *al-Khiyār* can be defined a unilateral choice either to cancel (*Faskh*) or ratify (*Imḍā'*) a contract of sale[1]. For the five categories of *al-Khiyār,* the concise definition is referred to their categorisations themselves. For Rayner[2], the concise definition of the five categories of *al-Khiyār* can be demonstrated as follows; *Khiyār al-Majlis* (option of contractual session), *Khiyār al-Sharṭ* (option of condition or stipulation), *Khiyār al-'Aib* (option of defect), *Khiyār al-Ru'yat* (option of inspection) and *Khiyār al-Taᶜyīn* (option of determination).

In line with the three *aḥādīth* of this sub topic, al-Sanᶜani[3] indicates that the first[4] and second[5] *Ḥadīth* are referred to the category of *Khiyār al-Majlis* (option of

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[1] Rayner, *The Theory*, p.305.
[2] *Ibid.*,p.380.
[3] al-Ṣanᶜāni, *Subul*,v.3,p.6-9.
[4] 692-1 Narrated Ibn ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "Both parties in a business transaction have a right to annul the bargain, so long as they have not separated and are together; or one of them tells the other to exercise his right and he does it, then they make the bargain

contractual session). The first *Ḥadīth* highlights the condition of *Khiyār al-Majlis* in which the transaction is bonded between seller and purchaser. The category of *Khiyār al-Majlis* applies to both parties as long as they are either in two conditions; i) they have not separated and are together in a contractual session, or, ii) they separate after having made the bargain and none of them has annulled it. However, in the second *Ḥadīth*, the Prophet s.a.w reminds that it is forbidden to rescind the contract because of the separation between the buyer and the seller. This ruling aims to preserve the interest of both parties in terms of loss and damage of goods of purchase. In connection with the objective of *Khiyār al-Majlis*, the third[6] *Ḥadīth* underlines an ethical manner for both parties to declare a statement of 'deceiving is not allowed (in the religion)'as a reminding in the contract to avoid any element of *gharār* or fraudulent transaction[7].

Based on three *aḥādīth* in this sub topic, it can be concluded that the notion of *al-Khiyār* with particular reference to *Khiyār al-Majlis* clearly indicates its connection with the concept of public interest that aims to preserve the interest of both parties who involve in the contract.

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according to that, the transaction becomes then binding; or when they separate after having made the bargain and none of them has annulled it, the bargain becomes then binding." (Agreed upon, and the version is of Muslim).

[5] 693-2 Narrated ᶜAmr bin Shuᶜaib on his father's authority from his grandfather (رضى الله عنهم): The Prophet صلى الله عليه وسلم said, "The two parties in a business transaction have a right to annul it so long as they have not separated unless it is a bargain with the right to annul it, attached to it; and one has not the right to separate from the other for fear that he may demand that the bargain be rescinded." (Reported by al-Khamsa except Ibn Mājah, al-Dāraqutni, Ibn Khuzaima and Ibn al-Jārūd reported it too). Another version has: "till they separate at their place (of transaction)."

[6] 694-3 Narrated Ibn ᶜUmar رضى الله عنهما: A man told Allah's Messenger صلى الله عليه وسلم that he was being deceived in business transactions, and he replied, "When you make a bargain say, 'Deceiving is not allowed (in the religion)'" (Agreed upon).

[7] al-Ṣanᶜāni, *Subul*,v.3,p.10-11.

The discussion on the preservation of the interest of related parties in the contract of transaction will further detail in the next topic that regards with *al-Ribā*.

6.2.3 *Al-Ribā* or Usury

This sub topic consists of 17 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (14 *aḥādīth*), *Ḥasan* (2 *aḥādīth*) and *Ḍa^{c}īf* (1 *Ḥadīth*). In terms of narration, those *aḥādīth* have many authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 4 *aḥādīth*), Bukhāri (narrated 5 *aḥādīth*), Muslim (narrated 9 *aḥādīth*), Abū Dāwūd (narrated 5 *aḥādīth*), al-Nasā'i (narrated 2 *aḥādīth*), al-Tirmīdhi (narrated 3 *aḥādīth*), Ibn Mājah (narrated 2 *aḥādīth*), al-Ḥākim (narrated 3 *aḥādīth*), Ibn Qaṭṭān (narrated 1 *Ḥadīth*), Bayhāqi (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*), Ibn al-Madīni (narrated 1 *Ḥadīth*), Isḥāq (narrated 1 *Ḥadīth*), al-Bazzāz (narrated 1 *Ḥadīth*), Ibn Khuzaima (narrated 1 *Ḥadīth*) and Ibn al-Jārūd (narrated 1 *Ḥadīth*).

For al-Ṣan^{c}āni, those 17 *aḥādīth* can be divided at least into two specific topics that relate to the subject of *al-Ribā* namely the cursed individual who involve in the transaction of *al-Ribā* and the prohibited transactions of *al-Ribā*.

In the first specific topic of the cursed individuals who involve in the transaction of *al-Ribā*, there are 4 *aḥādīth* in this regard i.e. the first[1], second[2], twelfth[3] and thirteenth[4] *Ḥadīth*. Prior to analyses of those 4 *aḥādīth*, it is vital to

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[1] 695- 1 Narrated Jābir رضى الله عنه: Allah's Messenger صلى الله عليه وسلم cursed the one who accepts usury, the one who gives it, the one who records it and the two witnesses to it, saying, "They are all the same." (Reported by Muslim). Al-Bukhāri reported something similar from Abū Juhaifa's *Ḥadīth*.

[2] 696-2 Narrated Abdullah b. Mas^{c}ūd رضى الله عنه : The Prophet صلى الله عليه وسلم said, "Usury has seventy-three categories, the least one in sin is as that of a man who marries his mother, and the very essence of usury is the violation of the honour of a male Muslim." (Ibn Mājah reported it in a short form and al-Ḥākim in a complete one. The latter also graded it *Ṣaḥīḥ* (sound)).

[3] 706-12 Narrated Abu Umāma رضى الله عنه: The Prophet صلى الله عليه وسلم said, "Whoever intercedes for his brother and that one gives him a present which he accepts, becomes guilty of a serious type of usury." (Reported by Aḥmad and Abū Dāwūd, but some of its narrators' reliability has been doubted).

highlight a literal and standard definition of *al-Ribā* in the perspective of Islamic transaction. Literally, the term *al-Ribā* is defined *al-Ziyāda* or increase in capital[5]. In a 'Dictionary of Islam', *al-Ribā* is literally translated as 'usury', 'excessive interest' or 'usurious interest'[6]. The standard definition of *al-Ribā* is referred to 'Encyclopedia of Islam' in which it is defined as 'any unjustified increase of capital for which no compensation is given'[7]. From this simple and standard definition of *al-Ribā*, it can be understood upon why the ruling of *al-Ribā* is obviously forbidden.

In line with the above definition of *al-Ribā*, those 4 *aḥādīth* emphasise on particular individuals who have been cursed by the Prophet s.a.w because of their involvement in such activities of *al-Ribā*. In the first *Ḥadīth*, the Prophet s.a.w. classifies four types of individual who have the same degree of curse as follows; i) one who accepts usury, ii) one who gives usury, iii) one who records usury, iv) witnesses for usury's transaction. In addition to those four categories, the Prophet s.a.w highlights in the second *Ḥadīth* that indeed usury has seventy-three categories. However, at this stage, no detail explanation is given regarding 73 categories of usury except the Prophet s.a.w highlights the least and very essence of its category. According to the *Ḥadīth*, the least category of usury is that of a man who marries his mother and the very essence of usury is the violation of the honour of a male Muslim.

The discussion on the category of usury has been prolonged in twelfth and thirteenth *Ḥadīth* of this sub topic. From the both *aḥadīth*, juristically, the Prophet

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[4] 707-13 Narrated Abdullah b. ʿAmr b. al-ʿĀs رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم cursed the one who bribes and the one who takes bribes. (Reported by Abū Dāwūd and al-Tirmīdhi, who graded it *Ṣaḥīḥ*).

[5] al-Shirbīni, *Mughni al-Muḥtāj*,v.2,p.21, and *Nihāya al-Muḥtāj*,v.3,p.39.

[6] Hughes, *A Dictionary*,p.230

[7] Schacht, 'Riba', *E*^{2}, v.3, p. 1148.

s.a.w. underlines bribery as another type of prohibited transaction of usury. For example, the thirteenth *Ḥadīth* rules that accepting the gift after making recommendation for a bad deed is classified by the Prophet s.a.w as a serious type of usury. This ruling also applies to the involved individuals such as (*al-Rāshī*) or one who bribes and (*al-Murtashī*) or one who takes bribe. Those types of individual have been cursed by the Prophet s.a.w in the thirteenth *Ḥadīth*.

The above discussion clearly highlights the element of injustice and corruption as main juristic causes in the prohibited transaction of bribery. In line with the concept of public interest, this prohibited transaction of bribery aims to prevent any fraudulent element in such transaction that may leads to injustice and corruption to particular parties. The discussion on fraudulent elements particularly in usury transaction has been detailed by the Prophet s.a.w in numbers of *aḥadīth* of this sub topic.

There are 13 of 17 *aḥadīth* in this sub topic that have been discussed regarding fraudulent elements of usury transactions. From 13 *aḥadīth*, 9 of them highlight the type of *Ribā al-Buyū^c* or *Ribā al-Faḍl* i.e. the third[8], fourth[9], fifth[10], sixth[11], seventh[12], eighth[13], ninth[14], fifteenth[15] and sixteenth[16] *Ḥadīth*.

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[8] 697-3 Narrated Abū Sa°īd al-Khudri رضى الله عنه: The Prophet صلى الله عليه وسلم said, "Do not sell gold for gold unless it is same amount for the same as amount, and do not make one amount greater than the other, do not sell silver for silver unless it is same amount and do not make one amount greater than the other, and do not sell for ready money some of it to be given later." (Agreed upon).

[9] 698-4 Narrated 'Ubāda b. al-Ṣāmit رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Gold is to be paid for with gold, silver with silver, wheat with wheat, barley with barley, dates with dates, and salt with salt, same quantity for same quantity and equal for equal, payment being made on the spot. If these classes differ, sell as you wish if payment is made on the spot." (Reported by Muslim).

[10] 699-5 Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Gold is to be paid for with gold, both being of equal weight and of same quantities; silver is to be paid for with silver, both being of equal weight and of same quantities. If anyone gives more or asks for more of it, it is then usury." (Reported by Muslim).

In a standard definition of *Ribā al-Buyūᶜ* or *Ribā al-Faḍl,* its definition refers to the exchange contracts that applies to six items i.e. gold, silver, date, raisin, wheat and barley and the like of them[17]. The prohibition of this contract is based on the potential fraudulent element that may occur particularly in terms of inequality in quantity and quality in the exchange between those items and a potential delay in delivery. This juristic cause or *ᶜilla* for the prohibition of *Ribā al-Buyūᶜ* or *Ribā al-Faḍl* has been termed by Hanafis jurists as *al-Kayl* (measurement) or *al-Wazn* (weight)[18]. Numbers of *aḥadīth* highlight in this regard such as the third, fourth, fifth, sixth, seventh, eighth, ninth, fifteenth and sixteenth *Ḥadīth.*

In contrast with the juristic cause of the prohibited of *Ribā al-Buyūᶜ*, the Prophet s.a.w affirms that if the contract applies to the equality in quantity and quality in the exchange between those items and immediate delivery, thus, the transaction is

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[11] 700-6 Narrated Abū Saᶜīd al-Khudri and Abū Huraira رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم appointed a man over Khaibar and he brought him dates of a very fine quality. Allah's Messenger صلى الله عليه وسلم asked, "Are all the dates of Khaibar like this?" He replied, "I swear by Allah that they are certainly not, O Allah's Messenger. We take one Sa' of this kind for two, and even for three. So Allah's Messenger صلى الله عليه وسلم said, "Do not do so. Sell the mixed dates for Dirhams, then buy the very fine dates with the Dirhams." And he said that the same applies when things are sold by weight. (Agreed upon). Muslim has: "and so is the weight."

[12] 701-7 Narrated Jabir b. Abdullah رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade selling a quantity of dates whose measure was unknown for a specific quantity of dates. (Reported by Muslim).

[13] 702-8 Narrated Maᶜmar b. Abdullah رضى الله عنه: I used to hear Allah's Messenger صلى الله عليه وسلم say, "Food for food, of same quantities." Our food at that time consisted of barley. (Reported by Muslim).

[14] 703-9 Narrated Faḍāla b. ᶜUbaid رضى الله عنه: I bought a necklace for twelve Dinars at the battle of Khaibar and there were gold and gems in it, so I considered them separately and found that it was worth more than twelve Dinars. I told the Prophet صلى الله عليه وسلم about that and he said, "It must not be sold till the contents are considered separately." (Reported by Muslim).

[15] 709-15 Narrated Ibn ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم forbade *al-Muzābana*, which means that a man sells the fruit of his garden, if it consists of palm-trees (fresh dates), for dried dates by measure; or if it consists of grapes, for raisins by measure; or if it is corn, he sells it for a measure of corn. He forbade all that. (Agreed upon).

[16] 710-16 Narrated Saᶜd b. Abū Waqqas رضى الله عنهما: I heard Allah's Messenger صلى الله عليه وسلم being asked about buying dry dates for fresh ones. He replied, "Will fresh dates get diminished when they become dry?" They answered, "Yes." So he forbade that. (Reported by al-Khamsa and graded *Ṣaḥīḥ* by Ibn al-Madīni, al-Tirmīdhi, Ibn Ḥibbān and al-Ḥākim).

[17] Monzer Kahf, *Types of Riba,* in http://www.islamonline.net/fatwa/english/FatwaDisplay.asp?HfatwaID=22659,13/08/2004.

[18] al-Zuḥayli, *Fiqh al-Islāmī,* v.5, p.2706.

legal and lawful. This provision has been laid down by the Prophet s.a.w in the third, fourth, fifth, eight and ninth *Ḥadīth* of this sub topic.

At this stage, the preservation of equality is given priority by the Prophet s.a.w not only applies to the quantity and quality in the exchange between those items, but moreover to particular party who involves in such transaction. This objective of transaction is in line with the concept of public interest for which to gain benefit for humanity, whilst simultaneously to prevent harmful effects to their life.

In line with the above theme of public interest, this sub topic highlights another type of prohibited transaction of *al-Ribā,* which is termed *Ribā al-Nasīa.* There are at least 3 *aḥādīth* in this regard i.e the tenth[19], eleventh[20] and seventeenth[21] *Ḥadīth.*

The prohibited transaction of *Ribā al-Nasīa* refers to the contract of loan in which the additional amount is added to the premium of the loan because of the late time of payment[22]. Most jurist agree that this transaction also covers a type of *Ribā al-Faḍl* as well as *Ribā* of debts[23]. A main juristic cause for this prohibited transaction is the charge of additional amount. Thus, in the tenth *Ḥadīth,* the Prophet

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[19] 704-10 Narrated Samura b. Jundub رضى الله عنه: The Prophet صلى الله عليه وسلم forbade selling animals for animals when payment was to be made at a later date. (Reported by al-Khamsa) Ibn al-Jārūd and al-Tirmīdhi graded it *Ṣaḥīḥ* (sound).

[20] 705-11 Narrated Ibn ᶜUmar رضى الله عنهما: I heard Allah's Messenger صلى الله عليه وسلم say, "When you will sell anything on credit to anyone on the condition that you will buy it back for a lower price, follow the cattle, prefer agriculture and give up Jihad. Allah s.w.t. will make disgrace prevail over you and will not strip it off from you till you return to your religion." (Reported by Abū Dāwūd from the version of Nāfiᶜ on the authority of Ibn ᶜUmar رضى الله عنهما, but there is an unreliable narrator in its chain. Aḥmad reported something similar from the version of ᶜAṭṭā'. Its narrators are reliable and Ibn al-Qaṭṭān graded it *Ṣaḥīḥ* (sound)).

[21] 711-17 Narrated Ibn ᶜUmar رضى الله عنهما: The Prophet صلى الله عليه وسلم forbade selling a debt to be paid at a future date for another i.e., a debt for a debt. (Reported by Isḥāq and al-Bazzār with a weak *Isnād*).

[22] *Op.cit.*, Monzer Kahf.

[23] *Ibid.*

s.a.w obviously forbade selling animals for animals when payment was to be made at a later date. It suggests that the charge of additional amount in this transaction would effect loss and damage for the debtor. However, in the eleventh *Ḥadīth*, the difference emerges with the former in terms of the condition of contract. For al-Ṣanᶜāni, the eleventh *Ḥadīth* also indicates the prohibited transaction of *'Aina* in which the selling is made by credit on the condition that the seller will buy it later at lower price[24]. It appears that this transaction leads to loss and injustice particularly for the buyer at the end of the stage of transaction.

In the seventeenth *Ḥadīth* of *Daᶜīf*, the Prophet s.a.w highlights a type of transaction in which selling a debt to be paid at a future date for another i.e. a debt for a debt. For al-Ṣanᶜāni, although the *Ḥadīth* has been categorised *Daᶜīf*, its still a proof of such prohibited transaction[25]. However, Imām Aḥmad suggests that it is not permissible to engage a debt for a debt[26]. The reason behind this ruling can be understood clearly that a debt is considered a burden for debtor. To engage another debt will therefore increase a degree of burden for debtor. This solution obviously contrast with the concept of public interest that aims to remove harmful effects and simultaneously to gain benefit for the life of humanity.

The fourteenth[27] *Ḥadīth* in this sub topic deals with the legal transaction of *al-Qarḍ*. For al-Ṣanᶜāni, this *Ḥadīth* is a proof to indicate that no *al-Ribā* transaction on animals but the alternative is formed in the transaction of *al-Qarḍ*. To put it simply,

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[24] al-Sanᶜāni, *Subul*,v.3,p.24.
[25] *Ibid*.,p.31
[26] *Ibid*.
[27] 708-14 Narrated (Abdullah b. ᵒAmr b. al-ᵒĀas) رضى الله عنه: The Prophet صلى الله عليه وسلم commanded him to equip an army, but when the camels were insufficient, he commanded him to keep back the young camels of *Ṣadaqa*. He said, "I was taking a camel to be replaced by two when the camels of *Ṣadaqa* came." (Reported by al-Ḥākim and al-Bayhāqi; its narrators are reliable).

al-Qarḍ or *al-Muḍāraba* is a contract of equity sharing between investor and trader. Further discussion on this regard will take place in the specific topic of *al-Qirāḍ*.

In conclusion, this topic has significantly discussed the principles of public interest through the juristic causes of ruling from numbers of *aḥadīth* that relate to the subject of *al-Ribā*. The prohibition of *al-Ribā's* transactions clearly aims to prevent harmful effects to the life of humanity and simultaneously would preserve their basic necessities of life.

6.2.4 Permission regarding the sale of *al-ᶜArāya* and the sale of trees and fruits

This sub topic consists of 7 *aḥādīth Ṣaḥīḥ*. In terms of narration, those *aḥādīth* have many authentic narrators such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 5 *aḥādīth*), Muslim (narrated 6 *aḥādīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*) and al-Ḥākim (narrated 1 *Ḥadīth*).

In the *fiqh* literature, the sale of *al-ᶜArāya* refers to the exchange commodities that have same measurement in terms of quantity and quality[1]. For al-Ṣanᶜāni, this transaction is permitted by the Prophet s.a.w because of the principle of equality in quantity and quality that applies within the contract[2]. The application of the sale of *al-ᶜArāya* to the legal business transaction verifies the concept of *al-Tarkhīṣ* that aims to facilitate the transaction of commodities such as dates, grapes and grains. In line with this concept, there are at least two *aḥādīth* highlight on this particular sale of *al-ᶜArāya* i.e. the first[3] and second[4] *Ḥadīth*.

In the first and second *Ḥadīth*, the Prophet s.a.w emphasises on the basis of computation of dry commodities as a basic condition for the permission of the sale of *al-ᶜArāya*. For instance, in the second *Ḥadīth*, the permission of *al-ᶜArāya* applies to

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[1] al-Ṣanᶜāni, *Subul*,v.3,p.32.
[2] *Ibid.*
[3] 712-1. Narrated Zayd b. Thābit رضى الله عنه: Allah's Messenger صلى الله عليه وسلم gave permission regarding *al-ᶜArāya* for its sale on the basis of a calculation of what the dates would be when dry by measure. (Agreed upon).
Muslim has: "He gave permission regarding the *al-ᶜArāya* for its sale in which the household buys its fruit on the basis of a calculation of what the dates would be when dry, yet they could eat them when fresh."
[4] 713-2. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم gave permission regarding the sale of *al-ᶜArāya* for a computation of their amount when dry on the condition that they be less than five Awsuq, or amounting to five Awsuq. (Agreed upon).

dry dates on the condition that they would be less than five *awsuq* (more than eight quintals), or amounting to five *Awsuq*. The reason behind this is to give a standard and equal measurement of dry commodities for the benefit of traders as well as consumers.

In the sale of *al-ᶜArāya*, the measurement of quality and quantity of commodities is given priority by the Prophet s.a.w to avoid their possibility of loss and damage particularly at the stage of delivery. In the case of the absence of quality and quantity of commodities, thus, the Prophet s.a.w forbade the sale. This provision has been underlined in the third[5], fourth[6], fifth[7], and sixth[8].

Those four *aḥādīth* underline the prohibited sale of fruits unless they are in good condition as it has been highlighted in the third *Ḥadīth*. At this stage, the term of good condition refers to the condition that the fruits were safe from blight. Most jurists agree that this condition aims to avoid any fraudulent element in the sale of *al-ᶜArāya*[9]. Furthermore, the rest three *Ḥadīth* signify the bad condition of fruits that are forbade to be sold such as colourful of reddish and yellowish (in the fourth *Ḥadīth*), black of grapes and hard of grains (in the fifth *Ḥadīth*) and affected fruits by blight (in

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[5] 714-3. Narrated Ibn ᶜUmar رضى الله عنهما : Allah's Messenger صلى الله عليه وسلم forbade the sale of fruits till they are clearly in good condition, forbidding it both to the seller and to the buyer. (Agreed upon).
A version has: "When he was asked about what is their good condition?" He صلى الله عليه وسلم replied, "Till they were safe from blight."

[6] 715-4. Narrated Anās b. Mālik رضى الله عنه: The Prophet صلى الله عليه وسلم forbade the sale of fruits till they become colourful. He was asked what that meant, he replied, "Till they become reddish and yellowish." (Agreed upon and the version is of al-Bukhāri).

[7] 716-5. Narrated (Anās b. Mālik) رضى الله عنه: The Prophet صلى الله عليه وسلم forbade the sale of grapes till they become black and the sale of grain till it becomes hard. (Reported by al-Khamsa except al-Nasā'i and graded *Ṣaḥīḥ* by Ibn Ḥibbān and al-Ḥākim).

[8] 717-6. Narrated Jābir b. Abdullah رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "If you sell some fruit to your brother and it was smitten by blight it would not be lawful for you to take anything from him. Why should you take your brother's property unjustly?" (Reported by Muslim). A version by Muslim has: "The Prophet صلى الله عليه وسلم commanded that unforeseen loss be remitted in respect of what is affected by blight."

[9] al-Ṣanᶜāni, *Subul*,v.3,p.35-36.

the sixth *Ḥadīth*). However, in the sale of pollinated tree, the fruits belong to the seller who has sold them unless the buyer makes a condition to buy them together with the tree. This provision has been laid down by the Prophet s.a.w in the last[10] *Ḥadīth* of this sub topic.

In line with the concept of public interest, the permission of the sale of *al-ᶜArāya* demonstrates the flexibility of Islamic transactions in the sale of dry commodities such as dates, grapes and grains. However, the contract of *al-ᶜArāya* must be in line with the condition of measurement of good quality and quantity of commodities. This condition clearly highlights the theme of public interest in which the interest of buyers as well as consumers is preserved from fraudulent elements in such transaction.

[10] 718-7. Narrated Ibn ᶜUmar رضى الله عنهما: The Prophet صلى الله عليه وسلم said, "If anyone buys a palm tree after it has been fecundated, the fruits belong to the seller who has sold them unless the buyer makes a condition." (Agreed upon).

6.2.5 Payment in advance (*al-Salm*), loans (*al-Qarḍ*) and pledges (*al-Rahn*)

This sub topic consists of 8 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (6 *aḥādīth*), *Ḥasan* (1 *aḥādīth*) and *Ḍa^{c}īf* (1 *aḥādīth*). In terms of narration, those *aḥādīth* have many authentic narrators of the *Ḥadīth* such as Bukhāri (narrated 4 *aḥādīth*), Muslim (narrated 2 *aḥādīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Ḥākim (narrated 2 *aḥādīth*), Bayhāqi (narrated 1 *Ḥadīth*), al-Dāraqutni (narrated 1 *Ḥadīth*) and al-Ḥārith (narrated 1 *Ḥadīth*).

There are three transactions in this sub topic i.e. *al-Salm, al-Qarḍ* and *al-Rahn.* From 8 *aḥādīth* of this sub topic, 2 *aḥādīth* relate to the transaction of *al-Salm,* i.e. the first[1] and second[2] *Ḥadīth.* For the transaction of *al-Qarḍ,* 4 *aḥādīth* of this sub topic are referred to, i.e. the third[3], fourth[4], seventh[5] and eighth[6] *Ḥadīth.* The rest 2

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[1] 719.1 Narrated Ibn ^{c}Abbās رضى الله عنهما: When the Prophet صلى الله عليه وسلم came to Medina, they were paying one and two years in advance for fruits, so he (صلى الله عليه وسلم)said, "Those who paid in advance for fruits must do so for a specified measurement and weight for a specified time." (Agreed upon). Al-Bukhāri has: "Those who pay in advance for anything."

[2] 720.2 Narrated ^{c}Abd. al-Raḥman b. Abza and ^{c}Abdullah b. Abū Awfa رضى الله عنهم "We used to get booties along with Allah's Messenger صلى الله عليه وسلم , and some peasants from those of Syria used to come to us and we would pay in advance to them for wheat, barley and raisins." A version has: "and olive oil for a specified fixed time." It was asked, "Did they have standing crop?" They replied, "We were not asking them about that." (Reported by al-Bukhāri).

[3] 721.3 Narrated Abū Huraira رضى الله عنه: The Prophet صلى الله عليه وسلم said, "If anyone accepts other people's belongings meaning to pay back, Allah will pay back for him; but if anyone accepts them meaning to squander them, Allah the Most High will squander him." (Reported by al-Bukhāri).

[4] 722.4 Narrated ^{c}Ā'īsha رضى الله عنها: I said, "O Messenger of Allah, so-and-so has brought clothes from Syria, how about if you sent someone to him and you get from him two garments on credit till it is easy for you to repay?" So he sent someone to him but he refused. (al-Ḥākim and al-Bayhāqi reported it, and its narrators are reliable).

[5] 725.7 Narrated Abū Rāfi^{c} رضى الله عنه: The Prophet صلى الله عليه وسلم borrowed a young camel from a man, and when some *ṣadaqa* camels came to him he ordered Abū Rāfi^{c} (رضى الله عنه) to pay the man his young camel. He told him (صلى الله عليه وسلم), "I can find only an excellent camel in its seventh year." He said, "Give it to him, for the best person is he, who discharges his debt in the best manner." (Reported by Muslim).

[6] 726.8 Narrated ^{c}Ali رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Every loan which leads to a benefit is usury." (al-Ḥārith b. Abū Usāma reported it, but there is omission in its chain of narrators). The aforesaid *Ḥadith* has a weak citation on the authority of Faḍāla b. ^{c}Ubayd رضى الله عنه by al-Bayhāqi. It has also another *Mawquf* version reported by Abdullah b. Salām رضى الله عنه and al-Bukhāri reported it.

aḥādīth of this sub topic are in line with the transaction of *al-Rahn,* i.e. the fifth[7] and sixth[8] *Ḥadīth.*

The definition of *al-Salm* is equivalent to an advance payment for future delivery. Technically, the sale of *al-Salm* refers to a contract in which payment is made in advance for the goods which are delivered at a concurred later date[9]. In the first and second *Ḥadīth,* the Prophet s.a.w verifies the transaction of *al-Salm* by stated the condition of specified measurement of goods in terms of quantity, quality and delivery. This condition is applied to the terms of contract of *al-Salm.* Furthermore, Muslim jurists are in agreement that this transaction can be applied to any type of goods or products[10].

In line with the concept of public interest, the transaction of *al-Salm* within the condition of specified measurement of goods in terms of their quantity, quality and delivery would preserve the interest of buyer from getting loss and being the victim of fraudulent elements.

For the juristic theme of *al-Qarḍ,* literally it can be defined as interest free loan or gratuitous loan[11] of which it has been ruled by the Prophet s.a.w as permissible. This ruling is laid down in the fourth *Ḥadīth.* In line with this type of

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[7] 723.5 Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said: "An animal may be ridden for spending on it when it is in pledge and the milk of a camel may be drunk for spending on it when in pledge. And the responsibility of caring for it is upon the one who rides (it) and drinks (its milk)." (Reported by al-Bukhāri)."

[8] 724.6 Narrated (Abū Huraira) رضىالله عنه: Allah's Messenger صلى الله عليه وسلم said: "A pledge does not become lost to its owner when he does not redeem it in time. Any increase in its value goes to him and any loss must be borne by him." (Reported by al-Dāraquṭni and al-Ḥākim. Its narrators are reliable, but it is *Mursal* according to Abū Dāwūd and others).

[9] al-Ṣanᶜāni, *Subul,*v.3,p.41 and www.muamalat.com.my (19.8.2004).

[10] *Ibid.*

[11] Razali, *al-Qarḍ al-Ḥasan,* in http://islamic-world.net/economic, 19/08/2004.

loan, al-Ṣanᶜāni suggests that the third *Ḥadīth* of this sub topic highlights an ethical manner for borrower to deal with the transaction of *al-Qarḍ*[12]. In this *Ḥadīth*, the Prophet s.a.w reminds the importance of good intention of borrower that will be rewarded by Allah s.w.t and vice versa for the bad intention of borrower. In the case that the borrower kindly gives something else or pays some profits to creditor with the principle money, thus, the Prophet s.a.w praise his giving as underlines in the sixth *Ḥadīth*. At this stage, both *aḥādīth* clearly emphasis on an ethical manner of intention of borrower in dealing with the transaction of *al-Qarḍ* and the way to appreciate the creditor. This ethical manner of transaction would lead a good relationship between borrower and creditor as part of the way to preserve the interest of both parties in the transaction of *al-Qarḍ*. Furthermore, the last *Ḥadīth* of this sub topic which is classified *Daᶜīf* signifies the transaction of loan that leads to a benefit which particularly made by creditor is usury.

Regarding the transaction of *al-Rahn* or pledge or pawn, for al-Ṣanᶜāni, the fifth *Ḥadīth* rules the right of pledgee or pawnbroker to utilise the belonging or property of borrower with the sense of responsibility during the time of possession[13]. However, Muslim jurists agree to impose the condition of permission from the borrower prior the utilisation of his belonging[14]. In line with the responsibility of belonging, the sixth *Ḥadīth* signifies that the increase and decrease of its value would be responsibility of owner or borrower and not to pawnbroker. The reason behind this is to give equal right for both pawnbroker and borrower. Since the borrower would get benefit from the value of property in the transaction of *al-Rahn*, therefore it is equal right for the pawnbroker to utilise the property within the period

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[12] *Op.cit.*, al-Ṣanᶜāni.
[13] *Ibid.*
[14] *Ibid.*

of possession. The application of equal right in this transaction would preserve the interest to both parties as part of the principle of public interest.

In conclusion, these three types of transactions i.e. *al-Salm, al-Qarḍ* and *al-Rahn* mostly highlight the principle of transparency of transaction between creditor and debtor. The significance of ethical manner for both parties has been highlighted as a fundamental condition to achieve the principle of transparency of transaction. In line with the concept of public interest, the significant principle of ethical manner aims to prevent any devastating effect of humanity that might occur in those types of transactions such as bankruptcy and seizure. Further discussion on such devastated transactions will take place in the next topic.

6.2.6 Bankruptcy and seizure or *al-Taflīs wa al-Ḥajr*

The sub topic of *al-Taflīs wa al-Ḥajr* consists of 8 *aḥādīth Ṣaḥīḥ*. In terms of narration, those *aḥādīth* have many authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 2 *aḥādīth*), Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 4 *aḥādīth*), Abū Dāwūd (narrated 4 *aḥādīth*), al-Nasā'i (narrated 3 *aḥādīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 2 *aḥādīth*), Ibn Ḥibbān (narrated 2 *aḥādīth*), al-Ḥākim (narrated 4 *aḥādīth*), al-Dāraquṭni (narrated 1 *Ḥadīth*) and Ibn Khuzaima (narrated 1 *Ḥadīth*).

The first[1] *Ḥadīth* of this sub topic highlights the right of creditor on debtor's property if the debtor is declared a bankrupt. At this stage, the creditor becomes the owner of the property due to the bankruptcy of his debtor. Shall the debtor dies, his property is belonged to the creditor because of the debtor's condition of bankruptcy. Many jurists observe that this regulation laid down by the Prophet s.a.w is juristically justified in the light of the concept of public interest. For instance, Imām Ibn ᶜAbd al-Salam argues that in the case of bankruptcy, the interest of the creditor is given

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[1] 1. Narrated Abū Bakr b. ᶜAbd. al-Raḥman on the authority of Abū Huraira رضى الله عنه: We heard Allah's Messenger صلى الله عليه وسلم say, "If a creditor finds his very property with a debtor who becomes bankrupt, he is more entitled to it than anyone else." (Agreed upon).
Abū Dāwūd and Mālik reported the aforesaid *Ḥadīth* from Abū Bakr b. ᶜAbd. al-Raḥman 's version in a *Mursal* form with this wording: "If anyone sells some goods (on credit) and the one who buys them becomes bankrupt and does not repay any of the price to the seller who then finds his very goods (with him), he is more entitled to them (than anyone else); if the buyer dies, the owner of the goods is then equal to the other creditors." (al-Bayhāqi reported it with full chain of narrators but graded it weak according to Abū Dāwūd's narration).
Abū Dāwūd and Ibn Mājah reported the aforesaid *Ḥadīth* from ᶜUmar b. Khalda's version and it has: "We went to Abū Huraira رضى الله عنه regarding a friend of ours who was bankrupt. He said, 'I shall certainly pronounce judgement about him in accordance with the judgement of Allah's Messenger صلى الله عليه وسلم . If anyone becomes bankrupt or dies and the owner of the goods finds his actual goods he has most right to them.'" (al-Ḥākim graded it *Ṣaḥīḥ* (sound); Abū Dāwūd proved it to be weak, and also termed this addition regarding the mention of the death to be weak).

priority over the interest of the debtor[2]. In this respect, the priority is given to the creditor as the solution to pay back his credit through the seizure of debtor's property.

In line with the seizure of debtor's property, the second[3] *Ḥadīth* affirms the ruling of the seizure is lawful, although this would effect to dishonour and punish for the debtor. For al-Ṣanᶜāni, the *Ḥadīth* also highlights the ruling of forbidden to debtor who deliberately delays the payment of credit[4]. It appears that the late payment of credit made by the debtor will effect many difficulties to the creditor. For this reason, in the third[5] *Ḥadīth,* the Prophet s.a.w allows the creditor to take debtor's property through the process of legal action or by court permission. The third *Ḥadīth* also underlines that a bankrupt debtor who is undertaken of seizure is allowed to accept *ṣadaqa* or donation from donors. This provision demonstrates the application of the concept of public interest in which the life of bankrupt debtor is preserved by the assistance of donors.

Regarding the discussion on seizure of bankrupt's property, the fourth[6] *Ḥadīth* rules the legality of seizure through the process of legal action that aims to pay back a debt of bankrupt to creditor. The legality of seizure also depends on the legal capacity

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[2] ᶜIzzi Dien, *Qawāᶜid al-Aḥkām*,v.1,p.79.

[3] 2. Narrated ᶜAmr b. al-Sharid on the authority of his father: Allah's Messenger صلى الله عليه وسلم said, "Delay in payment on the part of one who possesses the means makes it lawful to dishonour and punish him." (Abū Dāwūd and al-Nasā'i reported it; al-Bukhāri reported it without *Isnād*, and Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).

[4] al-Ṣanᶜāni, *Subul*,v.3, p.54-55.

[5] 3. Narrated Abū Saᶜid al-Khudri رضى الله عنه: In the time of Allah's Messenger صلى الله عليه وسلم a man suffered loss affecting fruits he had bought, owed a large debt and became bankrupt, so Allah's Messenger صلى الله عليه وسلم said to the people, "Give him *ṣadaqa*." They did so, but as that was not enough to repay his debt in full, Allah's Messenger صلى الله عليه وسلم said to the creditors, "Take what you can find, and you will have nothing other than that." (Reported by Muslim).

[6] 4. Narrated Ibn Kaᶜb b. Mālik رضى الله عنه on the authority of his father: Allah's Messenger صلى الله عليه وسلم seized the property of Muᶜādh and sold it in return for a debt he was indebted for. (al-Dāraquṭni reported it, al-Ḥākim graded it *Ṣaḥīḥ* (sound); Abū Dāwūd reported it through a *Mursal* form and preponderated it as *Mursal*).

of bankrupt as the fifth[7] and sixth[8] *Ḥadīth* underline the age of maturity is fifteen years. For al-Ṣanᶜāni , in the context of vice versa, the fifth *Ḥadīth* indicates that below fifteen years is disqualified legal capacity of business transactions[9]. Thus, it can be learned that the provision of the age of maturity of business transaction aims to prevent the harmful effects of contract such as fraudulent element and discrimination that might occur in such contract. This preventive objective is related to the concept of public interest for which to preserve the right and equality of interested party of the contract.

In line with the preservation of right and equality, the seventh[10] and eight[11] *Ḥadīth* highlight on this respect. The seventh *Ḥadīth* rules the right of women to deal with her wealth such as dowry, inherited property and the like without permission of her husband. In the concept of public interest, this ruling will preserve the right and equality for married women to deal with her property for the best of her interest. In contrast with this topic and its ruling, the eight *Ḥadīth* highlights the permissible of begging for those who are in one of three conditions as follows; a man who has

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[7] 5. Narrated Ibn ᶜUmar رضى الله عنهما: I was brought before the Prophet صلى الله عليه وسلم on the Day of Uḥud when I was fourteen years old but he did not give me permission to fight. I was afterwards brought before him on the Day of al-Khandaq (the battle of Trench) when I was fifteen and he gave me permission to fight. (Agreed upon). Al-Bayhāqi's version has: "He did not give me permission to fight and did not find me having attained puberty." (Ibn Khuzaima graded it *Ṣaḥīḥ* (sound)).

[8] 6. Narrated ᶜAṭṭīya al-Qurazi رضى الله عنه: We were brought before the Prophet صلى الله عليه وسلم on the day of Quraiza. Those who had began to grow hair (on their private parts) were killed, but those who had not, were set free; I was among those who had not begun to grow hair so I was set free. (Reported by al-Arbaᶜa. Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[9] al-Ṣanᶜāni, *Subul*,v.3,p.60.

[10] 7. Narrated ᶜAmr b. Shuᶜaib on his father's authority from his grandfather (رضى الله عنهم): Allah's Messenger صلى الله عليه وسلم said: "It is not lawful for a woman to give a gift without her husband's permission."
A version has: "It is not lawful for a woman to dispose of anything regarding her property when her husband is responsible for her." (Reported by Aḥmad and the authors of *al-Sunan* except al-Tirmīdhi and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[11] 8. Narrated Qabisa b. Mukhariq al-Hilāli رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Begging is allowable only to one of three (people): a man who has become a guarantor for a payment, to whom begging is allowed till he gets it, after which he must stop begging; a man whose property has been destroyed by a calamity which has smitten him, to whom begging is allowed till he gets what will support life; and a man who has been smitten by poverty, the genuineness of which is confirmed by three intelligent members of his people." (Reported by Muslim).

become a guarantor for a payment, a man whose property has been destroyed by a calamity which has smitten him and a man who has been smitten by poverty. Those three conditions can be seen the juristic causes of permissibility of begging. The main objective of this provision is very clear for which to preserve the life of those who are in one of three conditions above. In connection with the seventh *Ḥadīth*, it suggests that a wife who has wealthy ownership should help her husband who is in predicament as discussed in the eight *Ḥadīth*. The assistance for those who are in such predicament is juristically classified as a humanity obligation particularly for those who have material capability. In such predicament situations, a solution of *al-Ṣulh* or reconciliation between two parties of contract is part of the best way to achieve mutual understanding whilst simultaneously to prevent harmful effects of life as the main principle of Islamic public interest. Further discussion on *al-Ṣulh* or reconciliation will take place in next topic.

6.2.7 *Al-Ṣulḥ* or Reconciliation

This sub topic of *al-Ṣulḥ* consists of 3 *aḥādīth Ṣaḥīḥ*. In terms of reference, this sub topic has referred to authentic narrators of the *Ḥadīth* such as Bukhāri (narrated 1 *Ḥadīth*), Muslim (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 2 *aḥādīth*) and al-Ḥākim (narrated 1 *Ḥadīth*).

In the *fiqh* literature, the term *al-Ṣulḥ* can be literally defined peace or reconciliation. However, according to al-Ṣanᶜāni, Muslim jurists divide the subject of *al-Ṣulḥ* into several categories, which are technically defined upon which based on its subject and category[1]. For example, the term *al-Ṣulḥ* is defined as treaty and truce in the subject of political such as a treaty between Muslim and non-Muslim, and a truce between rebels and government, whereas as rapprochement in the subject of marriage such as a rapprochement between husband and wife. In the subject of financial transaction, the term *al-Ṣulḥ* can be defined as reconciliation between two parties of contract who were disagreement on particular terms.

In line with the above definition, the first[2] *Ḥadīth* of this sub topic underlines the ruling of permissible of *al-Ṣulḥ* particularly between Muslims. However, the *Ḥadīth* rules the permissibility of *al-Ṣulḥ* in general terms and does not refer to specific contract such as financial contract and so on. Primarily, the *Ḥadīth* rules that

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[1] al-Ṣanᶜāni, *Subul*,v.3,p.63.

[2] 1. Narrated ᶜAmr b. ᶜAuf al-Muzāni رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Reconciliation is allowable between Muslims except such which makes unlawful something which is lawful, or makes lawful something which is unlawful; and Muslims must keep to the conditions they have made, except for a condition which makes unlawful something which is lawful, or makes lawful something which is unlawful." (al-Tirmīdhi reported and graded it *Ṣaḥīḥ* (sound), but the *Ḥadīth* scholars disagreed with him because the narration of Kathīr b. Abdullah b. ᶜAmr b. ᶜAuf is weak, perhaps al-Tirmīdhi considered it reliable for its many ways of narration). Ibn Ḥibbān declared the aforesaid *Ḥadīth* to be sound from the version of Abū Huraira رضى الله عنه.

the contract of *al-Ṣulḥ* must not against any basic principle of Islamic law while simultaneously must not change unlawful into lawful and vice versa. Furthermore, many jurists agree to affirm that the mutual consent of ethic must be taken into account for both parties in the contract of *al-Ṣulḥ*[3]. This condition clearly in connection with the theme of public interest that aims to preserve the right and equality for interested parties that involve in such contract of transaction.

In the context of social right of community, the mutual consent of ethic that applies to the contract of *al-Ṣulḥ* must be practiced by each person. The second and third *Ḥadīth* rule the condition of mutual consent of ethic as a basic principle in the contract of *al-Ṣulḥ* within a specific example. In line with this principle, the second[4] *Ḥadīth* demonstrates a specific example whereby one must not prevent his neighbour from fixing a beam on his wall. At this stage, the mutual consent of ethic must be practiced by each neighbour to achieve the social right of community. Shall this principle is to be ignored by each person, the Prophet s.a.w rules that it is unlawful to take something from someone without permission and have no sense of mutual consent of ethic. This provision has been ruled in the third[5] *Ḥadīth* in which the Prophet s.a.w affirms that it is unlawful to take his brother's stick except with his good will.

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[3] al-Ṣanᶜāni, *Op.cit.*, p.65.

[4] 2. Narrated Abū Huraira رضى الله عنه: The Prophet صلى الله عليه وسلم said, "One must not prevent his neighbour from fixing a beam in his wall." Abū Huraira رضى الله عنه then said, "Why do I see you turn away from it? I swear by Allah that I will always narrate it to you." (Agreed upon).

[5] 3. Narrated Abū Ḥumayd al-Saᶜidi رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "It is not lawful for a person to take his brother's stick except with his good will." (Ibn Ḥibbān and al-Ḥākim reported it in their two *Ṣaḥīḥ* books).

In the perspective of public interest, the concerning on mutual consent of ethic between each party who involve in a contract would lead the social right for each party as well as community as a whole. The stability of social right in community will preserve the peace and prosperity of life of humanity as one of basic principles of the concept of public interest.

The topic of *al-Ṣulḥ* will be further detailed in the subject of financial transaction with particular reference to the transaction of *al-Ḥawāla wa al-Ḍamān* in which the focus is given on the examination of the transfer of debt and surety.

6.2.8 The transfer of a debt and surety or *al-Ḥawāla wa al-Ḍamān*

This sub topic of *al-Ḥawāla wa al-Ḍamān* consists of 4 *aḥādīth* that are encompassed 3 *Ṣaḥīḥ* and 1 *Ḍaᶜīf.* In terms of narration, mostly, those *aḥādīth* have authentic narrators such as Aḥmad (narrated 2 *aḥādīth*), Bukhāri (narrated 2 *aḥādīth*), Muslim (narrated 1 *Ḥadīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Nasā'i (narrated 1 *Ḥadīth*), al-Bayhāqi (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*) and al-Ḥākim (narrated 1 *Ḥadīth*).

The first[1] *Ḥadīth* of this sub topic rules two injunctions regarding the transaction of *al-Ḥawāla* or the transfer of debt. For al-Ṣanᶜāni, the *Ḥadīth* highlights the injunction of forbidden for a rich man to delay the payment of debt because this would lead to injustice for the creditor[2]. The second injunction that can be deduced from the *Ḥadīth* is the permissibility of transferring debt to other creditor. This injunction would help the debtor to pay back a debt to the creditor by transferring the debt to other party. This type of transaction can be applied to the critical situation in which the debtor has no capability to pay the debt. At this stage, the Prophet s.a.w insists to accept the transfer of debt from critical debtor as the way to help him out from such predicament of debt. Some jurists agree that at this stage it is obligatory to accept the transfer of debt from critical debtor[3].

The importance of payment the debt through the transaction of *al-Ḥawāla* particularly in the case of debtor's death has been emphasised by the Prophet s.a.w in

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[1] 1. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Delay in payment by a rich man is injustice, but when one of you is referred for payment to a wealthy man he should accept the reference." (Agreed upon). A version by Aḥmad has: "And if anyone is referred to another, let him accept that."

[2] al-Ṣanᶜāni, *Subul*,v.3,p.69.

[3] *Ibid.*

the second[4] *Ḥadīth.* In the analysis of that *Ḥadīth,* Muslims jurists agree that the transaction of *al-Ḍamān* or surety is applied to debtor's death for which his relatives must take responsibility to pay the debt as the way to free the debtor from the burden of debt[5]. In line with this topic, in the third[6] *Ḥadīth,* the Prophet s.a.w underlines the vital responsibility of relatives of a dead body to pay his debt to creditor. However, the *Ḥadīth* rules the responsibility of government to take over the payment of debt in the case of one dies and leaves nothing to pay his debt. This provision is clearly related to the significance of public interest for which the authority parties such as government and community leaders should take social responsibility to help needed people such as hopeless and poor debtor.

The discussion on the transaction of *al-Ḍamān* or surety is closed with the fourth[7] *Ḥadīth* of *Ḍaᶜīf* in which the Prophet s.a.w rules the exemption of *ḥudūd* or prescribed punishment in the application of *al-Ḍamān.* Although the ruling that includes in the *Ḥadīth* can be deduced as invalid, but the question of why no *al-Ḍamān* in the *ḥudūd* is worth interesting to be discussed here. It is suggested that there is simple distinguish between the transaction of *al-Buyuᶜ* and the *ḥudūd* laws.

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[4] 2. Narrated Jābir رضى الله عنه : A man of us died, so we washed, embalmed and shrouded him; we then brought him to Allah's Messenger صلى الله عليه وسلم and ask him to pray over him, he went forward some steps and asked, "Did he owe anything?" We replied, "Two Dinars." He turned away, but Abū Qatāda (رضى الله عنه) took upon himself the bearing of them. We then came to him (صلى الله عليه وسلم) and Abū Qatāda (رضى الله عنه) said, "I shall discharge the two Dinars." Allah's Messenger صلى الله عليه وسلم thereupon said, "Will you be responsible for paying them as a right to the creditor; and the dead man will then be free from them?" He replied, "Yes." So He prayed over him. (Reported by Aḥmad, Abū Dāwūd and al-Nasā'i. Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[5] al-Ṣanᶜāni, *Subul,*v.3,p.70-71.

[6] 3. Narrated Abū Huraira رضى الله عنه: A man who had died in debt would be brought to Allah's Messenger صلى الله عليه وسلم and he would ask, "Has he left anything to discharge his debt?" If he was told that he had left enough he would pray over him, otherwise he would say, "Pray over your friend." But when Allah brought the conquests at his hands he said, "I am closer to the believers than their ownselves, so if anyone dies leaving a debt I shall be responsible for repaying it." (Agreed upon). A version by al-Bukhāri has: "If anyone dies and leaves nothing to discharge his debt."

[7] 4. Narrated ᶜAmr b. Shuᶜaib on his father's authority from his grandfather (رضى الله عنهم): Allah's Messenger صلى الله عليه وسلم said, "No surety is allowed regarding a prescribed punishment." (Reported by al-Bayhāqi with a weak *Isnād*).

The simple distinguish between both of them is referred to the juristic concept of public interest. In terms of the application of benefit to humanity, the transaction of *al-Buyuᶜ* is seen more applicable compared with the *ḥudūd* laws. Although both are in line with the concept of public interest, but the former has more interactions and benefits to humanity whereas the latter is seen has little interaction but more punishments to humanity.

Further discussion on interaction and benefit to humanity in the transaction of *al-Buyuᶜ* will take place in the next topic of partnership and agency or *al-Shirka wa al-Wakāla.*

6.2.9 Partnership and agency or *al-Shirka wa al-Wakāla*

This sub topic consists of 8 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (6 *aḥādīth*) and *Ḥasan* (2 *aḥādīth*). In terms of narration, those *aḥādīth* have many authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 3 *aḥādīth*), Abū Dāwūd (narrated 3 *aḥādīth*), al-Nasā'i (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*) and al-Ḥākim (narrated 1 *Ḥadīth*).

The first[1] *Ḥadīth* of this sub topic verifies the significance of *al-Shirka* or partnership in a contract of which Allah s.w.t becomes the third (partner) of two partners as long as no fraudulent elements exist in the contract. The Prophet s.a.w affirms that the fraudulent elements of the contract is away from the mercy and bless of Allah almighty. For al-Ṣanᶜāni, the smart partnership in business would deserve profit and reward and vice versa for the fraud partnership[2]. In other words, the transaction of *al-Shirka* must be applied within the transparency of contract between two parties.

In line with the transaction of *al-Shirka*, the second[3] *Ḥadīth* can be classified as a proof to indicate historically that *al-Shirka* was applied before Islam to Arab community but it has been endorsed and legalised during the life of the Prophet s.a.w.

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[1] 1. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Allah the Most High said, 'I am the third (partner) of two partners as long as one of them does not cheat his companion, but when he cheats I depart from them.'" (Reported by Abū Dāwūd and al-Hākim graded it *Ṣaḥīḥ* (sound)).

[2] al-Ṣanᶜāni, *Subul*,v.3,p.74.

[3] 2. Narrated al-Sā'ib al-Makhzūmi رضى الله عنه: I was a partner with the Prophet صلى الله عليه وسلم before the Prophethood and when the day of Conquest (of Makka) came, he said, "Welcome my brother and my partner." (Reported by Aḥmad, Abū Dāwūd and Ibn Mājah).

In terms of practice during the life of companions, the third[4] *Ḥadīth* signifies the permissibility of partnership in non-business activities of which has been termed *Shirka al-abdān.* For Imām Abū Ḥanīfa and al-Hadāwiya, this type of transaction is allowed and legal if every party knows the terms of contract. However, al-Shāfi°i differs on this transaction due to fraudulent elements that may exist in the transaction particularly in the aspect of measurement of profit, which is considered uncounted measure of profit in non-business activities[5]. At this stage, al-Shāfi°i's argument can be rebutted as the profit of non-business activities can be defined and clarified by each party in the terms of contract, thus, the fraudulent elements can be avoided.

Regarding the transaction of *al-Wakāla,* there are five *aḥādīth* of this sub topic verify this transaction i.e. the fourth[6], fifth[7], sixth[8], seventh[9] and eighth[10] *Ḥadīth.* Those *aḥādīth* rule the permissibility of *al-Wakāla* or agency in many forms such as the worshipping of *taḍḥiyya* (sacrificing the animals), collecting and distributing *ṣadaqa* (alms poor), punishment of *ḥudūd* laws. The main condition that must be

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[4] 3. Narrated Abdullah b. Mas°ūd رضى الله عنه: °Ammār, Sa°d, and I agreed to be partners in whatever we would get of booties on the day of Badr." The reporter quoted the rest of the *Ḥadīth* which concludes: "Then Sa°d brought two captives, but neither °Ammār nor I brought anything." (Reported by al-Nasā'i and others).

[5] al-Ṣan°āni, *Op.cit.*,v.3,p.74

[6] 4. Narrated Jābir b. Abdullah رضى الله عنهما: I intended to go to Khaibar, so I went to the Prophet صلى الله عليه وسلم and he said, "When you meet my agent at Khaibar take fifteen Wasq (of dates) from him." (Abū Dāwūd reported and graded it *Ṣaḥīḥ* (sound)).

[7] 5. Narrated °Urwa al-Bariqi رضى الله عنه: Allah's Messenger صلى الله عليه وسلم sent him with a Dinar to buy a sacrificial animal for him. (The reporter mentioned the rest of the *Ḥadīth.* Al-Bukhāri reported it in the context of another previously mentioned *Ḥadīth*).

[8] 6. Narrated Abū Huraira رضى الله عنه: "Allah's Messenger صلى الله عليه وسلم sent 'Umar to collect *Sadaqa*." The reporter mentioned the rest of the *Ḥadīth.* (Agreed upon).

[9] 7. Narrated Jābir رضى الله عنه: "The Prophet صلى الله عليه وسلم slaughtered sixty three (sacrificial) camels and ordered 'Ali رضى الله عنه to slaughter the remainder." The reporter mentioned the rest of the *Ḥadīth.* (Reported by Muslim).

[10] 8. Narrated Abū Huraira رضى الله عنه regarding the story of the hired servant: The Prophet صلى الله عليه وسلم said, "Unais, go to this man's wife, and if she confesses, stone her to death." The reporter mentioned the rest of the *Ḥadīth.* (Agreed upon).

applied to the transaction of *al-Wakāla* is certainty of agreement of contract between agency and ownership[11].

In the perspective of public interest, both transactions have been legalised by the Prophet s.a.w to attain benefit for interested parties within the certainty agreement of the contract, which aims to avoid the existence of fraudulent elements in the transaction. In connection with this principle, *al-Iqrār* or the confession is one of many forms of transaction, which applies to achieve the transparency and truth particularly in the agreement of contract. Thus, a specific discussion on *al-Iqrār* will take place in the next sub topic.

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[11] al-Ṣanᶜāni, *Subul*,v.3,p.77-79.

6.2.10 Confession or *al-Iqrār*

This sub topic of *al-Iqrār* consists of 1 *Ḥadīth Ṣaḥīḥ* which has one authentic narrator of the *Ḥadīth* i.e. Ibn Ḥibbān (narrated 1 *Ḥadīth*) as follows;.

1. Narrated Abū Dhār رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said to me, "Say the truth even though it is hard." (Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound) as a part of a long *Ḥadīth*).

In the analysis of the *Ḥadīth*, al-Ṣanᶜāni highlights the ruling of obligatory to declare or affirm the truth in any transaction although it is hard in the practice. This ruling and its principle are in line with many verses of the Qur'an such as verse 171 of *Sūra al-Nisā'* in which Allah s.w.t says: "nor say of Allah aught but the truth". In the business transaction, the affirmation of truth in the agreement of contract is vital for both parties that aim to avoid the existence of fraudulent elements in the transaction. Moreover, this principle is juristically applied to the punishment of *Ḥudūd* and *Qiṣāṣ* of which to seek the truth in the procedure of accusation and prosecution.

In line with the concept of public interest, the declaration of truth made by any party of transaction will preserve its honourable life as well as religion. The declaration of truth will also bring the justice and right for a person who declares the truth and to whom he declares the truth.

6.2.11 *al-ᶜĀriya* or loan

This sub topic consists of 4 *Aḥādīth Ṣaḥīḥ*. In terms of narration, those *aḥādīth* have authentic narrators such as Aḥmad (narrated 2 *aḥādīth*), Abū Dāwūd (narrated 5 *aḥādīth*), al-Nasā'i (narrated 4 *aḥādīth*), al-Tirmīdhi (narrated 2 *aḥādīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*) Abū Ḥātim (narrated 1 *Ḥadīth*), and al-Ḥākim (narrated 3 *aḥādīth*).

In the *fiqh* literature, the term *al-ᶜĀriya* refers to two categories i.e. i) *ᶜĀriya Maḍmūna* or guarantees of simple loan, ii) *ᶜĀriya Mu'adda* or a trust of borrowed object. In line with those two categorizations of *al-ᶜĀriya*, for al-Ṣanᶜāni, the first[1] *Ḥadīth* is a proof to indicate the obligatory of returning something that belongs to someone. However, in the analysis of the *Ḥadīth*, Muslim jurists differ to determine whether the *Ḥadīth* is a proof to indicate that *ᶜāriya* can be classified under the category of *ᶜĀriya Maḍmūna* or *ᶜĀriya Mu'adda*. There are at least three different opinions on this regard. The first group of jurists affirms that the *Ḥadīth* is a proof of *ᶜĀriya Maḍmūna*, whereas the second group of jurists verifies that the *Ḥadīth* is a proof to indicate that it is not obligatory of *Maḍmūna* or guarantees on a simple loan. The third group of jurists seems similar to the second group but they affirm that the condition of *Maḍmūna* is not apply to a good borrower and a proper storehouse as ruled in the *Ḥadīth* of which narrated by al-Dāraquṭni and al-Bayhāqi[2]. It suggests that the third group of jurists highlights an ethical manner of borrower in dealing with the transaction of *ᶜāriya*.

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[1] 1. Narrated Samura b. Jundub رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "The hand which takes is responsible till it pays." (Reported by Aḥmad and al-Arbaᶜa; al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

[2] al-Sanᶜāni, *Subul*,v.3,p.81-82.

In line with an ethical manner of borrower, the second[3] and third[4] *Ḥadīth* underline this aspect by affirming the category of *ᶜĀriya Mu'adda.* In the second *Ḥadīth,* the Prophet s.a.w emphasises on ethical manner of borrower to give back what has been entrusted to him by the lender who trusts him, while he warns borrower not to cheat again the lender who cheats him. However, in the analysis of jurists, they differ on the punishment of cheater whether to prosecute him or not to prosecute. Briefly, most of jurists in agreement that the prosecution of cheater is juristically necessary that in accordance with the principle of Islamic law laid down by many legal texts. Only few jurists suggest that the judge should refer to the ruling of the *Ḥadīth* of which to warn the cheater and not to punish him. However, many jurists rebut their arguments by referring to many verses of the Qur'an and many authentic *Ḥadīth* that insist to stop abominable through prosecution and education[5]. This principle is obviously in line with the concept of public interest of which the preservation of property is given one of the top priorities in the life of humanity.

In connection with the category of *ᶜĀriya Mu'adda,* the third *Ḥadīth* rules this category within the mutual consent of agreement between lender and borrower. In the transaction of *ᶜĀriya Mu'adda,* the borrower will not be charged for the lost or damage of borrowed object. However, this is not in the category of *ᶜĀriya Maḍmūna*

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[3] 2. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Give back what has been entrusted to you to him who trusts you, and do not cheat him who cheats you." (Reported by al-Tirmīdhi and Abū Dāwūd; al-Tirmīdhi graded it *Ḥasan* (fair) and al-Ḥākim graded it *Ṣaḥīḥ* (sound). Abū Ḥātim al-Rāzi disapproved it).

[4] 3. Narrated Yaᶜla b. Umaiya رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said to me, "When my messengers come to you, give them thirty coats of mail" I asked, "O Allâh's Messenger, is it a loan with a guarantee of its return, or a loan that must be paid back?" He replied, "No, it is a loan with a guarantee of its return" (Reported by Aḥmad, Abū Dāwūd and al-Nasā'i. Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).

[5] al-Ṣanᶜāni, *Subul,*v.3,p.83-85.

of which the lost or damage of borrowed object will be charged to the borrower as the fourth[6] *Ḥadīth* rules in this respect. In other words, the condition of guarantee is applied to the transaction of *ᶜĀriya Maḍmūna* that aims to preserve the right of lender on his belongings. This objective is in line with the concept of public interest in which the interest and right of ownership is preserved in the business transactions such as *ᶜĀriya Maḍmūna.*

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[6] 4. Narrated Safwān b. Umaiya رضى الله عنه: At the battle of Ḥunayn, the Prophet صلى الله عليه وسلم borrowed coats of mail from him and he asked, "Are you taking them by force, O Muhammad (صلى الله عليه وسلم)?" He replied, "No, it is a loan with a guarantee of their return." (Reported by Abū Dāwūd and al-Nasā'i; al-Ḥākim graded it *Ṣaḥīḥ* (sound)).

6.2.12 *al-Ghaṣb* or Usurpation

This sub topic consists of 5 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (3 *aḥādīth*), *Ḥasan* (1 *Ḥadīth*) and *Da^{c}īf* (1 *Ḥadīth*). In terms of reference, this sub topic is referred to authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 2 *aḥādīth*), Abū Dāwūd (narrated 2 *aḥādīth*), al-Tirmīdhi (narrated 2 *aḥādīth*) and Ibn Mājah (narrated 1 *Ḥadīth*).

The discussion on the transaction of *al-Ghaṣb* or usurpation in this sub topic is technically referred to the land which has been taken and utilised without appropriate permission from the owner. There are 4 *aḥādīth* of this sub topic discuss on this matter i.e. the first[1], third[2], fourth[3] and fifth[4] *Ḥadīth*.

For al-Ṣan^{c}āni, the first and fifth *Ḥadīth* are classified as proofs to indicate the ruling of forbidden of the transaction of *al-Ghaṣb* that leads to injustice and

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[1] 1. Narrated Sa^{c}id b. Zayd رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "If anyone takes a span of land unjustly, on the Day of Resurrection Allah will put around his neck its size taken from seven earths." (Agreed upon).

[2] 3. Narrated Rāfi^{c} b. Khadīj رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "If anyone sows in other people's land without their permission, he has no right to any of the crop, but he may have what he spent on it." (Reported by Aḥmad and al-Arba'a except al-Nasā'i. Al-Tirmīdhi graded it *Ṣaḥīḥ* (sound), but it has been said that al-Bukhāri proved it weak).

[3] 4. Narrated ^{c}Urwa b. al-Zubayr رضى الله عنه: A man among the Companions of Allah's Messenger صلى الله عليه وسلم said, "Two men brought a dispute before Allah's Messenger صلى الله عليه وسلم concerning a land in which one of them had planted palm trees and the land belonged to the other, so Allah's Messenger صلى الله عليه وسلم ruled that the land belongs to its owner and commanded the owner of the palm trees to uproot his palm trees, and he said, "The labour of an unjust person has no dues." (Reported by Abū Dāwūd and its chain of narrators is *Ḥasan*. The quoted part of the aforesaid *Ḥadīth* is found in the books of the authors of *al-Sunan* from ^{c}Urwa's version on the authority of Sa^{c}id b. Zayd, but there is disagreement regarding whether it is *Mawṣūl* or *Mursal* and the determination of the name of the Companion who first quoted it from the Prophet . صلى الله عليه وسلم

[4] 5. Narrated Abū Bakra رضى الله عنه: In his Khutba (religious talk sermon) on the Day of Sacrifice at Mina, the Prophet صلى الله عليه وسلم said, "Your blood and your property and your honours have been sanctioned against violations by you, like the sacredness of this day of yours, in this month of yours, in this town of yours." (Agreed upon).

committing a major sin. In the first *Ḥadīth*, the Prophet s.a.w warns the severe punishment in the day of resurrection for those who took part in the transaction of *al-Ghaṣb*. In the analysis of the *Ḥadīth*, many jurists agree that the transaction of *al-Ghaṣb* must be applied to the condition of a guarantee of the land. In other words, any damage and lose on the land which has been taken through the transaction of *al-Ghaṣb* must be paid back to the owner.

Furthermore, the third *Ḥadīth* of *Ḍa^{c}īf* underlines that the usurper has no right to the crop of the land but he may have what he spent on it. This principle has been repeated by the Prophet s.a.w in the fourth *Ḥadīth* of which he rules the injustice on the activity of cultivation on the land that belongs to someone without his permission. In line with this principle, in the second[5] *Ḥadīth*, the Prophet s.a.w verifies the compensation on value and quantity of a borrowed object in the case of damage and loss. This provision will bring justice for the owner for the cost of damage and loss of a borrowed object he has had. In line with the principle of public interest, the compensation for the cost of damage and loss of the goods will prevent harmful effects particularly to the owner.

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[5] 2. Narrated Anās رضى الله عنه: The Prophet صلى الله عليه وسلم was with one of his wives when one of the Mothers of the Believers sent a bowl containing food with a servant of hers. Then she struck with her hand and the bowl was broken. He collected the pieces of the bowl and began to collect the food in it and said, "You eat", and gave a sound bowl to the messenger and kept the broken one. (Reported by al-Bukhāri and al-Tirmīdhi) The latter named the one who broke it as °Ā'Ïsha (رضى الله عنها) and added: The Prophet صلى الله عليه وسلم then said, "Food for food, and a vessel for a vessel." (al-Tirmīdhi also graded it *Ṣaḥīḥ* (sound)).

6.2.13 *al-Shufᶜa* or Option to buy neighbouring property

This sub topic of *al-Shufaᶜa* consists of 5 *aḥādīth* that are encompassed 3 *Ṣaḥīḥ*, 1 *Ḥasan* and 1 *Ḍaᶜīf*. In terms of narration, those *aḥādīth* have many authentic narrators such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 2 *aḥādīth*), Muslim (narrated 1 *Ḥadīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Nasā'i (narrated 2 *aḥādīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 2 *aḥādīth*), al-Bazzāz (narrated 1 *Ḥadīth*) and Ibn Ḥibbān (narrated 1 *Ḥadīth*).

The transaction of *al-Shufᶜa* refers to the condition of option to buy immovable property that particularly belongs to neighbour. This type of transaction has been underlined by the Prophet s.a.w in all *aḥādīth* of this sub topic. The first[1] *Ḥadīth* rules the transaction of *al-Shufᶜa* which is applicable to immovable property such as land, garden, house, shop etc. In the *Ḥadīth*, it is also ruled the right of partner's option to be informed before selling the property. However, the rest three *aḥādīth*[2] underline that the most preference of buyer in the transaction of *al-Shufᶜa* is the neighbour of the property. In the analysis of those three *aḥādīth*, some jurists

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[1] 1. Narrated Jābir b. Abdullah رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم decreed that the right to buy a neighbouring property is applicable to everything which is not divided but when boundaries are fixed and separate roads made there is no partner's option." (Agreed upon; the version being of al-Bukhāri). Muslim's version has: "The right to buy a neighbouring property is applicable to everything which is shared, whether a land, a dwelling or a garden and it is not lawful to sell before informing one's partner." Al-Ṭaḥāwi's version has: "The Prophet صلى الله عليه وسلم decreed the right of partner's option regarding everything." (Its narrators are reliable).

[2] The rest three *aḥādīth* is referred to the second, third and fourth *Ḥadīth* as follows;

2. Narrated Anās b. Mālik رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "The neighbour of the house has the most right to buy it." (Reported by al-Nasā'i and Ibn Ḥibbān graded it *Ṣaḥīḥ*, but it has a defect concerning its narration through two different chains of narrators).

3. Narrated Abū Rāfiᶜ رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "The neighbour has more right to be given preference." (al-Bukhāri reported it and it involves a long story.)

4. Narrated Jābir رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "The neighbour is most entitled to the right of option to buy his neighbour's property and its exercise should be waited for, even if he is absent, when the two properties have one road." (Reported by Aḥmad and al-Arbaᶜa; its narrators are reliable).

affirm that it is not necessary to offer the transaction of *al-Shufᶜa* only to the potential neighbour of the property but it can be offered to any potential partner of the sold property. In rebutting this argument, Ibn Qayyīm asserts that the priority is given to the neighbour who entitles a close friend of the owner of property[3]. In addition, it appears that the right of neighbour should be preferred rather than the right of non-neighbour in the transaction of *al-Shufᶜa* as two *Aḥādīth Ṣaḥīḥ* rule in this respect.

The fifth[4] *Ḥadīth* of *Ḍaᶜīf* in this sub topic highlights that the absence of potential partner would annul the transaction of *al-Shufᶜa*. However, Ibn Qayyīm suggests that the temporary absence of neighbour in the transaction of *al-Shufᶜa* does not rescind his right to buy the property[5]. His suggestion on this regard can be learned as the significant right of neighbour in the transaction of property of *al-Shufᶜa*. In other words, the right of neighbour is preserved although in the transaction of property as this is in line with the theme of the concept of public interest in Islam.

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[3] al-Ṣanᶜāni, *Subul*, v.3,p.97-101.

[4] 5. Narrated Ibn ᶜUmar رضى الله عنهما : The Prophet صلى الله عليه وسلم said, "The right to buy neighbouring property is like loosening a strap." (Reported by Ibn Mājah and al-Bazzār, who added: "There is no option to buy a neighbouring property to one who is absent." Its chain of narrators is weak).

[5] al-Ṣanᶜāni, *Op.cit.*

6.2.14 *al-Qirāḍ* or Equity sharing between investor and entrepreneur

This sub topic of *al-Qirāḍ* consists of 2 *aḥādīth* that are encompassed 1 *Ṣaḥīḥ* and 1 *Ḍaᶜīf*. In terms of reference, this sub topic is referred to some narrators of the *Ḥadīth* such as Ibn Mājah (narrated 1 *Ḥadīth*) and al-Dāraquṭni (narrated 1 *Ḥadīth*).

In the analysis of the topic of *al-Qirāḍ*, al-Ṣanᶜāni affirms that the term *al-Qirāḍ* can be defined as *al-Muḍāraba* of which frequently refers to profit and property[1]. A standard definition of the term *al-Qirāḍ* and *al-Muḍāraba* can be referred to Rayner's definition as an equity sharing between bank or investor and client or entrepreneur[2].

In the topic of *al-Qirāḍ*, the author of *Bulūgh al-Marām* refers to one *Ḥadīth Ḍaᶜīf* as the first[3] *Ḥadīth*. Indeed, the *Ḥadīth* has no indication of the legality of *al-Qirāḍ* and *al-Muḍāraba*, however the term *al-Muqāraḍa* has been highlighted in the *Ḥadīth* of which refers to the transaction of taking and paying of loan as one of the two blessed transactions. Apart from the transaction of *al-Muqāraḍa*, the *Ḥadīth* also highlights the transaction in which payment is agreed on a fixed later time as the second of the blessed transactions. The *Ḥadīth* also highlights the mixing of wheat and barley for personal use but not for sale as another blessed activity that contains blessings or *al-baraka*.

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[1] al-Ṣanᶜāni, *Subul*,v.3,p.102.
[2] Rayner, *The Theory*,p.381.
[3] 1. Narrated Suhaib رضى الله عنه: The Prophet صلى الله عليه وسلم said, "There are three things which contain blessings: A business transaction in which payment is agreed on a fixed later time, taking and paying of loan, and mixing wheat and barley for one's household use but not for sale." (Reported by Ibn Mājah through a weak chain of narrators).

In the analysis of that *Ḥadīth*, al-Ṣanᶜāni examines the term *al-baraka* that relates to those transactions[4]. For the first transaction in which payment is agreed on a fixed later time, the term *al-baraka* or blessings is referred to the application of tolerance, support and assistance to debtor who deals with creditor to pay the credit on a fixed later time. In the transaction of *al-Muqāraḍa*, the term *al-baraka* or blessings is referred to the objective of *al-Muqāraḍa* that aims to assist and facilitate people who involve in taking and paying of loan. In the mixing of wheat and barley for personal use, *al-baraka* or blessings is referred to this activity only and not for sale. This is because the mixing of both seeds in the sale is classified fraud and cheat. Thus, no *al-baraka* or blessings in that transaction[5]. This principle is obviously in line with the concept of public interest of which to prevent harmful effects to the life of humanity such as fraudulent elements in the business transaction.

The second[6] or last *Ḥadīth* of this sub topic underlines the agreements that incorporated in the transaction of *al-Qirāḍ* and *al-Muḍāraba*. Both parties i.e. investor and entrepreneur must stick and follow to the agreement of *al-Qirāḍ* or *al-Muḍāraba*. Although no compensation is paid for the loss of property but the responsibility of its loss is required in this transaction. Furthermore, the profit of business must be divided in accordance with the terms of agreement for the sake of

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[4] al-Ṣanᶜāni, *Subul*,v.3,p.102.
[5] *Ibid.*
[6] 766.2 Narrated al-Ḥākim b. Hizām رضى الله عنه: He used to make a condition on the man to whom he gave his property to trade with and the profit being shared between both, but any loss falling on the property that: "You should not trade with my property in living beings, transport it by sea, or settle with it at the bottom of a ravine; and if you do any of the aforesaid acts you should then guarantee my property." (al-Dāraquṭni reported it and its narrators are reliable).
Mālik said in al-Muwaṭṭā' from al-ᶜAlā' b. ᶜAbd al-Rahman b. Yaᶜqūb from his father on the authority of his grandfather that he traded with the property belonging to ᶜUthmân (رضى الله عنه) so that the profit would be divided in halves between both of them. (This *Ḥadīth* is *Mawquf* (untraceable) and *Ṣaḥīḥ* (sound)).

justice and right of both parties as this principle is in line with juristic theme of the concept of public interest in Islam.

6.2.15 *al-Musāqāt* (cultivating and sharing the profit of the land) and *al-Ijāra* (wages).

This sub topic consists of 9 *aḥādīth* that are encompassed 7 *Ṣaḥīḥ* and 2 *Ḍa^{c}īf*. In terms of narration, those *aḥādīth* have many authentic narrators such as Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 5 *aḥādīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Abū Ya^{c}la (narrated 1 *Ḥadīth*), al-Bayhāqi (narrated 2 *aḥādīth*), Jābir (narrated 1 *Ḥadīth*), and ^{c}Abd al-Razzāq (narrated 1 *Ḥadīth*).

The first[1] *Ḥadīth* of this sub topic is a proof to indicate the legality of the transaction of *al-Musāqāt* or is also known as *al-Muzāra^{c}a*[2]. A standard definition of *al-Musāqāt* is referred to the transaction of cultivating the land and sharing its profit with the owner of the land[3]. One of the differences between the transaction of *al-Musāqāt* and *al-Muzāra^{c}a* is that the former is usually referred to the cultivation of grains whereas the latter is referred to of fruit trees. Historically, the first *Ḥadīth* highlights the application of *al-Musāqāt* to the people of *Khaybar*, a group of Jews in the Prophet's era. In the transaction of *al-Musāqāt*, the Jews of *Khaybar* cultivated the palm-trees on the land of *Khaybar* that belongs to Islamic state. In the agreement between them and the Prophet as a ruler of the state, the former should employ their own resources in working on it and the profit should be divided to the latter in

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[1] 1. Narrated Ibn ^{c}Umar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم had agreed with the people of Khaibar to give (to the Muslim authority) half what it produced of fruits or crops. (Agreed upon).
A version by al-Bukhāri and Muslim has: They asked him (صلى الله عليه وسلم) to confirm them in it on condition that they should do all the cultivation and have half the dates. Allah's Messenger صلى الله عليه وسلم replied them, "We shall confirm you in it on that condition as long as we wish." So they were confirmed in it till ^{c}Umar (رضى الله عنه) deported them.
Muslim has: Allah's Messenger صلى الله عليه وسلم handed over to the Jews of Khaibar, the palm-trees and the land of Khaibar on condition that they should employ their own resources in working on it and keep half of its produce.
[2] al-Ṣan^{c}āni, *Subul*,v.3,p.105.
[3] *Ibid.*

accordance with the terms of agreement. This type of transaction had also been applied in the companion's era[4]. It suggests that within the transaction of *al-Musāqāt* also applies the transaction of *al-Ijāra* of which the wages will be paid to the lessee as the payment of the profit made by the lessor as agreed in the contract of agreement.

In line with the transaction of *al-Ijāra,* the second[5] *Ḥadīth* rules the wages of gold and silver as the payment of cultivating the rental land. Furthermore, the *Ḥadīth* also rules no wages to the owner of the land particularly in the case of disaster of cultivated rental land except for the portion that produced the crop. This principle has been endorsed in the third *Ḥadīth.* Despite the endorsement of the transaction of *al-Ijāra,* the third[6] *Ḥadīth* however forbids the transaction of *al-Muzāraᶜa* in the time of the Prophet s.a.w. This is because the land was less in that time while numbers of people were increase. The transaction of *al-Muzāraᶜa* in that time would burden the lessee to divide the profit of crops with the owner from the cultivated rental land. Thus, the Prophet s.a.w rules the transaction of *al-Ijāra* that will ease the lessee to pay only on the basis of rental land to the owner. However, whenever more lands of agriculture were allocated particularly in the era of the companions, thus, the ruling of forbidden is changed to permissible in this respect. This provision is juristically in line

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[4] *Ibid.*

[5] 2. Narrated Ḥanẓala b. Qais (رضى الله عنه): I asked Rāfiᶜ b. Khadīj رضى الله عنه about letting out land for gold and silver and he replied, "There would be no harm in that for the people used to let out land in the time of Allah's Messenger صلى الله عليه وسلم for what grew by the streamlets, and the edges of the brooks or for something of the crop; but sometimes this portion of the crop would be destroyed while the other is saved, or vice-versa, thus no wages were payable to the people (the owners of the land) except for the portion which produced a crop." Therefore, he rebuked (practising) it but for something known and guaranteed there would be then no harm in it. (Muslim reported it).
It includes an account of what was summed up by al-Bukhāri and Muslim regarding the general forbiddance of letting out land.

[6] 3. Narrated Thābit b. Ḍaḥḥāk رضى الله عنه: Allah's Messenger صلى الله عليه وسلم forbade employing people on land for a share of the produce and ordered that they should be employed for wages. (Reported by Muslim).

with the concept of public interest in which the interest of people is preserved that based on their priority of life.

The rulings of the transaction of *al-Ijāra* have been prolonged in the rest six *aḥādīth* of this sub topic i.e. the fourth, fifth, sixth, seventh, eighth and ninth *Ḥadīth*. The fourth[7] and fifth[8] *Ḥadīth* rule the wage of cupper is lawful although the Prophet s.a.w describes the earnings of a cupper are *khabīth* or technically can be defined as unreasonable charge. The sixth[9] *Ḥadīth* underlines the punishment on the day of resurrection for those who unpaid wage after receiving full service from the worker. The same punishment is entitled to two groups i.e. those who betrayed after confessing in the name of God and those who sold a free man and monopolised his price.

In connection with the most worthy wages to be received, the Prophet s.a.w highlights in the seventh[10] *Ḥadīth* that the Qur'an is the best in this regard. However, some jurists differ on receiving the wages of teaching the Qur'an whether it is lawful or unlawful. Briefly, al-Ṣanᶜāni refers to the *Ḥadīth* of the Prophet s.a.w of which it is

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[7] 4. Narrated Ibn ᶜAbbās رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم had himself cupped and gave the one who cupped him his pay; and if it was prohibited he would not give him (his pay). (Reported by al-Bukhāri).

[8] 5. Narrated Rāfiᶜ b. Khadīj رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "The earnings of a cupper are impure." (Reported by Muslim).

[9] 6. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Allah Who is Great and Glorious have said, 'There are three whose adversary I shall be on the Day of Resurrection: A man who gave a promise in My Name and then betrayed; a man who sold a free man and consumed his price; and a man who hired a servant and, after receiving full service from him, did not give him his wages.'" (Reported by Muslim).

[10] 7. Narrated Ibn ᶜAbbās رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "The most worthy thing for which you receive payment is Allah's Book." (Reported by al-Bukhāri).

lawful to receive the wages of treatment of patient by using the reciting from the Qur'an[11].

The last two *aḥādīth Ḍaᶜīf* of this sub topic i.e. the eighth[12] and ninth[13] *Ḥadīth* underline an ethical manner to pay wages for the worker before his sweat dries as a metaphor in the sense of humanity. Although the sources of this ruling are derived in two *aḥādīth Ḍaᶜīf* but a main lesson that can be learned from them is that the right of wages of employee must be fulfilled by employer as this principle is in line with the concept of public interest in Islam.

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[11] al-Ṣanᶜāni, *Subul*,v.3,p.112-113.

[12] 8. Narrated Ibn ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "Give the hireling his wage before his sweat dries." (Reported by Ibn Mājah).
Abū Yaᶜla and al-Bayhāqi reported something to the same effect on the subject of wages from Abu Huraira رضى الله عنه. Al-Ṭabarāni also reported something similar from Jābir; but all these *Aḥādīth* are weak.

[13] 9. Narrated Abū Saᶜīd al-Khudri رضى الله عنه: The Prophet صلى الله عليه وسلم said, "When anyone hires a hireling he should pay him all his wages." (Reported by 'Abdul Razzaq, but there is *Inqita'* (omission) in it, but al-Bayhāqi proved it *Mawṣūl* through the narration of Abū Ḥanīfa).

6.2.16 *Iḥyā' al-Mawāt* or developing barren lands

This sub topic of *Iḥyā' al-Mawāt* consists of 9 *aḥādīth* that are encompassed 4 *Ṣaḥīḥ*, 3 *Ḥasan* and 2 *Ḍa^{c}īf*. In terms of narration, those *aḥādīth* have many authentic narrators such as Aḥmad (narrated 2 *aḥādīth*), Bukhāri (narrated 1 *Ḥadīth*), Abū Dāwūd (narrated 5 *aḥādīth*), al-Nasā'i (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 2 *aḥādīth*), Ibn Mājah (narrated 2 *aḥādīth*), Ibn al-Jārūd (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*) and al-Bayhāqi (narrated 1 *Ḥadīth*).

In the *fiqh* literature[1], the transaction of *Iḥyā' al-Mawāt* is practically based on certain factors which are in line with the necessity of people's custom or known as *al-^{c}Uruf* as follows; i) developing the land for the purpose of public interest (*tabyīḍ al-'Arḍ*), ii) cultivating the land for the purpose of agriculture (*tanqiatuha Lilzara^{c}*), iii) putting a wall around a barren land for the purpose of building a house (*binā' al-Ḥā'iṭ ^{c}ala al-'Arḍ*).

In connection with those factors of the legality of the transaction of *Iḥyā' al-Mawāt*, there are two *aḥādīth* that rule the ownership of barren lands i.e. the first[2] and second[3] *Ḥadīth*. Both *aḥādīth* affirm that a developer of barren land, which is not belonging to any Muslim or non-Muslim, entitles to get ownership of the land. However, Muslim jurists differ on whether to get prior permission or not from the

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[1] al-Ṣan^{c}āni, *Subul*, v.3,p.114.

[2] 1. Narrated ^{c}Urwa from ^{c}Ā'īsha رضى الله عنهما: The Prophet صلى الله عليه وسلم said, "He who develops land which has no owner, has the most right to it." (Reported by al-Bukhāri) ^{c}Urwa said that ^{c}Umar ruled according to that during his caliphate.

[3] 2. Narrated Sa^{c}īd b. Zayd رضى الله عنه: The Prophet صلى الله عليه وسلم said, "If anyone makes a barren land productive, it belongs to him." (Reported by al-Thalātha; al-Tirmīdhi graded it *Ḥasan* saying that it was reported in a *Mursal* form which is the case but there is disagreement regarding the Companion who first quoted it from the Prophet صلى الله عليه وسلم, it was said that it was Jābir, ^{c}Ā'īsha or Abdullah b. ^{c}Umar, and it is preponderated that it was the first one (i.e. Jābir))

government in the transaction of *Iḥyā' al-Mawāt.* It suggests that prior permission from the government is necessary in the transaction of *Iḥyā' al-Mawāt* due to prevent injustice and harmful effects in developing the barren lands. This is juristically in line with the theme of public interest that will remove any harmful effects of humanity whilst simultaneously it will preserve the element of justice and transparency for the purpose of the life of humanity.

The discussion on the transaction of *Iḥyā' al-Mawāt* has been extended through several *aḥādīth* in this sub topic. Some of them laid down basic principles that incorporated in the transaction of *Iḥyā' al-Mawāt.* For instance, the third[4] *Ḥadīth* highlights no preserved land except what belongs to Allah and His Messenger. In the analysis of the *Ḥadīth,* Muslim jurists insist that no reserve land is given by the government to individual or leadership but only for the purpose of public interest except for juristic reasons. In other words, the gift of reserve land to individual ownership would bring injustice and harmful effects for the society. In line with this injunction, the fourth[5] *Ḥadīth* rules a general principle that can be related to the transaction of *Iḥyā' al-Mawāt* is that "You should neither harm yourself nor cause harm to others" (*La Ḍarar wa lā Ḍirār*). It appears that this principle can be seen as a social guidance to achieve justice, peace and mutual understanding among the members of society. In the transaction of *Iḥyā' al-Mawāt,* this principle must be

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[4] 3. Narrated Ibn ᶜAbbās رضى الله عنه that al-Ṣaᶜb b. Jaththāma al-Laythi رضى الله عنه told him that the Prophet صلى الله عليه وسلم had said, "There is no preserve except what belongs to Allah and His Messenger." (Reported by al-Bukhāri).

[5] 4. Narrated (Ibn ᶜAbbās) رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "You should neither harm yourself nor cause harm to others." (Reported by Aḥmad and Ibn Mājah). Ibn Mājah reported something similar to the aforesaid *Ḥadīth* from Abu Saᶜid's narration; it is found in al-Muwaṭṭā' in a *Mursal* form.

applied officially by the government to develop any barren land that aims to benefit for the people and country and not to bring harmful effects to their lives.

The rest five *aḥādīth* of this sub topic can be classified as the legal proof to constitute some principles such as the individual ownership of the land, the necessity of *Ḥarīm* and the right of people to utilise and benefit the natural sources.

Regarding the principle of the individual ownership of the land, there are at least four *aḥādīth* on this regard i.e. the fifth[6], sixth[7], seventh[8] and eighth[9] *Ḥadīth*. Each *Ḥadīth* rules the right of particular individual to get ownership of the land from the government such as someone who puts a wall around a barren land for the purpose of building a house, someone who digs a well for the benefit of people, someone who entitles to get an estate for the purpose of agriculture for fixed period and someone who entitles to get an estate as a reward of his services that benefit to Islam and Muslim *ummah*.

Concerning the principle of the necessity of *Ḥarīm*, for al-Ṣanᶜāni, the sixth *Ḥadīth* examines in this respect. Although the *Ḥadīth* is juristically classified *Ḍaᶜīf*, but Muslim jurists analyse its ruling that parallel with the ruling in some *aḥādīth Ṣaḥīḥ* such in the fifth *Ḥadīth* . Thus, in al-Ṣanᶜāni's analysis of the sixth *Ḥadīth*, he

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[6] 5. Narrated Samura b. Jundub رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "If anyone puts a wall around a barren land, it belongs to him." (Reported by Abū Dāwūd and Ibn al-Jārūd graded it *Ṣaḥīḥ* (sound)).

[7] 6. Narrated Abdullah b. Mughaffal رضى الله عنه: The Prophet صلى الله عليه وسلم said, "If anyone digs a well, he has forty cubits (of land) as resting place for his animals near the water." (Reported by Ibn Mājah through a weak chain of narrators).

[8] 7. Narrated ᶜAlqama b. Wā'il from his father رضى الله عنه: "The Prophet صلى الله عليه وسلم assigned him land in *Haḍramout*." (Reported by Abū Dāwūd and al-Tirmīdhi. Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound)).

[9] 8. Narrated Ibn 'Umar رضى الله عنهما: The Prophet صلى الله عليه وسلم assigned to al-Zubayr the land his horse could cover at a run. He made his horse run, and when it stopped he threw his whip. He then said, "Give to him up to the spot his whip has reached." (Reported by Abū Dāwūd, but it has weakness).

states that apart from the rule to give ownership of the land for someone who digs a well for the benefit of people, the *Ḥadīth* also rule the necessity of *Ḥarīm.* A standard definition of *Ḥarīm* is referred to natural sources that are preserved from developing and monopolising because of their harmful effects to the life of humanity. In line with the *Ḥadīth,* the well is classified as *Ḥarīm* because of its benefit to the life of humanity. In this regard, Muslim jurists affirm that apart from well, river and conservatory area are also classified as *Ḥarīm.*

The last[10] *Ḥadīth* of this sub topic rules the principle of the right of people to utilise and benefit the natural sources particularly pasture, water and fire or electricity. For al-Ṣanᶜāni, the *Ḥadīth* is a proof to rule the public utility of those three natural sources and no personal belonging to them in the case of necessary condition[11]. Those three natural sources have the same feature of public utility. At this stage, it can be learned that on the other words, the *Ḥadīth* rules the priority of public interest is given more important rather than the priority of the right of personal belonging. This principle is justified with the condition of fundamental basic necessity of human life such as natural sources and the like.

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[10] 9. Narrated A man of the Companions رضى الله عنهم : I went on an expedition with the Prophet صلى الله عليه وسلم and heard him say, "People are partners in three things: pasture, water and fire." (Reported by Aḥmad and Abū Dāwūd; its narrators are reliable).

[11] al-Ṣanᶜāni, *Subul,*v.3,p.124-125.

6.2.17 *al-Waqf* or Endowment

This sub topic of *al-Waqf* consists of 3 *aḥādīth Ṣaḥīḥ*. In terms of narration, those *aḥādīth* have authentic narrators such as Bukhāri (narrated 2 *aḥādīth*) and Muslim (narrated 3 *aḥādīth*).

The transaction of *al-Waqf* or the endowment refers to the donated property that aims to benefit the public interest. Any profit that obtained from the donated property must be allocated continuously to the purpose of public interest. Furthermore, the transaction of *al-Waqf* is divinely classified as one of the three most valuable rewards for Muslim death. The first[1] *Ḥadīth* affirms the most valuable rewards for Muslim death is reckoned on three types of actions i.e. i) *ṣadaqa* or gifts whose benefit is continuous, ii) knowledge from which benefit continues to be reaped, iii) the supplication of a good son or daughter (for his or her died parents). It appears that this *Ḥadīth* is a proof to indicate that being a rich person who deals in the transaction of *al-Waqf* is promised by the Prophet s.a.w to gain the most valuable reward after his death.

In conjunction with the transaction of *al-Waqf*, the second and third *Ḥadīth* rule the types of property of *al-Waqf*. The second[2] *Ḥadīth* underlines the land as a

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[1] 1. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "When a son of Adam dies no further reward is recorded for his actions, with three exceptions: *ṣadaqa*, whose benefit is continuous; or knowledge from which benefit continues to be reaped; or the supplication of a righteous son (for him)." (Reported by Muslim).

[2] 2. Narrated Ibn ʿUmar رضى الله عنهما: ʿUmar رضى الله عنه got some land in Khaybar and went to the Prophet صلى الله عليه وسلم asking his command regarding it and said, "O Allah's Messenger, I have acquired a land in Khaybar which is the most valuable property that I have ever acquired." He replied, "If you wish you may make the property an inalienable possession and give its prsduce as *ṣadaqa*." So ʿUmar رضى الله عنه gave it as *ṣadaqa* that must not be sold, inherited, or given away, and he gave its produce as *ṣadaqa* to be devoted to the poor, relatives, the emancipation of slaves, Allah's cause, travellers and guests, no sin being committed by the one who administers it if he eats something from it

type of property of *al-Waqf* that can be utilised for the benefit of people such as the poor, relatives, the emancipation of slaves, Allah's cause, travellers and guests. Furthermore, the *Ḥadīth* affirms the portion of benefit for the authority body that manages the land of *al-Waqf.* However, the authority body of *al-Waqf* has no right to sale and transfer the land to other party.

The third[3] *Ḥadīth* underlines the movable property such as coats of mail, weapons and animals that can be dealt in the transaction of *al-Waqf.* For al-Ṣanᶜāni, the *Ḥadīth* is a proof to rule the permissibility of material endowment of which valuable for the payment of *zakāt* or alms poor. It suggests that this ruling is formed to give a chance for a person who has no capability to give valuable property such as land and the like for the purpose of *al-Waqf.*

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in a reasonable manner or gives something to a friend to eat, provided he does not store anything as goods (for himself). (Agreed upon; the version is of Muslim).
A version by al-Bukhari has: "He gave it as *Sadaqa* that must not be sold or gifted but its produce must be spent (as *Sadaqa*)."

[3] 3. Narrated Abu Huraira رضى الله عنه : "Allah's Messenger صلى الله عليه وسلم sent 'Umar رضى الله عنه to collect *Sadaqa*." The narrator reported the *Hadith* and it contains: "As for Khâlid, he has kept back his coats of mail and weapons to use them in Allah's cause." (Agreed upon).

6.2.18 *al-Hiba* (Gifts), *al-ᶜUmra* (life-tenancies) and *al-Ruqba* (giving property for the recipient's life time)

This sub topic consists of 11 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (9 *aḥādīth*), *Ḥasan* (1 *Ḥadīth*) and *Daᶜīf* (1 *Ḥadīth*). In terms of reference, this sub topic is referred to many authentic narrators such as Aḥmad (narrated 2 *aḥādīth*), Bukhāri (narrated 7 *aḥādīth*), Muslim (narrated 5 *aḥādīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Nasā'i (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 2 *aḥādīth*), al-Ḥākim (narrated 2 *aḥādīth*), Abū Yaᶜla (narrated 1 *Ḥadīth*) and al-Bazzāz (narrated 1 *Ḥadīth*).

In the *fiqh*[1] literature, the transaction of *al-Hiba, al-ᶜUmra* and *al-Ruqba* are practically referred to individual transaction between the giver and the recipient. For instance, the transaction of *al-Hiba* refers to the giver who gives something as a gift to someone or recipient for the sake of Allah s.w.t. Both transaction of *al-ᶜUmra* and *al-Ruqba* practically refer to *Jahilliya*'s era in which a house is given as a gift. However, the former deals with a life tenancy at the house whereas the latter deals with a lifetime to live at the house.

In line with the transaction of *al-Hiba,* there are ten *aḥādīth* that deal with this type of transaction. Only one *Ḥadīth* deals with the transaction of *al-ᶜUmra* and *al-Ruqba.*

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[1] al-Ṣanᶜāni, *Subul,*v.3,p.130.

Those ten *aḥādīth* of *al-Hiba* mainly focus on the rulings of ethical manner of the giver and recipient who deal with this type of transaction. The first[2] *Ḥadīth* is a proof to rule the obligatory of equality for parents in giving a gift to their children. However, some jurists suggest that in practice, it's difficult for parents to apply the equality of quality and quantity in giving a gift to their children, thus, the rule is only recommended in this regard[3].

The second and third *Ḥadīth* emphasises on the ruling of taking back the gift. In general, the ruling of taking back the gift is unlawful as the second[4] *Ḥadīth* indicates in this respect. However, the exception is given to parents as lawful to take back the gifts of their children for some reasons. This ruling has been highlighted in the third[5] *Ḥadīth* of this sub topic. It suggests that the reason of unlawful of taking back the gift is based on unethical manner in doing so for the giver. Although the sense of unethical manner is seen in the case of parents who take back the gifts of their children but the Prophet s.a.w rules as lawful in this regard. It appears that both cases are totally different in terms of relation between the giver and recipient. The second case of parents has family relation, which is much more closed between

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[2] 1. Narrated al-Nuᶜman b. Bashīr رضى الله عنهما : His father brought him to Allah's Messenger صلى الله عليه وسلم and said, "I have given this son of mine a slave, who was belonging to me." Allah's Messenger صلى الله عليه وسلم asked, "Have you given all your children the like of him?" He replied, "No." Allah's Messenger صلى الله عليه وسلم then said, "Take him back then." A version has: My father went then to the Prophet صلى الله عليه وسلم to call him as witness to my *sadaqa* (i.e. gift) and he asked, "Have you done the same with all your children?" He replied, "No." He said, "Fear Allah and treat your children equally." My father then returned and took back that gift. (Agreed upon).
A version by Muslim has: He said, "Call someone other than me as witness to this." He then said, "Would you like them to show you equal filial piety." He replied, "Yes." He said, "Don't do it, then.:

[3] al-Ṣanᶜānī, *Subul*, v.3,p.130-131.

[4] 2. Narrated Ibn ᶜAbbās رضى الله عنهما: The Prophet صلى الله عليه وسلم said, "The one who repossesses back a gift is like a dog which vomits and then returns to its vomit." (Agreed upon) A version by al-Bukhāri has: "An evil example does not apply to us, one who repossesses back a gift is like a dog which vomits and then returns to its vomit."

[5] 3. Narrated Ibn ᶜUmar and Ibn ᶜAbbās رضى الله عنهم: The Prophet صلى الله عليه وسلم said, "It is not lawful for a man (Muslim) to give a gift and then take it back, except a father regarding what he gives his child." (Reported by Aḥmad and al-Arbaᶜa. al-Tirmīdhi, Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ*).

parents and children. Thus, the case of taking back of gift by parents is seen as common practice in a family. However, in the first case, the taking back of gift by giver would morally harmful effect to recipient.

In the fourth[6] *Ḥadīth*, the Prophet s.a.w demonstrates the giving of something in return the gift from recipient as the proper way to express the appreciation of gift to giver. For this prophetic principle, most jurists agree that it is recommended to do that. However, it is obligatory for the giver to have good intention as well as mutual consent in the transaction of *al-Hiba* as the fifth[7] *Ḥadīth* rules in this respect. This ruling should be practiced by the giver that aims to avoid the element of corruption which might exist in the transaction of *al-Hiba*. Moreover, a good intention in the transaction of *al-Hiba* will bring the sense of caring and loving between giver and recipient and meanwhile it would gently extract grudge particularly for recipient as both *aḥādīth* in the eighth[8] of *Ḥasan* and the ninth[9] of *Ḍaᶜīf* highlight on this aspect. In terms of social relation, in the tenth[10] *Ḥadīth Ṣaḥīḥ*, the Prophet s.a.w encourages neighbour to deals in the transaction of *al-Hiba* although in small quantity and quality as this will strengthen the sense of caring between members of community.

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[6] 4. Narrated ᶜĀ'īsha رضى الله عنها: Allah's Messenger صلى الله عليه وسلم would accept a present and give something in return for it. (Reported by al-Bukhāri).

[7] 5. Narrated Ibn ᶜAbbās رضى الله عنهما: A man gave away a she-camel to Allah's Messenger صلى الله عليه وسلم . So he gave him something in return for it and asked, "Are you pleased?" He replied, "No." So he gifted him abundantly and asked, "Are you pleased?" He replied, "No." Again he gifted him abundantly and asked, "Are you pleased?" He replied, "Yes." (Reported by Ahmad and Ibn Ḥibbān graded it *Ṣaḥīḥ*).

[8] 8. Narrated Abū Huraira رضى الله عنه: The Prophet صلى الله عليه وسلم said, "Give presents to one another and you will love one another." (al-Bukhāri reported it in *al-Adāb al-Mufrad*; Abū Yaᶜla reported it with a good chain of narrators).

[9] 9. Narrated Anās رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "Give presents to one another, for a present gently extracts grudge." (al-Bazzār reported it through a weak chain of narrators).

[10] 10. Narrated Abū Huraira رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "O Muslim women, a woman neighbour should not consider even a goat's trotter too insignificant a gift to give to her neighbour." (Agreed upon).

The seventh[11] and eleventh[12] *Ḥadīth* underline the right of giver in the transaction of *al-Hiba.* The seventh *Ḥadīth* underlines that the giver should not buy his gift if the gift is offered for the sale. Muslim jurists differ to determine whether forbidden or reprehensible to buy this type of gift. As a solution, the giver should avoid to buy this type of gift because this is contrast with his first intention of *al-Hiba* of which seeking for the sake of Allah s.w.t[13]. However, for some reasons, the giver has the right to take back the gift particularly in the case of no condition in returning the gift. This principle is ruled by the Prophet s.a.w in the eleventh *Ḥadīth.*

The transaction of *al-ᶜUmra* and *al-Ruqba* are highlighted in the sixth[14] *Ḥadīth* of this sub topic. As previously discussed, both transactions have interrelated with the transaction of *al-Hiba* but slightly different in terms of gift in which is referred to the house only. The aim of both applicable transactions is to assist recipient to have a proper shelter to live in within certain agreement of contract. This objective is clearly in line with the concept of public interest because living in a proper shelter will preserve the life of family.

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[11] 7. Narrated ᶜUmar رضى الله عنه: I provided a man with a horse to ride in Allah's cause, but as he did not look after it well, I thought he would sell it at a cheap price. I therefore asked Allah's Messenger صلى الله عليه وسلم about that and he said, "Do not buy it even if he gives it to you for a Dirham." The narrator reported the rest of the *Ḥadīth.* (Agreed upon).

[12] 11. Narrated Ibn ᶜUmar رضى الله عنهما: The Prophet صلى الله عليه وسلم said, "If anyone gives away a gift, he has most right to it as long as he is given nothing in return for it." (al-Ḥākim reported and graded it *Ṣaḥīḥ* and it is established from Ibn ᶜUmar's version on the authority of ᶜUmar رضى الله عنه that this is ᶜUmar's saying).

[13] al-Ṣanᶜāni, *Subul*,v.3,p.136-137.

[14] 6. Narrated Jābir رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "What is given in life-tenancy belongs to the one to whom it is given." (Agreed upon).
Muslim has: "Keep your properties for yourselves and do not squander them, for if anyone gives a life-tenancy it goes to the one to whom it is given, both during his life and after his death, and to his descendants."
A version has: "The life-tenancy which Allah's Messenger صلى الله عليه وسلم allowed was only that in which one says, 'It is for you and your descendants.' When he says, 'It is yours as long as you live', it returns to its owner."
Abū Dāwūd and al-Nasā'i have: "Do not give property to go to the survivor and do not give life-tenancy, for if anyone is given either, the property goes to his heirs."

6.2.19 *Luqaṭa* or Lost and found items

This sub topic of *Luqaṭa* consists of 6 *aḥādīth* that are encompassed 5 *Ṣaḥīḥ* and 1 *Ḥasan.* In terms of narration, these *aḥādīth* have many authentic narrators such as Aḥmad (narrated 1 *Ḥadīth*), Bukhāri (narrated 2 *aḥādīth*), Muslim (narrated 4 *aḥādīth*) Abū Dāwūd (narrated 2 *aḥādīth*), al-Nasā'i (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn al-Jārūd (narrated 1 *Ḥadīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*) and Ibn Khuzaima (narrated 1 *Ḥadīth*).

The transaction of *luqaṭa*[1] or lost and found items is juristically divided into 3 catagories; i) invaluable items and edible, ii) invaluable items and inedible. It must be announced to the public places for three days prior entitlement, iii) valuable items and must be announced to the public places for one year. Shall no claim of ownership, the items can be utilised.

In connection with those three categories of *luqaṭa*, the first[2] *Ḥadīth* is a proof to rule the permissibility of keeping invaluable items if found. However, the Prophet s.a.w as a person who found those items kept them as inedible although those items were edible. For Ṣan^{c}āni, the *Ḥadīth* is also a proof to encourage the sense of carefulness to eat uncertainty of food[3]. At this stage, the *Ḥadīth* indicates the second category of *luqaṭa.*

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[1] al-Ṣan^{c}āni, *Subul*,v.3,p.140

[2] 1. Narrated Anās رضى الله عنه: The Prophet صلى الله عليه وسلم came upon a date on the road and said, "Were it not that I fear it may be part of the *ṣadaqa* I would eat it." (Agreed upon).

[3] *Op.cit. Subul*,v.3,p.140.

The second[4] and third[5] *Ḥadīth* of this sub topic are proofs to rule the obligatory of keeping *luqaṭa* items for the purpose of seeking the owner of those items. A proper announcement is vital to do in order to seek the real owner of *luqaṭa* items. Furthermore, in the second *Ḥadīth*, the Prophet s.a.w rules the permissibility to eat astray goat after one year for seeking its owner. However, the astray goat has guarantee in terms of its price. The finder must pay compensation to the owner of goat if the goat has been slaughtered. In the case of astray camels, the Prophet s.a.w rules that those camels should be freed to find their foods and water. It suggests that this is because those camels are classified independent animals of which they can survive to live compared with astray goats.

The fourth[6] *Ḥadīth* underlines the rule of obligatory to seek reliable witness in the transaction of *luqaṭa* and in delivery those items to their owner. This provision is vital to be applied that aims to achieve justice, right and transparency in the transaction of *luqaṭa*. The ignorance of this provision would bring harmful effects particularly to the real owner of those items.

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[4] 2. Narrated Zayd b. Khālid al-Juhāni رضى الله عنه: A man came to the Prophet صلى الله عليه وسلم and asked him about a find. He replied, "Note what it is contained in and what it is tied with and make the matter known for a year Then if its owner comes give it to him, otherwise you can do what you like with it." He asked, "What about astray goat?" He replied, "You, your brother, or the wolf may have it." He asked, "What about astray camels?" He replied, "What have you to do with them? They have their stomachs and their feet. They can go down to water and eat trees till their master finds them." (Agreed upon).

[5] 3. Narrated (Zayd b. Khālid) رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "He who gives refuge to a stray is a stray himself as long as he does not make it known." (Reported by Muslim).

[6] 4. Narrated ʿIyaḍ b. Himar رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "He who finds something should call two trusty people as witnesses, keep in mind what it is contained in and what it is tied with, and not conceal it or cover it up; and if its owner comes he has then most right to it, otherwise it is Allah's property which He gives to whom He wishes." (Reported by Aḥmad and al-Arbā'a excluding Tirmīdhi. Ibn Khuzaima, Ibn al-Jārūd and Ibn Ḥibbān graded it *Ṣaḥīḥ*).

The fifth[7] and sixth[8] *Ḥadīth* of this sub topic highlight an ethical manner to be practiced in the transaction of *luqaṭa*. For instance, the fifth *Ḥadīth* rules the prohibition of taking items that belong to pilgrims. It appears that the aim of this ruling is to prevent the burden of pilgrims as they have spent a lot of money during their worshipping of pilgrimage. Furthermore, the sixth *Ḥadīth* rules the prohibition of keeping the *luqaṭa* property of disbelievers who have been preserved their equal rights as Muslims in Islamic state except for juristic reasons. It suggests that this ruling aims to protect the rights of minority in Islamic state as part of main theme in the concept of public interest in Islam for which to protect the property and life of humanity regardless races and religions.

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[7] 5. Narrated ᶜAbd. al-Raḥman b. ᶜUthmān al-Taymi رضى الله عنه: The Prophet صلى الله عليه وسلم prohibited taking what a pilgrim has dropped. (Reported by Muslim).

[8] 6. Narrated al-Miqdām b. Maᶜdīkarib رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "A beast of prey with a fang, a domestic ass, and a find from the property of a Kafir who has been given a covenant unless he dispenses with it, are not lawful." (Reported by Abū Dāwūd).

6.2.20 *Al-Farā'iḍ* or Shares of inheritance

This sub topic consists of 13 *aḥādīth* within variation on numbers of the authentic *Ḥadīth* as follows; *Ṣaḥīḥ* (11 *aḥādīth*) and *Ḥasan* (2 *aḥādīth*). In terms of reference, this sub topic is referred to many authentic narrators of the *Ḥadīth* such as Aḥmad (narrated 5 *aḥādīth*), Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 2 *aḥādīth*), Abū Dāwūd (narrated 5 *aḥādīth*), al-Nasā'i (narrated 8 *aḥādīth*), al-Tirmīdhi (narrated 2 *aḥādīth*), Ibn Mājah (narrated 6 *aḥādīth*), Ibn Ḥibbān (narrated 3 *aḥādīth*), al-Ḥākim (narrated 5 *aḥādīth*), Abū Zur^{c}a al-Rāzi (narrated 1 *Ḥadīth*), al-Dāraquṭni (narrated 1 *Ḥadīth*), Ibn al-Madīni (narrated 1 *Ḥadīth*), ^{c}Abd al-Bir (narrated 1 *Ḥadīth*) and al-Bayhāqi (narrated 1 *Ḥadīth*).

From 13 *aḥādīth* of this sub topic, there are two juristic themes that relate to the transaction of *al-Farā'iḍ*. The first juristic theme refers to the principle of the transaction of *al-Farā'iḍ* that must be followed and practiced for the sake of justice and right in bestowing the shares of inheritance to those entitle individuals. The second juristic theme refers to the fixed portions of the transaction of *al-Farā'iḍ* to those entitle individuals that are laid down by the Qur'an.

In the first juristic theme, there are seven *aḥādīth* which highlight some principles of the transaction of *al-Farā'iḍ*, whereas six *aḥādīth* underline the second juristic theme that focuses on the fixed portions of individuals in the transaction of *al-Farā'iḍ*.

To begin with, the discussion will examine on the first juristic theme that are encompassed seven *aḥādīth* that relate to some principles of the transaction of *al-Farā'iḍ* i.e. the first, second, fourth, tenth, eleventh, twelfth and thirteenth *Ḥadīth.*

The first[1] *Ḥadīth* rules the obligatory of giving the shares to those who are entitled to the inheritance and the remaining shares must be given to the nearest male heir. In line with this principle of transaction of *al-Farā'iḍ,* the verse 11 and 12 of *Sura al-Nisa'* laid down six fixed portion of shares as follows; one-half, one-fourth, one-eight, two-third, one-third and one-sixth. There are two types of entitled individuals in bestowing six fixed portion of shares of *al-Farā'iḍ* i.e. i) *Dhu al- al-Farā'iḍ,* juristically refers to children, daughters, parents and husband or wives, ii) *ᶜAṣaba,* juristically refers to husband or wives, brothers and sisters, uncles and unties, nephew and nieces, grand fathers and grand mothers, grand sons and grand daughters. In other words, those individuals are entitled in the transaction *al-Farā'iḍ* because of their lineage relation to the deceased. It appears that in the concept of public interest, the application of the transaction *al-Farā'iḍ* aims to preserve and utilise the property of the deceased by bestowing to his lineage and relatives. Furthermore, the first *Ḥadīth* rules that the remaining shares must be given to the nearest male heir because this is in line with the responsibility of male to look after family compared with female.

The second[2] and fourth[3] *Ḥadīth* underline the principle that Muslim docs not inherit from disbeliever and vice versa. The objective of this principle vividly

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[1] 1. Narrated Ibn ᶜAbbās رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "Give the shares to those who are entitled to them, and what remains goes to the nearest male heir." (Agreed upon).

[2] 2. Narrated Usāma b. Zayd رضى الله عنهما: The Prophet صلى الله عليه وسلم said, "A Muslim does not inherit from an infidel and an infidel from a Muslim." (Agreed upon).

preserves the interest of Muslim's property for the sake of religion and life. The same objective is applied to the case of murderer who is excluded from the entitled individual in the transaction of *al-Farā'iḍ* as the tenth[4] *Ḥadīth* rules in this respect.

The eleventh[5] and twelfth[6] *Ḥadīth* emphasis on the principle of bestowing *al-Farā'iḍ* that belongs to a deceased freed slave. The term *al-Walā'* is also referred to the left property of deceased freed slave. In this regard, both *aḥādīth* underline that *al-Walā'* cannot be sold or given away because its belong to lineage of deceased freed slave. In the case of no lineage to be bestowed, the *al-Walā'* entitles to individual who pays the money for the freedom.

The thirteenth[7] *Ḥadīth* of this sub topic endorses Zayd b. Thābit as one of experts in the subject of *al-Farā'iḍ* particularly during the life of the Prophet s.a.w. In other words, it can be learned that the transaction of *al-Farā'iḍ* should be managed and consulted with a knowledgeable person or expert in this subject.

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[3] 4. Narrated Abdullah b. ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "People of two different religions do not inherit from one another." (Reported by Aḥmad and al-Arbaᶜa except al-Tirmīdhi; al-Ḥākim reported it with Usāma's version; al-Nasā'i reported Usāma's *Ḥadīth* with the aforesaid version).

[4] 10. Narrated ᶜAmr b. Shuᶜaib on his father's authority from his grandfather رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "One who kills a man cannot inherit anything from him." (Reported by al-Nasā'i and al-Dāraquṭni; Ibn ᶜAbd. al-Barr graded it strong; al-Nasā'i declared it to be defective, but the right opinion is that it is *Mawquf* at ᶜAmr b. al-ᶜĀas رضى الله عنه.

[5] 11. Narrated ᶜUmar b. al-Khaṭṭāb رضى الله عنه : I heard Allah's Messenger صلى الله عليه وسلم as saying, "The property a parent or a child acquires, goes to his innate whoever it may be." (If either dies leaving no relative). (Reported by Abū Dāwūd, al-Nasā'i and Ibn Mājah; Ibn al-Madīni and Ibn ᶜAbd. al-Barr graded it *Ṣaḥīḥ*).

[6] 12. Narrated ᶜAbdullah b. ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "The right to inheritance from a freed slave is as of a kindred by lineage; it cannot be sold or given away." (al-Ḥākim reported it through al--Shāf'i's narration from Muḥammad b. al-Ḥasan on the authority of Abū Yūsuf; Ibn Ḥibbān graded it *Ṣaḥīḥ* (sound), but al-Bayhāqi graded it defective).

[7] 13. Narrated Abū Qilāba on the authority of Anās رضى الله عنه : Allah's Messenger صلى الله عليه وسلم said, "The most versed in the rules of inheritance among you is Zayd b. Thābit." (Aḥmad and al-Arba'a except Abū Dāwūd reported it; al-Tirmīdhi, Ibn Ḥibbān and al-Ḥākim graded it *Ṣaḥīḥ*, but it was weakened for being *Mursal*).

The second juristic theme of this sub topic is the fixed portions of individuals of the transaction of *al-Farā'iḍ*. There are six *aḥādīth* in this subject. For instance, the third[8] *Ḥadīth* of this sub topic indicates three fixed portions of individuals i.e. i) half to the daughter, as one of *Dhu al- al-Farā'iḍ,* ii) one-sixth to the granddaughter (from father's side, as one of *ᶜAṣaba,* iii) one-third to the sister, also one of *ᶜAṣaba.*

The fifth[9] *Ḥadīth* rules that *Dhu al- al-Farā'iḍ* includes daughters who got two-third and also a grandfather who got one-sixth. In this case, the deceased only left two daughters and a grandfather as heirs. However, the grandfather entitles to get another one-sixth because he is also categorised as *ᶜAṣaba* particularly in this case. The portion of one-sixth also entitles to a grandmother in the case of deceased has no mother to inherit before her as the sixth[10] *Ḥadīth* rules in this respect.

The seventh[11] and eighth[12] *Ḥadīth* rule that a maternal uncle (mother's brother) has no right in the fixed portions of individuals of the transaction of *al-Farā'iḍ* particularly in the case of nobody is entitled to inherit *al-Farā'iḍ.* If this were the case, the property would be bestowed to the government as public fund (*Bait al-*

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[8] 3. Narrated Ibn Masᶜūd رضى الله عنه concerning the situation where there were a daughter, a son's daughter and a sister: The Prophet صلى الله عليه وسلم ruled, "The daughter gets half and the son's daughter a sixth, making two-thirds, and what remains goes to the sister." (Reported by al-Bukhāri).

[9] 5. Narrated ᶜImrān b. Ḥusayn رضى الله عنهما: A man came to the Prophet صلى الله عليه وسلم and said, "My son's son has died, so what do I receive from his estate?" He replied, "You receive a sixth;" then when he turned away he called him and said, "You receive another sixth;" and when he turned away he called him and said, "The other sixth is an allowance (beyond what is due)." (Reported by Aḥmad and al-Arbaᶜa; al-Tirmīdhi graded it *Ṣaḥīḥ*. It is from al-Ḥasan al-Baṣri's version on the authority of ᶜImrān; but it was said that al-Hasan did not hear the *Ḥadīth* from ᶜImrān).

[10] 6. Narrated Ibn Burayda رضى الله عنهما on the authority of his father: The Prophet صلى الله عليه وسلم appointed a sixth to a grandmother if no mother is left to inherit before her. (Reported by Abu Dawud and al-Nasa'i; Ibn Khuzaima and Ibn al-Jarud graded it *Ṣaḥīḥ* and Ibn 'Adi graded it strong).

[11] 7. Narrated al-Miqdām b. Maᶜdīkarib رضى الله عنه: Allah's Messenger صلى الله عليه وسلم said, "A maternal uncle is heir of him who has none." (Ahmad and al-Arba'a reported it excluding al-Tirmīdhi; Abū Zurᶜa al-Rāzi graded it *Ḥasan*; al-Ḥākim and Ibn Ḥibbān graded it *Ṣaḥīḥ*).

[12] 8. Narrated Abū Umāma b. Sahl (رضى الله عنه): ᶜUmar رضى الله عنه wrote to Abū ᶜUbayda رضى الله عنه that Allah's Messenger صلى الله عليه وسلم had said: "Allah and His Messenger are the Patrons of him who has none and a maternal uncle is the heir of him who has none." (Reported by Aḥmad and al-Arba'a except Abū Dāwūd; al-Tirmīdhi graded it *Ḥasan*; Ibn Ḥibbān graded it *Ṣaḥīḥ*).

Māl). Furthermore, the ninth[13] *Ḥadīth* concludes this subject that a newborn baby entitles as heir of his parent and whenever the baby dies, the transaction of *al-Farā'iḍ* must be applied to his relatives.

In the perspective of public interest, the transaction of *al-Farā'iḍ* and its incorporated principles should be applied properly to the members of society. This provision aims to preserve the right of deceased's property of which it would be transferred equally to entitled relatives of deceased.

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[13] 9. Narrated Jābir رضى الله عنه: The Prophet صلى الله عليه وسلم said, "When a new born has raised its voice (and then dies), it is treated as a heir." (Reported by Abū Dāwūd and authenticated by Ibn Ḥibbān).

6.2.21 *al-Waṣāyā* or Wills and testaments

This sub topic of *al-Waṣāyā* consists of 5 *aḥādīth* that are encompassed 3 *Ṣaḥīḥ*, 1 *Ḥasan* and 1 *Ḍaᶜīf.* In terms of narration, those *aḥādīth* have many authentic narrators such as Aḥmad (narrated 2 *aḥādīth*), Bukhāri (narrated 3 *aḥādīth*), Muslim (narrated 3 *aḥādīth*), Abū Dāwūd (narrated 1 *Ḥadīth*), al-Tirmīdhi (narrated 1 *Ḥadīth*), Ibn Mājah (narrated 1 *Ḥadīth*), Ibn al-Jārūd (narrated 1 *Ḥadīth*), al-Dāraquṭni (narrated 2 *aḥādīth*), Ibn Ḥibbān (narrated 1 *Ḥadīth*), Ibn Khuzaima (narrated 1 *Ḥadīth*) and al-Bazzāz (narrated 1 *Ḥadīth*).

Those five *aḥādīth* of this sub topic underline some principles regarding the transaction of *al-Waṣāyā* that should be practiced by Muslims. In the first[1] *Ḥadīth* of *al-Waṣāyā*, the Prophet s.a.w rules that it is recommended for a Muslim to deal in the transaction of *al-Waṣāyā* before his death. The Prophet s.a.w also emphasises on written form of will in order to make it as confirmation and proof for the purpose of the transaction of *al-Waṣāyā.* It suggests that the absence of written form of will would normally leads harmful effects in the transaction of *al-Waṣāyā* particularly in the case of bestowing the property of deceased. Thus, Muslims jurists affirm that a proper written form of will can be considered an official witness or an official statement in the transaction of *al-Waṣāyā*[2].

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[1] 1. Narrated Ibn ᶜUmar رضى الله عنهما: Allah's Messenger صلى الله عليه وسلم said, "It is not prudent for a Muslim person who has something he wants to give as a bequest to have it for two nights without having his will written regarding it." (Agreed upon).

[2] al-Ṣanᶜāni, *Subul*,v.3,p.161.

The second[3] *Ḥadīth* of *Ṣaḥīḥ* and the fifth[4] *Ḥadīth* of *Ḍaᶜīf* rule that the portion of *al-Waṣāyā* is one-third of the property of deceased. The reason behind the fixed portion of one-third of *al-Waṣāyā* has been clarified by the Prophet s.a.w in the second *Ḥadīth* as to leave the heirs in adequate wealth is better than to leave them poor and begging from people. In other word, the priority of family is given more important in bestowing property rather than others. This principle is in line with the concept of public interest that aims to preserve lineage in many ways of life such as in property transaction of *al-Waṣāyā*.

The third[5] *Ḥadīth* is a proof to indicate that a *ṣadaqa* or charity made by a son on behalf of his mother who has died is accepted by Allah s.w.t as his mother's *ṣadaqa*. This provision highlights the significance of property for the blessing of deceased through the form of *ṣadaqa* or charity. At this stage it can be learned on how the property should be managed in the proper way such in transaction of *al-Waṣāyā*.

The fourth[6] *Ḥadīth* of this sub topic is a proof to indicate that a will must not be bestowed to an heir. Muslim jurists affirm that this principle aims to seek justice

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[3] 2. Narrated Saᶜd b. Abī Waqqāṣ رضى الله عنه: I said, "O Allah's Messenger, I have property and none heirs from me but only one daughter of mine. Shall I give two-thirds of my property as *Sadaqa*?" He replied, "No." I said, "Shall I give half of it as *Sadaqa*?" He replied, "No." I said, "Shall I give a third of it as *Sadaqa*?" He replied, "You may give a third as *Sadaqa*, which is still a lot. To leave your heirs rich is better than to leave them poor and begging from people." (Agreed upon).

[4] 5. Narrated Muadh b. Jabal رضى الله عنه: The Prophet صلى الله عليه وسلم said, "Allah gave a favour as *Sadaqa* to you a third of your property, when you are about to die, as an addition to your good deeds." (Reported by al-Dāraquṭni). Aḥmad and al-Bazzār reported the aforesaid *Hadith* from that of Abū al-Darda'. Ibn Mājah reported it from the *Ḥadīth* of Abū Huraira (رضى الله عنه); and all of them are weak, but they may strengthen one another, and Allah knows best.

[5] 3. Narrated ᵒĀ'īsha رضى الله عنها: A man came to the Prophet صلى الله عليه وسلم and said, "O Allah's Messenger, my mother had died suddenly, and did not make a will. And I think she would have given out *Sadaqa* if she had been able to speak, so will she get a reward if I gave out *Sadaqa* on her behalf?" He replied, "Yes." (Agreed upon; the version is of Muslim).

[6] 4. Narrated Abu Umāma al-Bāhili رضى الله عنه: I heard Allah's Messenger صلى الله عليه وسلم saying, "Allah has appointed for everyone who has a right what is due to him, and no will must be made to an heir." (Reported by Aḥmad and al-Arba'a except al-Nasā'i; Aḥmad and al-Tirmīdhi graded it *Hasan*; Ibn Khuzaima and Ibn al-Jārūd graded it strong). Al-Dāraquṭni reported the aforesaid *Hadith* from the

among heirs in terms of fixed portions of individuals in the transaction of *al-Farā'iḍ*[7]. Shall any heir entitle a portion of will, the permission of other heirs is needed. This principle must be applied as the way to prevent injustice and harmful effects in the transaction of property as part of main theme in the concept of public interest in Islam.

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narration of Ibn ᶜAbbās (رضى الله عنهما); and he added in its end: "unless the other heirs wish so." (Its chain of narrators is *Ḥasan*).

[7] al-Ṣanᶜāni, *Subul*,v.3,p.168.

6.2.22 *al-Wadīᶜa* or Trust's property

This sub topic of *al-Wadīᶜa* consists of 1 *Ḥadīth Ḍaᶜīf* which was narrated by Ibn Mājah as follows;

1. Narrated ᶜAmru b. Shuᶜayb on his father's authority from his grandfather: The Prophet صلى الله عليه وسلم said, "There is no guarantee on him who is entrusted with something." (Ibn Mājah reported it, but its chain of narrators has a weakness).

In the analysis of the *Ḥadīth*, al-Ṣanᶜāni defines *al-Wadīᶜa* as trust's property that is managed by trustee. In other words, *al-Wadīᶜa* can also be seen a type of property transaction which is based on the basis of trust. In the book of *Subul al-Salām*, al-Ṣanᶜāni highlights two rulings regarding the transaction *al-Wadīᶜa*. The first ruling is recommended to deal in the transaction *al-Wadīᶜa* as this is in line with the verse 2 of *Sūra al-Mā'ida* that insists believers in helping one another in virtue, righteousness and piety. The second ruling is obligatory to deal in the transaction of *al-Wadīᶜa* as the way to manage the property from loss and damage[1].

Further analysis of jurists on the above *Ḥadīth* states that there is no condition of *Ḍamān* or guarantee in the transaction of *al-Wadīᶜa* because its operates on the basis of trust. Thus, no compensation to be paid by the trustee for any cost of loss and damage on the property of *al-Wadīᶜa*. However, the responsibility of trustee in managing the transaction of *al-Wadīᶜa* is necessary because it will be counted and rewarded by Allah s.w.t on the day of judgement.

In the perspective of public interest, the transaction of *al-Wadīᶜa* is part of social obligation and contribution because its normally deal with public trust of

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[1] al-Ṣanᶜāni, *Subul*,v.3,p.171.

property such as *al-Waqf* or the endowment and the like. The good management in the transaction of *al-Wadīᶜa* will benefit not only to the donor and trustee but also to the whole community. As a matter of fact, the principle of *al-Wadīᶜa* has been applied to other transaction that aims to assist Muslims community such as alms poor or *ṣadaqa* and the like.

6.3 Summary

The analysis of the *aḥādīth* of *Kitāb al-Buyūᶜ* within the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* in this chapter verifies two fundamental points. The first point is the significant juristic concept of public interest, *maṣlaḥa* in connection with Islamic legal texts of the *Ḥadīth.* The connection between the former and latter in this chapter forms three juristic methods i.e. firstly, the criteria of *naṣṣ* in determining the existence of *maṣlaḥa.* Within this chapter, 176 *aḥādīth* of *Kitāb al-Buyūᶜ* have been examined to identify their basic criteria that are employed to determine the principles of *maṣlaḥa.* Secondly, the interpretation of *maṣlaḥa* from *aḥādīth.* In connection with this method, 22 sub topics of *Kitāb al-Buyūᶜ* that are encompassed 176 *aḥādīth* have been analysed and examined within the framework of the juristic concept of *maṣlaḥa.* Thirdly, the implementation of *maṣlaḥa* through *aḥādīth* of *Kitāb al-Buyūᶜ.* Accordingly, this chapter highlights the dynamic principles of *maṣlaḥa* that have been implemented particularly in the field of bussiness transactions that commenced during the life of the Prophet s.a.w.

The second fundamental point that can be verified from this chapter is the juristic principles of *maṣlaḥa* in the *aḥādīth* of *Kitāb al-Buyūᶜ*. It has been found in this chapter the practical principles of *maṣlaḥa* in most of *aḥādīth* of *Kitāb al-Buyūᶜ* which are also divided into 22 sub topics. To put it concisely, the juristic principles of *maṣlaḥa,* public interest upon which have been implemented in the area of business transactions aim to preserve the religion, life, intellect, lineage, honour and property of humanity. The preservation on these six constituents of life of humanity is classified by Muslim jurists as the principle of *ḍarūra* or necessity. To some extent, many types of business transactions and their juristic principle of public interest that

have been examined and analysed in this chapter firmly establish the significant divine source of the *Ḥadīth* of the Prophet s.a.w as an evolving and living law for the life of believers as well as humanity.

CONCLUSION OF TIIESIS

Conclusion

From six chapters that have been drawn up in this thesis, there are several points of conclusion which can be presented here as follows;

1. Within the framework of Islamic jurisprudence, the concept of *al-Maṣlaḥa wa al-Naṣṣ* signifies three methods of interaction and dealing between the juristic concept of public interest and the Divine commandments through the legal texts in the *Qur'ān* and the *Sunna,* which is termed as *naṣṣ* (sgl.) or *nuṣūṣ* (plr). The first method is the criteria of *naṣṣ* in determining the existence of *maṣlaḥa.* The second method is the interpretation of *maṣlaḥa* from *nuṣūṣ.* The third method is the implementation of *maṣlaḥa* through *nuṣūṣ.* These three methods have formed Islamic legal principles on the basis of public interest that always in accordance with the Divine legal texts particularly the *Qur'ān* and the *Sunna.*

2. From the historical point of view, the concept of *al-Maṣlaḥa wa al-Naṣṣ* is well accepted as a valid and legal Islamic principle that emerged during the period of the Prophet and continued during the era of his companions, particularly that of the *khulafā' al-Rāshidūn* or Rightly Guided Caliphs. In the period of *tābi'ūn* or followers, there was significant indication of the further development of the concept *maṣlaḥa* in accordance with *naṣṣ,* particularly during the rule of the caliph ʿUmar ʿAbd ʿAzīz. This growth continued and filtered into the four *Sunni* schools of law, who contributed both directly and indirectly to the development of the concept of *al-*

Maṣlaḥa wa al-Naṣṣ. Their contribution to this concept was subsequently well developed by the disciples and jurists from their own schools of thought.

3. From the perspective of theoretical development, the main finding to emerge from discussion of this theory is the effort of Muslim jurists to link the concept of public interest (*Maṣlaḥa*) with the Divine legal texts (*Naṣṣ*) such as the *Qur'ān* and the *Ḥadīth*. Accordingly, some Muslim jurists have formed a legal principle of *Maṣlaḥa* that does not endorse with any textual evidence, *dalīl* or *naṣṣ*. This form of legal principle is termed *al-Maṣlaḥa al-Mursala*, developed by Imām Mālik. Also Ṭūfī has drawn up as a hypothetical form the theory of the priority of *maṣlaḥa* over the legitimacy of *naṣṣ*. Nevertheless, because of its controversial nature, many Muslim jurists have examined this theory from various perspectives and aspects in the light of Islamic jurisprudence. Importantly, despite the multiplicity of critical views regarding this theory, it can be stated that at the very least Ṭūfī contributed a new theory in response to juristic crises of his age.

4. The formation of the theory of the levels of *Ḍarūrīyya*, *Ḥājīyya*, and *Taḥsīnīyya* aims to incorporate the basic area of human needs, particularly the preservation of religion, life, lineage, intellect, property and honour. Of great significance here is the priority of legal level in Islamic law; that is, in order to apply Islamic law to humanity, the priority levels of *Ḍarūrīyya* (lit. necessities), *Ḥājīyya* (lit. needs), and *Taḥsīnīyya* (lit. improvements) are always to be taken into account. To put it blatantly, Islamic law is prescribed law, but is nevertheless flexible in its application to humanity.

5. The study of the theory of *Maqāṣid al-Sharīᶜa* as it connects with *Naṣṣ* emerges the significance of every single legal text from both the *Qur'ān* and the *Ḥadīth*, and of their ultimate objectives for humanity. This demonstrates that Islamic law (as the Divine law given to humanity) is a civilised law that has at its heart sound objectives which accord with the human capacity for reason, as can be examined through the legal texts of the *Qur'ān* and the *Ḥadīth*. To some extent, Islamic law is an evolving and living law, its purpose to protect humanity through its Divine rules.

6. Further juristic discussion on the significance of the process of *Taᶜlīl al-Aḥkām* for the concept of *al-Maṣlaḥa wa al-Naṣṣ*, highlights Islamic law as a dynamic law for humanity. Although Muslim jurists differ on the acceptance of *Taᶜlīl al-Aḥkām* as a valid process of ratiocination, it appears to be a significant method in justifying effective causes, ultimate objectives and the wisdom of Islamic law. Through the process of *Taᶜlīl al-Aḥkām*, every single injunction of Islamic law deriving from the *Qur'ān* and the *Ḥadīth* has rational and reasonable sense. Therefore, Islamic law decrees not only correct modes of worship, but also provides the basis of human fulfillment in daily life.

7. In order to demonstrate the systematic nature of Islamic law through the process of applying *Taᶜlīl al-Aḥkām* to the *Naṣṣ*, the *Ḥadīth* has been chosen as particular *Naṣṣ* and its connection with the concept of *al-Maṣlaḥa wa al-Naṣṣ*. To be more specific, the book *Bulūgh al-Marām*, as one of the authentic books of the *Ḥadīth* has been juristically referred as special reference in the application of the concept of *al-Maṣlaḥa wa al-Naṣṣ*.

8. The examination of *Bulūgh al-Marām* highlights its juristic features as a concise book of *Ḥadīth* that authentically consists of 77.6% *Ṣaḥīḥ*, 16.08% *Ḥasan* and 6.29% *Daᶜīf*. These figures of percentage-wise prove the quality and significance of *Bulūgh al-Marām* as the importance reference source for Islamic legal texts of the *Ḥadīth*. The examination of compilation methodology of *Bulūgh al-Marām* academically verifies a defining approach within three main elements i.e. numbers of *Ḥadīth*, arrangement of chapters and sub-topics and specific terms of cross-referencing. Moreover, this pattern of compilation methodology has been followed by many later jurists as a benchmark approach to compile the legal texts of *Ḥadīth*.

9. In order to apply the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* to the *aḥādīth* in the book *Bulūgh al-Marām*, *Kitāb al-Buyūᶜ* has been chosen as a focus of study. *Kitāb al-Buyūᶜ* or chapter on business transaction encompasses 176 *aḥādīth* within 22 sub topics. It has been found in this thesis the practical principles of *maṣlaḥa* in most of *aḥādīth* of *Kitāb al-Buyūᶜ* that aim to preserve the religion, life, intellect, lineage, honour and property of humanity. This type of preservation is juristically classified by Muslim jurists as the principle of *ḍarūra* or necessity which is a main principle of *maṣlaḥa*.

10. Further details on the analysis of the *aḥādīth* in *Kitāb al-Buyūᶜ* within the framework of the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* verify a new approach to the analysis of the *aḥādīth* of the Prophet s.a.w

Suggestions

Following the above conclusion, this thesis offers a few suggestions in relation to this study as follows;

1. The juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* should be applied to the analysis of the verses of the Qur'an and the *aḥādīth* of the Prophet s.a.w in various subjects and themes. This effort should be undertaken by Muslim scholars in order to highlight the significance of Islamic legal texts as a dynamic law that aim to protect and guide humanity through the Divine rules.

2. In practical terms, the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ* should be introduced and learned particularly at university level in the subject of *Tafsīr al-Qur'ān* (Quranic exegesis), *Sharḥ al-Ḥadīth* (Analysis of the *Ḥadīth*) and *Uṣūl al-Fiqh* (Islamic jurisprudence).

3. Apart from the topic on business transactions (*Kitāb al-Buyū'*), further study on other topics in the book *Bulūgh al-Marām* should be continued within the framework of the juristic concept of *al-Maṣlaḥa wa al-Naṣṣ*.

GLOSSARY OF ARABIC TERMS

A

adilla shar ᶜiyya; legal indicants
afᶜal; deeds
aḥād; solitary reports
aḥkām; rulings
ahl al-ra'y; rationalist
amārah al-ḥukm; the sign of the law
amr/nahy; commands and prohibitions
amr; imperative
aṣḥāb al-Ḥadīth; traditionalist
asbāb al-nuzūl; the particular and general circumstances in which the text was revealed
aqwal; sayings
ᶜ*āriya;* the loan
ᶜ*āriya maḍmūna;* guarantees of simple loan
ᶜ*āriya mu'adda;* a trust of borrowed object
ᶜ*arāya;* refers to the exchange commodities that have same measurement in terms of quantity and quality
ᶜ*ādil;* the most trustworthy narrators
ᶜ*ala al-fawr;* to be performed instantaneously
ᶜ*ala al-tarakhi;* to an unspecified time in the future
ᶜ*amm;* general term
ᶜ*aql;* reason
ᶜ*aqli;* intellectual
ᶜ*aqlan;* rationally
'awāmir; commandments

B

bayān; explanation
bāb; sub-topic
bidᶜa; religious innovation
buyūᶜ; business transactions

D

ḍābiṭ; the most accurate and greatest powers of memory
ḍaᶜīf; weak
dalīl; a textual indicant or proof or evidence
dalālāt; indications and signs
ḍamān; surety
ḍarūrī; necessary
ḍarūrī al-ukhrāwī; the Muslim submits by carrying out stated obligations and avoiding unlawful actions
ḍarūrī al-dunyāwī; , the basis of daily life such as food, drinks, clothes, marriage, house and the like
ḍarūrīyya; necessities

E

ex post facto; the founder

F

fadl al-mal; surplus of property
farā'iḍ; the shares of inheritance
faqih; jurists
fasid; invalid
fasid bi-itlaq; absolutely invalid
faskh; to cancel a contract of sale
fatwas; legal opinions
fi^{c}l; a deed
a fortiori argument; non-analogical argument

G

ghalabat al-zann; border on certainty
gharib; irrelevant
gharar; deceit, cheating, danger, peril and risk that might lead to destruction and loss
gharūr; deceiving
ghaṣb; usurpation
ghushsh; deception
ghish; cheating

H

ḥabl al-ḥabla; the absolute futurity and uncertainty of delivery of the contract
ḥadd; definition, the penalty
ḥadīth; reports or verbal transmission which conveyed the contents of *Sunna*
ḥajīyya; needs
ḥajr; seizure
ḥakam; arbitration judge
ḥal; circumstance
ḥaqīqa; a real one
ḥaram; the prohibited
ḥaraj ^{c}aẓīm; extreme hardship
ḥaṣāt; pebble throwing trade
ḥasan; fairness
ḥawāla; the transfer of debt
ḥiba; refers to the giver who gives something as a gift to someone or recipient for the sake of Allah s.w.t
ḥilf; a sworn testimony
ḥikma; the rationale, divine wisdom
ḥiyāl; Legal stratagems
ḥudūd; prescribed law
ḥukm al-ashyā' fī al-aṣl; the rule pertaining to things in their original state
ḥukm al-taklīfī; defining law
ḥusn al-ḥāl; the good condition

I

iḥtikār; storing goods for future profit
iḥyā' al-mawāt; developing the barren lands
ijāra; the wages of gold and silver as the payment of cultivating the rental land
ijmaᶜ; consensus
Ijtihad al-ra'y; the intellectual activity or the reasoning of the legal scholar whose sources of knowledge are materials endowed with religious (or quasi-religious) authority.
ikhtilaf; juristic disagreement
imḍā'; to ratify a contract of sale
iqrār; confession
iqtida; a requirement to commit or omit an act
isnad; the chain of transmission
istithnā'; exception
istihsan; juristic preference
istiqrā' bi al-naṣṣ; the induction to legal texts
istishab; the principle of the presumption of continuity
istislah; public welfare and interest
istiqama; straightness
ᶜilla; ratio legis or the effective cause in Islamic jurisprudence
ᶜilla; defects
ᶜilm al-kalam; theological enquiries
ᶜilm muktasab; acquired knowledge

J

al-jadal al-fiqhi; the art of juridical disputation
al-jadal al-hasan; good dialectic
jahl; ignorance
jali; perspicuous
jāmiᶜ; harmonization

K

kayl; measurement
kaffara; penance
khafīf ḍābiṭ; less accuracy and power of memory
khassᶠamm; general and specific
khamr; alcohol
khabar al-khassa or *khabar al-wahid;* solitary traditions
khidāᶜ; deception
khiyār; options of transaction
khiyār al-majlis; option of contractual session
khiyār al-shart; option of condition or stipulation
khiyār al-'aib; option of defect
khiyār al-ru'yat; option of inspection
khiyār al-taᶜyīn; option of determination
khilafiyyat, ikhtilaf; juristic disagreement
kinaya; an indirect declaration of intent
kitāb; chapter
kulli; universal

kulliyāt al-istiqrā'iyyāt; universal rules known inductively

L

luqaṭa; lost and found items

M

maḍarra; something harmful
madhhab; the legal school and its authoritative, standard doctrine
mafhum; linguistic implication
majaz; metaphorical
makruh; the repugnant or reprehensible
ᶜamal; practice
mamnuᶜ, haram; forbidden
mandub; recommended
manāṭ al-ḥukm; the cause of the ruling
manfaᶜa; something useful
maqasid al-shariᶜa; the ultimate objective of Islamic law
maqsud; aims
mashhur; well known or widespread
mashaqqa; hardship
masalih; good things
maṣlaḥa; public interest
maṣlaḥa al-qatᶜīyya; means any particular common good in the light of a definitive legal text, therefore no interpretation or *ta'wīl* can be made of it. For instance, the existence of *al-Maṣlaḥa al-Qatᶜīyya* on the subject of the pilgrimage which is obligatory for those who are capable of performing it.

maṣlaḥa al-ẓannīyya; means any particular common good achieved by non-definitive *naṣṣ* and through the process of legal reasoning on the basis of assumption, *ẓanniyya.*

matn; text
mawṣūl; connected linkage of *isnād*
miᶜyār; criterion or standard
muᶜtabara; the validity and recognised *maṣlaḥa* since there is textual evidence in its favour, particularly in the *Qur'ān* and the *Ḥadīth* of the Prophet s.a.w.

mursala; the recognised *maṣlaḥa* although it has no textual evidence in its favour.

mursal; non-continuous linkage of *isnād*
muṣarrāt; animals whose udders have been tied
mulgha; unrecognized, nullified and discredited *maṣlaḥa.*
mukhālafa mutaᶜāriḍa; variance and in contradiction
maniᶜ; an impediment
minhaj; methodological path
mubah; the permissible or what is permitted
mubayyan; lucidity
mufassar; clear

mufassal; unrestricted
mufti; jurisconsult
muḥaddithīn; scholars of *ḥadīth*
muḥāqala; refers to the barter sale of dried dates for fresh dates which are still on the tree
mukallaf; legally capacitated person
mukhābara; refers to a lease contract of agricultural land where the lessee cultivates the crops for himself and for the lessor
mukhādara; the transaction in which the purchaser cannot be guaranteed by the seller the quantity of the goods because the contract is agreed prior to the time of consumption of the goods
muktasab; acquired
mujmal; ambiguous or obscurity
mujtahids; the creative jurists or leading jurists
mula'im; relevant
mula'ama; relevance
munāsaba; suitability
munābadha; the transaction that refers to the act of throwing something
mulāmasa; the transaction that refers to the act of touching the object of sale
*muqallidun;*pl. of *muqallid;* followers or imitators
musāqāt; also known as *al-muzāraᶜa* is referred to the transaction of cultivating the land and sharing its profit with the owner of the land
murtashī; one who takes bribe
mutᶜa; temporary marriage
mutakallimun; scholastic theologians
mutaqaddimun; the early religious scholars
mutashabih; ambiguous
mutawātir; multiply transmitted reports
mutlaq; unrestricted word or statement or unrestricted language
muzābana; refers to the barter sale of harvested crops with crops which are still on the tree
maᶜnawi; thematic

N

nabi; Prophet
najsh; similar to auction or bidding that purely aims to increase the value of price of the goods and not genuinely to sell them
nahy; prohibitive or prohibition
naql; transmitted
nasikh wa mansukh; abrogating and abrogated verses
naskh; abrogation
naṣṣ (sgl.) *nuṣūṣ* (plr.); legal text, script, provision, proof or evidence
nutq; the meaning of the language

Q

qabḍ; certainty of delivery of good of purchase
qasama; compurgation
qasd al-Shariᶜ; the intention of the Lawgiver

qarina pl. *qara'in;* contextual evidence
qarḍ; interest free loan or gratuitous loan
qarina qatiᶜa; conclusive evidence
qatᶜi; certain
qawl; pronouncement
qawl wahid; a unity of opinion
qibla; the direction of prayer
qirāḍ; can be defined as *al-muḍāraba* of which frequently refers to an equity sharing between bank or investor and client or entrepreneur
qiyas; analogical deduction
qiyas ᶜilla; causative inference

R

rafᶜ al-haraj; alleviating hardship
rahn; pledge or pawn
rāshī; one who bribes
rasul; Messenger
ra'y; opinion
ribā; usury or any 'unjustified increase of capital for which no compensation is give'.

ribā al-buyūᶜ or *ribā al-faḍl;* refers to the exchange contracts that applies to six items i.e. gold, silver, date, raisin, wheat and barley and the like of them
ribā al-nasīa; refers to the contract of loan in which the additional amount is added to the premium of the loan because of the late time of payment
ruqba; refers to the transaction in which a house is given as a gift for lifetime

S

al-sabr wal-taqsim; classification and successive elimination
ṣadiq; truthful
ṣadaqa; alms poor or charity
ṣaḥīḥ; authentic, validity
salb; negation
salm; a contract in which payment is made in advance for the goods which are delivered at a concurred later date
sanna; setting of fashioning a mode of conduct as an example for others to follow
sarih; a direct statement
shakk; doubt
shaᶜāir al-ẓahira; external rituals
shart; proviso or a condition
shirka; partnership
shirka al-abdān; partnership in non-business activities
shufaᶜa; refers to the condition of pre-emption and option to buy immovable property that particularly belongs to neighbour
shura; consensus and mutual consultation
shudhūdh; irregularities
sifa; quality
sira; the prophet's biography and the events in which he was involved
sight al-ᶜumum; a single linguistic formulation
ṣulḥ; reconciliation between two parties of contract who were disagreement on

particular terms
sunna; an exemplary mode of conduct
sunan al-mu'akkada; commendable actions
sunnat Allah; the convention of God

T

ta^{c}bbudiyya; worshipping or strict obedience
taḍḥiyya; sacrificing the animals
taflīs; bankruptcy
taḥrīm; impermissibility
taḥsin, tawsi'a; improvement
taḥsinīyya; improvements
taḥqīq al-manāṭ; the process of individuating cases and realizing them in the external world or ascertaining the *^{c}illa*
tajdīd; renewal
tajzī'at al-ijtihād; permitting a jurist to practice *ijtihad*
takāfu' al-adilla; principle of Equivalence of Proofs
takhayyur; an amalgamated selection
takhrīj al-manāṭ/al-ijtihād al-qiyāsī; investigating the texts in order to extract what is otherwise an unspecified *ratio legis*
takhṣīṣ al-^{c}illa; the limitation of the *ratio legis*
takhṣīṣ; particularization
takhṣīṣ al-^{c}amm; specifying the general
takhṣīṣ al-^{c}illa; the limitation of the *ratio legis*
taklīf mā la yutaq; legal obligation would be intolerable
taqyīd al-mutlāq; considering the differences between events
ṭalab al-^{c}ilm; travel in search of knowledge
talab; request
tamlīk; conveyancing
tanassuk; piety and devotion
tanqīh al-manāṭ; the identification of the *ratio legis* insofar as it is isolated from attributes that are conjoined with it in the texts.
taqyīd; the qualification
ta^{c}āruḍ; conflict of evidence
tard wa-^{c}aks; co-presence and co-absence
tarakhkhus; juridical licenses
tarjih; solution
al-ṭarīq al-wasaṭ; a middle-of-the-road position
ṭarīq wasaṭ; a middle course
taṣawwūr; a conception
tashahhi; personal desires
ta'thīr; efficacy
tawfīq; reconciliation
tawaqqūf; suspended
ta'wīl; reinterpretation
al-tawātur al-lafẓī; the concurrent verbal reports
tawātur ma^{c}nāwī; recurrent thematic reports
ta^{c}līl al-aḥkām al-shar^{c}īyy'a; the juristic process of ratiocination of Islamic law or the determination of the cause of Divine commandments by logical and linguistic analysis

ta^{c}diya; extendibility
thunya; the sale of goods with the exempted part of it is unknown

U

^{c}umra; refers to the transaction in which a house is given as a gift for life tenancy
Usul al-Fiqh; Islamic jurisprudence
usulists; legal theorists
^{c}usr; undue difficulty
^{c}urf; customary practices

W

wadī^{c}a; trust's property that is managed by trustee
wahmi; imaginary
wājib; obligatory
wakāla; agency
wajudan wa ^{c}adaman; the continued concomitance
waqf; endowment which refers to the donated property that aims to benefit the public interest
waṣāyā ; the wills and testaments
waṣf al-munāṣib; compatible description
waṣf dhāti; identical attribute
wazn; weight
wujūb; affirmation

Y

yaqin, qaf^{c}; certainty
yatama; orphans
yusr; extreme ease

Z

ẓanniyya; assumption or probability
zakat; the payment of alms-tax

BIBLIOGRAPHY

Classical Sources

al-Ābādi, Muḥammad Shams al-Ḥaq al-ᶜAẓīm, *ᶜAwn al-Maᶜbūd bi Sharḥ Sunan Abi Dāwūd*, Dār al-Kutub al-ᶜIlmiyya, Beirut, 1992.

Abī Manṣūr Muḥammad b.Aḥmad al-Azhāri, *Tahdhīb al-Lughah*, Maktabah al-Khanjiy, Qaherah, 1976.

Abū Dāwūd, Sulaiman b. al-Ash'at al-Azdi, *Sunan Abī Dāwūd*, Ṭabᶜa Muḥammad ᶜAli al-Sayyīd, n.d.

ᶜAbd. Al-Razzāq, Abū b. Ḥumām al-Ṣanᶜāni, *al-Muṣannaf*, al-Maktaba al-Islāmi, Beirut, 1983 /1403 A.H.

Aḥmad b. Hanbal, *Musnad*, al-Maktaba al-Islamī, Beirut, n.d.

al-Āmidi, Sayf al-Dīn ᶜAli b. Muḥammad, *Al-Iḥkām fī Uṣūl al-Aḥkām*, Maṭbaᶜa al-Maᶜārīf, Cairo, 1914 /1332 A.H.

al-Āmidi, *Ghāyah al-Marām fī ᶜilm al-Kalām*, Maṭbaᶜa al-Maᶜārīf, Cairo, n.d.

al-ᶜAyni, Abū Muḥammad Maḥmūd b. Aḥmad al-ᶜAynī, *ᶜUmda al-Qāri bi Sharḥ Ṣaḥīḥ al-Bukhāri*, Idāra Ṭibāᶜa al-Munīrīyya, Cairo, 1378 C.E.

al-Baghāwi, Abū Muḥammad al-Ḥusayn b. Masᶜūd al-Farrā', *Sharḥ al-Sunna*, Ed. Shuᶜīb al-Arnā'ūṭ, al-Maktaba al-Islami, Beirut, 1971.

al-Bāji, Sulayman b. Khalaf, *al-Muntaqā Sharḥ al-Muwaṭṭā'*, Dār al-Kitāb al-ᶜArābi, Beirut, 1332 A.H.

al-Bāqilāni, Abū Bakr Muḥammad b. al-Ṭayyib, *al-Tamhīd fī al-Rad ᶜala al-Mulḥida wa al-Muᶜṭṭila wa al-Rāfiḍa wa al-Khawārīj wa al-Muᶜtazila,* Dār al-Fikr al-ᶜArābi, Qaherah, 1947.

al-Baṣri, Abū al-Ḥusayn Muḥammad b. ᶜAli .b al-Ṭayyīb, *al-Muᶜtamad fī Uṣūl al-Fiqh,* edited by Muḥammad Ḥamīdullah, 2 vols., al-Maᶜhad al-ᶜIlmi al-Faransī li al-Dirāsah al-ᶜArābiyyah, Damascus, 1964.

al-Bayḍāwi, ᶜAbdullah b. Muḥammad al-Shirāzī, *Minhāj al-Uṣūl ila ᶜIlm al-Uṣūl,* n.d.

al-Bayhaqi, Abū Bakar Aḥmad b. al-Ḥusayn, *Sunan al-Kubrā,* Dār al-Fikr, Beirut, n.d.

_____, *Manāqib al-Shāfiᶜī,* Dār al-Fikr, Beirut, n.d.

al-Bazdāwi, ᶜAli b. Muḥammad, *Uṣūl al-Bazdawī,* Nur Muhammad Publisher, Karachi, n.d.

al-Bukhāri, Ismaᶜīl b. Yahya, *Jāmiᶜ al-Ṣaḥīḥ,* Dār wa Matbaᶜa al-Shaᶜb, 1959/1378 A.H.

al-Dahlāwi, Shah Waliyullah b. ᶜAbd al-Raḥīm, *Hujjatullah al-Bāligha,* Dār al-Iḥyā' al-ᶜUlūm, Beirut, 1st Edition, 1990/1410 A.H.

al-Dardīr, Abū al-Barakat, Aḥmad b. Muḥammad, *al-Sharḥ al-Kabīr ᶜala Mukhtaṣar Khalīl,* Dār Iḥyā' al-Kutub al-ᶜArabīyya, Cairo,n.d.

al-Dāsūqi, Ibn ᶜArafah, *Ḥāshiyah al-Ḍāsuqī ᶜala al-Sharḥ al-Kabīr,* Dār Iḥyā' al-Kutub al-ᶜArabīyya, Cairo,n.d.

al-Dhahabi, *Tadhkira al-Huffāẓ,* Mu'assasah al-Risalah, Beirut, n.d.

al-Ghazāli, Abī Ḥāmid Muḥammad b. Muḥammad b. Muḥammad, *al-Mustaṣfā fī ᶜIlm Uṣūl,* Muassasah al-Risālah, Baghdad, 1997.

_____, Abī Ḥāmid Muḥammad b. Muḥammad b. Muḥammad, *Shifā' al-Ghalīl fī Masālik al-Taᶜlīl,* Matbaᶜah al- Risālah, Baghdad, 1971.

al-Ḥākim, Abū ᶜAbd Allah Muḥammad b. ᶜAbd Allah, *al-Mustadrak ᶜala al-Ṣaḥīḥayn,* edited by Mustafa cAbd al-Qadir cAta', 1st edition, Dar al-Kutub al-cIlmiyyah, Beirut, 1990.

Ibn Abī Shayba, Abu Bakar b. Abī Shayba, *al-Muṣannaf ibn Abī Shayba,* Idārah al-Qur'ān wa al-ᶜUlūm al-Islāmīyyah, Pakistan, 1406 A.H

Ibn al-Athīr, *al-Nihāya fī Gharīb al-Ḥadīth,* Dār al-Sādir, Beirut, 1979/1399 A.H.

Ibn ᶜAbd al-Barr, Abū ᶜUmar Yusuf al-Qurtubi, *al-Tamhīd limā fī al-Muwaṭṭā' min al-Maᶜānī wa al-Masānid,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, n.d.

_____, *al-Intiqā' fī Faḍā'īl al-Thalātha al-A'imma al-Fuqahā' : Mālik, al-Shāfiᶜī wa Abū Ḥanīfa,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, n.d.

_____, *Jāmiᶜ al-Bayān al-ᶜilm wa faḍlihi wa ma yanbaghi fi Riwayatihi wa Hamlihi,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1978.

Ibn ᶜAbd Salām, *Qawāᶜīd al-Aḥkām fī Maṣāliḥ al-Anām,* revised and commented by Taha ᶜAbd al-Rauf Saᶜd, 2nd edition, Dar al-Jil, n.p. 1980.

Ibn Ḥajar al-ᶜAsqalāni, Aḥmad b. ᶜAli, *Bulūgh al-Marām min adilla al-Aḥkām,* edited by Ṣafi al-Raḥman al-Mubārakfūri, Dār al-Salām, Riyaḍ, 1413 A.H /1992

_____, *Tahdhīb al-Tahdhīb,* Nahḍah al-Miṣr, Qaherah, 1971.

_____, *Taqrīb al- Tahdhīb,* Dār al-Ḥadīth, Qaherah, 1971.

_____, *al-Iṣāba fi Tamyīz al-Ṣaḥāba,* edited by ᶜAli Muhammad al-Bijari, Nahḍah al-Miṣr, Qaherah, 1972.

_____, *Rafᶜ al-ᶜAṣr ᶜan Quḍāt Miṣr,* edited by Dr. Ḥāmid ᶜAbd Majid, al-Amīrīah, Qaherah, 1956.

_____, *Fatḥ al-Bārī bi Sharḥ Ṣaḥīḥ al-Bukhārī,* Maṭbaᶜah al-Salafiah, Qaherah, 1959.

_____, *Anbā' al-Ghumar bi Anbā' al-ᶜUmr,* edited by Ḥasan Habshi, al-Majlis li al-Shu'un al-Islamiyyah, Qaherah, 1969.

_____, *al-Majmaᶜ al-Mua'ssas,* Dār al-Kutub al-Miṣrīyyah, Qaherah, n.d.

_____, *Nuzha al-Naẓar fī Tawḍīḥ Nukhba al-Fikr*, Dār al-Khayr, Beirut, 1993.

Ibn Ḥajīb, Jamal al-Din Abu 'Amr, *Ḥāshia al-Sharīf al-Jurjānī ᶜala Mukhtaṣar al-Muntaha al-Uṣūlī*, 2nd edition, Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1983.

Ibn Ḥazm, Abu Muhammad ᶜAli b. Ahmad, *al-Ihkām fī Uṣūl al-Aḥkām*, 2 vols., Maṭbaᶜah al-Imām, Qaherah, n.d.

Ibn al-Jawzi, ᶜAbd al-Raḥman b. ᶜAli, *Manākib al-Imām Aḥmad b. Ḥanbal*, Dār al-Fikr, Beirut, 1995.

Ibn Kathīr, Ismaᶜīl b. Kathīr, *al-Bidāya wa al-Nihāya*, Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1989.

Ibn Khaldūn, *al-Muqaddima*, Maṭbaᶜah Amīr, Iran, 1410 A.H.

Ibn Khallikān, Aḥmad b. Muḥammad, *Wafāyat al-'Aᶜyān wa Anbā' Abnā' al-Zamān*, edited by Iḥsan ᶜAbbās, Dār al-Thaqāfah, n.d.

Ibn Mājah, Muḥammad b. Yazīd, *Sunan Ibn Mājah*, Dār Iḥyā' al-Kutub al-ᶜArabīyyah, Beirut, 1952 /1375 A.H.

Ibn Manẓūr, Muḥammad b. Mukarram ibn ᶜAlī, *Lisān al-ᶜArāb*, Dār al-Sādir, Beirut, n.d.

Ibn al-Najjār al-Ḥanbali, Muḥammad b. Aḥmad b. ᶜAbd al-ᶜAzīz b. ᶜAlī al-Futūḥi al-Ḥanbalī, *Sharḥ al-Kawkib al-Munīr al-Musammā bi Mukhtaṣar al-Taḥrīr, aw al-Mukhtabār al-Mubtakar Sharḥ al-Mukhtaṣar fī Uṣūl al-Fiqh,* edited by Muḥammad al-Zuḥaylī and Nazih Hammad, Maktabah al-ᶜAbikan, Riyaḍ, 1993.

Ibn Qayyīm al-Jawziyyah, Shams al-Din Abū ᶜAbd Alah b. Abī Bakr, *Aᶜlām al-Muwaqqiᶜīn ᶜan Rabb al-ᶜĀlamīn,* edited by Muhammad ᶜAbd al-Salam Ibrahim, 4 vols., 2nd edition, Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1991.

_____, *Syifā' al-ᶜAlīl fī Masā'il al-Qaḍā' wa al-Qadr wa al-Ḥikma wa al-Taᶜlīl,* Dār al-Fikr, Damsyiq, 1398 A.H.

_____, *Zād al-Maᶜad,* edited by Shuᶜaīb al-'Arna'ut and ᶜAbd al-Qadīr al-'Arna'ut, Muassasah al-Risālah, n.p., 1405 A.H.

Ibn Rushd al-Ḥafīd, Abū al-Walid, Muḥammad b. Aḥmad b. Muḥammad b. Aḥmad, *Bidāya al-Mujtahid wa Nihāya al-Muqtaṣid,* Dar al-Jil, Beirut, 1989 C.E. – 1409 A.H.

Ibn Rajb, Abū al-Farj, ᶜAbd al-Raḥman ibn Shihāb al-Dīn ibn Rajb, *al-Qawāᶜīd fi al-Fiqh al-Islāmī,* Dār al-Maᶜrifah, Beirut, n.d.

Ibn al-Ṣalāḥ al-Shahrāzuri, Abū ᶜAmr ᶜUthman b. ᶜAbd al-Rahman, *Muqaddimah Ibn al-Ṣalāḥ fī ᶜUlūm al-Ḥadīth,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1989.

_____, *Ṣiyānah Ṣaḥīḥ Muslim,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, n.d.

Ibn Taymīyya, Taqī al-Dīn Abū al-ᶜAbbās, *Majmūᶜ al-Fatāwā,* compiled and arranged by ᶜAbd al-Raḥman b. Muḥammad ibn Qāsim al-ᶜAṣimī al-Ḥanbalī, Dār al-Taqwa, Jeddah, n.d.

_____, *Minhāj al-Sunna al-Nabawīyya,* al-Amīrīah, n.p., 1321 A.H.

Ibn al-ᶜImād, Abū al-Fallah ᶜAbd al-Ḥayyī al-Ḥanbalī, *Shadhara al-Dhahāb fī Akhbār man Dhahab,* al-Maktabah al-Tijārī, n.d.

al-Jurjāni, ᶜAli b. Muḥammad b. Sharīf, *Kitāb al- Taᶜrīfāt,* Maktabah Lubnan, Beirut, 1969.

Jazīri, ᶜAbd al-Rahman, *Kitāb al-Fiqh ᶜala al-Madhāhib al-Arbaᶜah,* Dār al-Kutub al-ᶜIlmiyyah, Beirut, n.d.

al-Juwayni, Abu al-Maᶜālī ᶜAbd al-Mālik b. ᶜAbd Allah b. Yusuf, *al-Burhān fī Uṣūl al-Fiqh,* edited by ᶜAbd al-ᶜAẓīm al-Dib, 2 vols., State of Qatar, 1399 A.H.

_____, *al-Irshād ila Qawāṭiᶜ al-Adilla fī Uṣūl al-Iᶜtiqād,* State of Qatar, 1399 A.H

Kandahlawi, *Ḥujja Allah al-Bālīgha,* al-Majlis li al-Shu'un al-Islamīyyah, Qaherah, n.d.

al-Khaṭīb, Muhammad ᶜAjjāj, *Uṣūl al-Ḥadīth ᶜUlūmuhu wa Muṣṭalāhuhu,* Dar al-Fikr, Beirut, 1409 A.H /1989.

al-Khaṭīb al-Baghdadi, Abu Bakar Ahmad b. ᶜAli, *Tārīkh Baghdād,* 14 vols., Dar al-Kitāb al-ᶜArābī, Beirut, n.d.

al-Khuli, Muhammad ᶜAbd Aziz, *Miftāḥ al-Sunna wa Tārīkh Funūn al-Ḥadīth,* Beirut, 1990.

Mālik b. Anās, *al-Mudawwana al-Kubra,* 6 vols., (reprinted), Dār al-Kutub al-ᶜIlmiyyah, Beirut, 1994/1415 A.H

_____, *al-Muwaṭṭā'*, transmitted by Yaḥya b. Yaḥya al-Laythi, 2 vols., edited by Muḥammad Fuad ᶜAbd al-Bāqī, Dār al-Iḥyā' al-Kutub al-ᶜArābīyyah, Qaherah, 1951.

Muslim, Muslim b. al-Ḥajjāj al-Nīsābūri, *Ṣaḥīḥ Muslim,* edited by Muḥammad Fuad ᶜAbd al-Bāqī, Dār al-Iḥyā' al-Kutub al-ᶜArābīyyah, Qaherah, 1st edition, 1955/1374 A.H.

al-Nasā'i, Aḥmad b. Shuᶜayb, *Sunan al-Nasā'i,* in Mawsūᶜah al-Ḥadīth, edited by Ṣāliḥ ibn ᶜAbd al-ᶜAzīz al-Shaykh, 1st edition, Muassasah al-Birr, London, 1420 A.H /1999.

_____, *Sunan al-Nasā'i bi Sharḥ al-Suyūṭī,* edited by ᶜAbd al-Fattaḥ Abū Ghuddah, 4th edition, Maktabah al-Maṭbūᶜah al-Islāmīyyah, Ḥalab, 1414 A.H./1994 .

al-Nawāwi, Abū Zakarīyya Muḥy al-Dīn b. Yaḥya ibn Sharf, *Tahdhīb al-Asmā' wa al-Lugha,* Dār al-Kutub al-ᶜIlmīyyah, Beirut, n.d.

_____, *al-Minhāj fī Sharḥ Ṣaḥīḥ Muslim,* 8 vols., al-Maṭbaᶜah al-Miṣrīyyah, Qaherah, 1924.

_____, *Ṣaḥīḥ Muslim bi Sharḥ al-Nawāwī,* edited by ᶜAlī ᶜAbd al-Majīd and others, Dar al-Khayr, Beirut, 3rd edition, 1996 /1416 A.H.

al-Qarāfī, Shihab al-Din Abu al-ᶜAbbas al-Sunhaji al-Bahnasi, *Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī ᶜIlm al-'Uṣūl,* Dār al-Fikr, Beirut, 1910.

al-Rāzi, Fakhr al-Dīn Muḥammad b. ᶜUmar b. al-Ḥusayn, *al-Maḥṣūl fī ᶜIlm Uṣūl al-Fiqh,* 2 vols., Dār al-Kutub al-ᶜIlmīyyah, Beirut, 1988.

al-Sakhāwi, Abu al-Khayr Muhammad b. ᶜAbd al-Raḥman, *al-Jawāhir wa al-Durār fī Tarjamah Shaykh al-Islām Ibn Hajar,* Dār al-Kutub, Qaherah, n.d.

_____,*al-Ḍaw' al-Lāmiᶜ*, Beirut, n.p.,n.d.

al-Ṣanᶜāni, Muḥammad b. Ismāᶜīl, *Subul al-Salām,* edited by Muḥammad Muḥarriz Ḥasan Salāmah, Maṭbūᶜah Jāmiᶜah al-Imām Muḥammad Saᶜūd al-Islāmīyyah, 4 vols., Riyāḍ, 1408 A.H.

al-Shāfiᶜi, Muhammad b. Idris, *al-Risāla,* edited by Aḥmad Muḥammad Shākir, Dār al-Turāth, Qāherah, 1979.

_____, *Ikhtilāf al-Ḥadīth,* edited by Muḥammad Aḥmad ᶜAbd al-ᶜAziz, Dār al-Kutub al-ᶜIlmīyyah, Beirut, 1986.

al-Shāṭībi, Abū Isḥāq Ibrāhim b. Mūsa, *al-Iᶜtiṣām,* Dār al-Ḥadīth, Qaherah, 2000.

_____, *al-Muwāfaqāt fī Usūl al-Sharīᶜah,* edited by al-Shaykh ᶜAbdullah Ḍarrāz, 1st edition, Dār al-Maᶜrīfah, Beirut, 1994/1415 A.H.

Shawkāni, Muḥammad b. ᶜAli, *Irshād al-Fuḥūl ilā Taḥqīq al-Haq min ᶜIlm al-Uṣūl,* edited by Muḥammad Ḥasan, Dār al-Kutub al-ᶜIlmīyyah, Beirut, 1999.

_____, *Nayl al-Awṭār,* Dār al-Jīl, Beirut, 1393 A.H./1973.

al-Suyūṭī, Jalāl al-Dīn b. ᶜAbd al-Raḥman b. Abī Bakr, *Tadrīb al-Rāwī fī Sharḥ Taqrīb al-Nawāwī,* Maṭbaᶜah al-Saᶜādah, Qaherah, 1389 A.H.

_____, *Sharḥ al-Suyūṭī Li-Sunan al-Nasā'ī,* Maṭbaᶜah al-Saᶜādah, Qaherah, n.d.

_____, *Ṭabaqāt al-Ḥuffāẓ,* edited by ᶜAli Muḥammad ᶜUmar, 1st edition, Maktabah Wahbah, Qaherah, 1393 A.H./1973.

Ṭabari, Abū Jaᶜfar Muḥammad b. Jarīr, *Tārīkh al-rusul wa al- muluk,* 30 vols., Sharikah Maktabah wa Maṭbaᶜah Muṣṭafa al-Bābī al-Ḥalabī wa Awlāduhu, Qaherah, n.d.

al-Taftazāni, Sa^{c}ad al-Dīn Mas^{c}ūd b. ^{c}Umar, *Sharḥ al-Talwīḥ ^{c}ala al-Tawḍīḥ li Matn al-Tanqīh fī Uṣūl al-Fiqh,* Maktabah wa Maṭba^{c}ah Muḥammad ^{c}Alī Ṣabīḥ wa Awlāduhu, n.d.

al-Tirmīdhi, Abū ^{c}Isa Muḥammad b. Sawrah, *Sunan*, edited by Aḥmad Muḥammad Shākir, 1st edition, Sharikah Maktabah wa Maṭba^{c}ah Muṣṭafa al-Bābī al-Ḥalabī wa Awlāduhu, Qaherah, 1937/1356 A.H.

Yaqūt, Shahāb al-Dīn b. ^{c}Abdullah al-Ḥamawī al-Rūmī, *Mu^{c}jam al-Buldān,* 8 vols., Maktabah al-Sadir, Beirut, 1957.

Zamakhshari, Abū al-Qāsim Maḥmūd b. ^{c}Umar, *Asās al-Balāghah,* Dār al-Kutub al-Miṣrīyyah, Qāherah, n.d.

al-Zarakshi, Badr al-Din Muhammad b. ^{c}Abdullah, *al-Baḥr al-Muḥiṭ,* Dar al-Fikr, Beirut, n.d.

al-Zayla^{c}i, Jamāl al-Dīn, *Naṣb al-Rāya li Aḥādīth al-Hidāya,* al-Maktabah al-Islāmīyyah, 1393 A.H.

Contemporary Sources

^{c}Abd al-Ghafar, Shuaib Hasan, *Criticism of Ḥadīth Among Muslims with Reference to Sunan Ibn Mājah,* Ta-Ha Publisher Ltd & al-Qur'an Society, London, 1986.

ᶜAbd al-Khāliq, ᶜAbd al-Ghānī, *Ḥujjiyyat al-Sunnah,* 2nd edition, Dār al-Wafā' li al-Ṭibāᶜah wa al-Nashr wa al-Tawzīᶜ, Qaherah, 1993.

ᶜAbd. al-Majīd Maḥmūd al-Maṭlūb, *al-Madkhal fī al-Taᶜrīf bi al-Fiqh al-Islāmī wa Ususihi wa Khaṣāiṣihi wa Maṣādirihi,* Dar al-Nahḍah al-ᶜArābīyyah, Qaherah, 1993.

Abū Zahra, Muhammad, *Uṣūl al-Fiqh,* Dār al-Fikr al-ᶜArābī, Qaherah, 1997

_____, *Abū Ḥanīfa: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh,* 2nd edition, Dār al-Fikr al-ᶜArābī, Qaherah, 1947.

_____, *Mālik: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh,* 2nd edition, Dār al-Fikr al-ᶜArābī, Qaherah, 1952.

_____, *al-Shāfiᶜī: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh,* 2nd edition, Dār al-Fikr al-ᶜArābī, Qaherah, 1948.

_____, *Ibn Ḥanbal: Ḥayātuhu, wa ᶜAsruh, Arā'uh, wa Fiqhuh,* 2nd edition, Dār al-Fikr al-ᶜArābī, Qaherah, 1947.

_____, *Tārīkh al-Madhāhib al-Islāmīyyah fī al-Siyāsah wa al-ᶜAqā'id wa al-Tārikh al-Madhāhib al-Fiqhiyyah*, Dār al-Fikr al-ᶜArābī, Qaherah,

Abū Zahw, Muḥammad Muḥammad, *al-Ḥadīth wa al-Muḥaddithūn,* Dar al-Kitab al-cArabi, Beirut, 1404 A.H. – 1984 C.E.

ᶜAli , ᶜAbd. Karīm, *Al-Shāfiᶜī's Contribution to Ḥadīth an Annotated Translation of His Work Jimāᶜ al-ᶜIlm*, Ph.D Thesis, University of Edinburgh, 1996.

al-ᶜĀmiri, ᶜAbdallah M. al-Husayn, *At-Tufi's Refutation of Traditional Muslim Juristic Sources of Law And His View On The Priority of Regard For Human Welfare As The Highest Legal Source Or Principle*, Ph.D Thesis, University of

Anderson, J.N.D., *Islamic Law in the Modern World*, New York University Press, 1959.

al-Ashqār, ᶜUmar Sulaiman, *al-Sharīᶜa al-Ilāhiyya la al-Qawānīn al-Waḍᶜīyya*, Dar al-Furqán, 1990.

_____, *Naẓarāt fī Uṣūl al-Fiqh*, 1st edition, Dār al-Nafā'is, 1999.

_____, *Tārīkh al-Fiqh al-Islāmī*, 3rd edition, Dār al-Nafā'is, 1991.

ᶜAṭīyah, Jamāl al-Dīn, *Naḥw Tafᶜīl Maqāṣid al-Sharīᶜa*, Dār al-Fikr, Damsyiq, 2001

Bakar, Mohd. Daud, *Conflict of Law and the Methodology of Tarjih; A Study in Islamic Legal Theory*, Ph.D Thesis, University of St. Andrews, 1993.

Ballantyne W.M., *Note on the New Commercial Code of Bahrain*, *ALQ*, vol.2, (4), Nov. 1987.

Brockelmann, Carl, *History of the Islamic Peoples*, London, 1964.

Burton, John, *The Sources of Islamic Law, Islamic Theories of Abrogation*, Edinburgh University Press, 1990.

al-Būṭi , Muhammad Saʿīd Ramaḍān, *Dawābiṭ al-Maṣlaḥa fī al-Sharīʿah al-Islāmīyyah*, Dār al-Muttaḥidah, Beirut, 1990.

Buang, Ahmad Hidayat, *The Prohibition of Gharar in The Islamic Law of Contracts: A Conceptual Analysis with Special Reference to the Practice of Islamic Commercial Contracts in Malaysia*, Ph.D Thesis, SOAS, University of London, 1995.

Calder, Norman, *Studies in Early Muslim Jurisprudence*, Oxford, 1993.

Collins Cobuild, *Learner's Dictionary*, Second Edition, 2003.

Coulson, N.J., *A History of Islamic Laws*, Edinburgh University Press, 1991.

_____, *Conflicts and Tensions in Islamic Jurisprudence*, The University of Chicago Press, 1969.

al-Durayni, Muhammad Fatḥi, *Naẓariya al-Taʿassuf fī Istiʿmāl al-Ḥaq fī al-Fiqh al-Islāmi*, 2nd edition, Mu'assasah al-Risālah, Beirut, 1998.

_____, *al-Manāhij al-Uṣūlīyyah,* Mu'assasah al-Risālah, Beirut, 1998.

_____, *Khaṣā'iṣ al-Tashrīᶜ al-Islāmī fī al-Siyāsah wa al-Ḥukm,* Mu'assasah al-Risālah, Beirut, 1987.

Doi, ᶜAbdul al-Rahman I, *Sharīᶜah: The Islamic Law,* Ta-Ha Publishers, London, 1984.

Dutton, Yasin, *The Origins of Islamic Law,* London, 1999.

EI[1], First Encyclopaedia of Islam, 1st edition, Leiden, 1987.

EI[2], Thet Encyclopaedia of Islam, 2nd edition, Leiden, 1987

English Translation of Bulūgh al-Marām, Dar al-Salam, Riyad, 1996.

Fyzee, Asaf A.A., *Outlines of Muhammad Law,*Oxford University Press, London, 1974.

Hallaq, Wael B., *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh,* Cambridge University Press, 1997.

Ḥasan, Ahmad, *The Early Development of Islamic Jurisprudence,* 4th edition, Islamic Research Institute, Islamabad, 1988

Hassan, Hussein Hamid, *Naẓarīya al-Maṣlaḥa fī al-Fiqh al-Islāmī*, Maktabah al-Mutannabi, Qaherah, 1981.

Hassan, Mohamed Fadzli, *Studies on the Principles and Theory of Maqasid al-Sharicah in the Sunni Schools With Their Application to Malaysia Law*, Ph.D Thesis, University of Birmingham, 2002

Hilali, Muhammad Taqi al-Din, Muhammad Muhsin Khan, *The Translation of The Noble Qur'an In The English Language*, Madinah, 1404 A.H

Hitti, Philip K., *History of The Arabs; From The Earliest Times to The Present*, Macmillan, London, 1968.

Hornby, A S, *Oxford Advanced Learner's Dictionary of Current English*, 1995.

Huṣairi, *Istinbāṭ al-Aḥkām Min al-Nuṣūṣ*, Dār al-Jīl, 1997.

Ibn ᶜĀshūr, al-Ṭāhir, *Maqāṣid al-Sharīᶜa al-Islamīyya*, edited by Muhammad al-Ṭāhir al-Misāwī, al-Basa'ir, 1418 A.H. – 1998 C.E.

Islahi, Amin Ahsan, *Islamic Law, Concept and Codification*, Islamic Publication, Lahore, n.d.

Izzi Dien, Mawil, *Islam and Environment, theory and practice*, The Journal of Beliefs and Values, University of Wales, Lampeter, 1997.

_____, *The Theory and Practice of Market Law in Medieval Islam*, E.J.W. Gibb Memorial Trust, UK, 1997.

_____, *Maṣlaḥa In Islamic Law: A Source or A Concept? A Framework For Interpretation*, in Studies in Honour of Clifford Edmund Bosworth, ed. R.I Nutton, Leiden, 2000.

_____, *Islamic Law, From Historical Foundations to Contemporary Practice*, Edinburgh University Press, 2004.

al-Khalīfa, Muhammad Rashad, *Madrasa al-Ḥadīth fī Miṣr*, Hai'ah al-°Ammah Li Shu'ūn al-Maṭāba° al-Amīriah, Qaherah, 1403 A.H – 1983 C.E.

al-Kamāli, °Abdullah Yahya, *Min Fiqh al-Muwāzana bayna al-Masāliḥ al-Shar°īyya*, Dār Ibn Ḥazm, Beirut, 2000.

_____, *al-Shar°īyya al-Islamīyya wa Fiqh al-Muwāzana*, Dār Ibn Ḥazm, Beirut 2000.

_____, *Ta'ṣīl Fiqh al-Muwāzana*, Dār Ibn Ḥazm, Beirut, 2000.

Kamali, Mohamad Hashim, *Shari°ah as Understood by the Classical Jurists*, in IIU Law Journal, vol.6, no.1&2, p.58-87, 1998.

_____, *Have We Neglected The Shariᶜah-Law Doctrine of Maslaha,* in Islamic Studies, 27:4, p.287-303, 1988.

_____, *Principles of Islamic Jurisprudence,* Pelanduk Publication, Malaysia, 1989.

_____, *Maqasid al- Shariᶜah: The Objectives of Islamic Law,* in Islamic Studies, 38:2, p.193-208, 1999.

Macdonald Duncan Black, *Development of Muslim Theology, Jurisprudence and Constitutional Theory,* Amarko Book Agency, India, 1973.

Maḥmasāni, Subḥi, *Falsafat al-Tashriᶜ fī al-Islām,* Hizbi Publisher, Malaysia, 1987.

_____, *al-Naẓariyyāt al-ᶜAmma li al-Mūjibāt wa al-ᶜUqūd fī al-Shariᶜa al-Islāmīyya,* Dār al-ᶜIlm li al-Malāyīn, Beirut, 1983.

Masᶜud, Muhammad Khalid, *Shatibi's Philosophy of Islamic Law,* Islamic Research Institute, Islamabad, 1995

Muslehuddin, Mohammad, *Islamic Jurisprudence and the Role of Necessity and Need,* Islamic Research Institute, Islamabad, 1975.

Nuᶜmān Jughaim, *Turuq al-Kashf ᶜan Maqāṣid al-Shāriᶜ*, Dār al-Nafā'is, Amman, 1422 A.H. – 2002 C.E.

Nyazee, Imran Ahsan Khan, *Theories of Islamic Law: The Methodology of Ijtihad,* International Institute of Islamic Thought and Islamic Research Institute, Islamabad, 1994.

al-Qarāḍāwi, Yūsuf, *Al-Sunnah Maṣdarān Lil Maᶜrifah wa al-Ḥaḍārah,* Dār al-Shurūq, Qaherah, 1998.

_____, *Al-Ṣaḥwah al-Islāmīyyah bayna al-Juhūd wa al-Taṭarrūf,* Qatar, 1982.

_____, *The Lawful and the Prohibited in Islam,* English Translation, Qaherah, 1997.

Rahim, Rahimin Affandi, *Islamic Legal Reform in the Administration of Islamic Law in Malaysia : A Critical Analysis,* Ph.D thesis, University of Birmingham, 1999.

al-Raysūni, Aḥmad, Aḥmad Jamāl Bārūt, *Al-Ijtihād: al-Naṣṣ, al-Wāqiᶜ, al-Maṣlaḥa,* Dār al-Fikr, Damsyiq, 2002.

al-Raysūni, Aḥmad, *Naẓarīyyat al-Maqāṣid ᶜinda al-Imām al-Shāṭibi,* Herndon, VA, 1995.

Schact Joseph, *An Introduction to Islamic Law,* Clarendon Press, Oxford, 1964.

_____, *The Origins of Muhammadan Jurisprudence,* Oxford University Press, 1950.

Shālibi, Muḥammad Muṣṭafa, *Taᶜlīl al-Aḥkām,* Dār al-Nahḍah al-ᶜArābīyyah, Beirut, 1401 A.H.- 1981 C.E.

Siddiqui, Muhammad Zubayr, *Hadith Literature: Origins, Development and Special Features,* The Islamic Text Society, Cambridge, 1993.

Sibāᶜi, Muṣṭafa, *al-Sunnah wa Makānatuhā fī al-Tashrīᶜ al-Islāmī,* 2nd edition, al-Maktab al-Islāmī, Damshiq, 1978.

al-ᶜUbaydi , Hammādi ,*al-Shāṭibī wa Maqāṣid al-Sharīᶜa,* Dār al-Qutaibah, Damshiq, 1992 /1412 A.H.

al-ᶜUnqari, *Taᶜlīl al-Aḥkām al-Syarᶜīyya Dirāsa wa Taṭbīq,* Ph.D thesis, University of Muḥammad ibn Saᶜūd al-Islāmīyyah, Riyāḍ, 1408 A.H.

Wizārah al-Awqāf wa al-Shu'ūn al-Islāmīyyah, *Al-Mawsūᶜah al-Fiqhīyyah,* Kuwait, 1404 A.H.- 1983 C.E.

Zayd, Mustafa, *Al-Maṣlaḥa fī al-Tashrīᶜ al-Islāmī,* 2nd edition, Qaherah, 1964.

Zaydān, ᶜAbd al-Karīm, *Al-Wajīz fī Uṣūl al-Fiqh,* Baghdad, 1987.

al-Zirīkli, Khayr al-Din, *Al-Aᶜlām, Qāmūs Tarājim Li Ashar al-Rijāl,* 10 vols., Beirut, 1954.

al-Zuḥayli, Wahbah, *Naẓarīyat al-Ḍarūra al-Sharᶜīyya,* Beirut, 1995.

_____, *Uṣūl al-Fiqh al-Islāmī*, Damshiq, 1998.

_____, *Al-Fiqh al-Islāmī wa Adillatuh*, (Financial Transactions in Islamic Jurisprudence) English Translation by Mahmoud A. El-Gamal, 2 vols., Dar al-Fikr, Beirut, 2003.