

CHAPTER 2: CONCEPTUAL FRAMEWORK OF *MAQĀṢID* APPROACH

2.0 Introduction

The objective of this chapter is to conceptualise the *Maqāṣid* approach in the context of the *fiqh* of family. This chapter analyses the framework of *Maqāṣid* approach, set forth by presenting its meanings, relationship with *Uṣūl al-Fiqh*, and the possibility to examine the *Maqāṣid* approach independently from *Uṣūl al-Fiqh*. The study examines the meaning of *Maqāṣid* approach and highlights its primary roles. This study highlights how the *Maqāṣid* approach plays very significant roles in Islamic jurisprudence. For a better understanding and overview of the concept, this chapter discusses the *Maqāṣid* approach in the context of family relations. This study discovers and concludes that there are four purposes of familial rulings, namely Preservation of Progeny, Actualization Interest and Avoiding Injury, Care of Family and Preservation of Religiosity And Emotional Within The Family.

2.1 Conceptualizing *Maqāṣid* Approach

There is a consensus in the Islamic thought that the ultimate references of its worldview are the Quran and Sunnah. Both are considered to be the main source of Islam, even though there are other rules and methodologies for dealing with the verses of the Quran and the Prophet's sayings and traditions. Since the beginning of the Islamic thought history until today, there are endeavours by scholars in founding, explaining, formulating, expanding, and creatively developing the methodology for Islamic research.

Accordingly, the most fundamental knowledge that should be studied and specialized before deriving Islamic rulings from the Quran and the prophetic traditions is *Uṣūl al-Fiqh* (Fundamentals of the Islamic Jurisprudence). It is also regarded as one of several pieces of knowledge that were exclusively founded by Muslim intellect and had not been imported from other traditions.⁷³ The development of the knowledge and *ijtihād* also contributes to the birth of *Maqāṣid al-Sharī'ah* as a new discipline by itself.

2.1.1 Definition and Meaning of *Maqāṣid al-Sharī'ah*

Many definitions have emerged, especially in the contemporary Islamic scholarship, in explaining the substance of the term *Maqāṣid al-Sharī'ah*. *Maqāṣid* is the plural of *maqṣad* from root word *qasada*. Literally, it denotes straightness of path (*istiḳāmat al-ṭarīq*), justice (*al-'adl*), reference and mother (*al-i'timād wa al-umm*).⁷⁴ Al-Shāṭibī refers to *al-maqāṣid al-aṣliyyah* as the foundations of obligation and their principles.⁷⁵ *Shari'ah*, means a command of worshipping Allah. It is said that it is the way of practising religion.⁷⁶ When both parts are combined, the term could be simply defined as the purposes of the way of practising religion.

There is no significant concern to define the term among the classical scholars of the *Uṣūl al-Fiqh* in general and *Maqāṣid al-Sharī'ah* in particular, even al-Shāṭibī himself that considered as the father of this discipline, did not provide any clear definition of

⁷³ Ibn Khaldūn, *al-Muqaddimah*. p. 3/18.

⁷⁴ Ibn Manẓūr, *Lisān al-'Arab*. p. 3/353.

⁷⁵ Al-Shāṭibī, *al-Muwāfaqāt*. p. 2/502.

⁷⁶ Al-Jurjānī, *Kitāb al-Ta'Rifāt*. p. 127.

the term. The reason might be because he was addressing his book to scholars that were well-versed in the science of Islamic Law.⁷⁷

Nevertheless, it should be taken into consideration that al-Shāṭibi indirectly indicates the meanings of the term during his explanation of his intent of the usage of the term *al-qaṣd* (intent) when it is combined with the term *al-shāri'* (Lawgiver), further meaning *al-irādat al-tashrī'iyyah* and *irādat al-taklīf*.⁷⁸ Both terminologies may simply be explained as the purposes of the Lawgiver behind the Islamic rulings.⁷⁹

Moreover, before al-Shāṭibi, there was a short description of al-Qarāfi's *maqāṣid* in the sense of his clarification of the distinction between *al-Maqāṣid* and *al-Wasa'il*. Al-Qarāfi defines it as [purposes] consist of the worldly and otherworldly interests.⁸⁰ Al-Ghazālī also offers his insight indicating the meaning of *Maqāṣid al-Sharī'ah* as the preservation of the five necessities, namely religion, life, intellect, progeny and property.⁸¹

Commonly cited definitions of *Maqāṣid al-Sharī'ah* are of the contemporary Muslim scholars like Ibn 'Āshūr and 'Allal al-Fasi. Ibn 'Āshūr presents his definition of the *Maqāṣid*, saying:

“The general objectives of Islamic legislation consist of the deeper meanings and inner aspects of wisdom considered by the Lawgiver in all or most of the areas and circumstances of legislation. They are not confined to a particular type of the *Shari'ah*

⁷⁷ Al-Raysūni, *Nazariyat al-Maqāṣid 'ind al-Imām al-Shāṭibī*. p. 17.

⁷⁸ Al-Shāṭibi, *al-Muwāfaqāt*. p. 3/107.

⁷⁹ Baza, *Maṣāliḥ al-Insān*. p. 32.

⁸⁰ Al-Qarāfi, *al-Furūq*. p. 2/63.

⁸¹ Al-Ghazālī, *al-Mustasfā min 'Ilm al-Uṣūl*. p. 2/482.

commands. Thus, they include the general characteristics of the *Shari'ah*, its general purpose and whatever notions contemplated by the legislation. They also include certain meanings and notions that are present in many, though not all, of the *Shari'ah* commands.”⁸²

According to al-Fasi, "what is meant by *Maqāṣid al-Sharī'ah* is its purpose or goal, and the underlying reasons which the Lawgiver has placed within each of its rulings”.⁸³

Significantly, this is also the spirit of the definitions given by al-Qaraḍāwī and Bin Bayyah. For al-Qaraḍāwī, “*Maqāṣid al-Sharī'ah* refers to the ends and purposes aimed at by the textual commands, prohibitions and permissibility, and the detailed rulings seek to realize them in the life of competent individuals, families and communities of the Muslim community.”⁸⁴

In this respect, Kamali aptly remarks that al-Qaraḍāwī's definition clearly seeks to relate the *Maqāṣid* closely to the detailed textual rulings of *Shari'ah* in their totality.⁸⁵ In fact, that is the very sense of the minor title of his book, *bayn al-Maqāṣid al-Kullīyyah wa al-Nuṣūṣ al-Juz'īyyah*, which means ‘Between The Universal *maqāṣid* And The Particular Divine Texts’ which he put it as the essential characteristic of the moderate Islamic school of thought.⁸⁶ The other definition by Bin Bayyah is not so different from the previous scholars as he defines it as “the spirit of *Shari'ah*, its

⁸² Ibn ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 251.

⁸³ Al-Raysūnī, *Naḥariyat al-Maqāṣid ‘ind al-Imām al-Shātibī*. p. 18.

⁸⁴ Al-Qaraḍāwī, *Dirāsāt fī Fiqh al-Maqāṣid*. p. 20.

⁸⁵ Kamali, “Actualisation Of The Higher Purposes Of *Shari'ah*.” p. 299.

⁸⁶ Al-Qaraḍāwī, op. cit. p. 137.

meanings, wisdom, purposes and objectives.”⁸⁷

In spite of the differences, they both share the essence of *Maqāṣid*'s substantial discourse, which is 'beneficial to humanity' as the goals of *Shari'ah* in general and Islamic rulings in particular. This is also the conclusion made by Ziyad Mahmoud in his study on eleven definitions of the term *Maqāṣid*, preceded by six linguistic meanings of the term. He ends the study by presenting three remarks, including his finding that the definitions are approximate in term of the meaning and substance of *Maqāṣid al-Sharī'ah*.⁸⁸ Nevertheless, this work was mainly concerned with the meaning and nature of the word as purposefulness in its use. It is worth noting that, in a brief outline of the relationship between purposefulness and other features of the Islamic law system, Auda succinctly explains the very essence of the purposefulness of *Shari'ah*.

- Purposefulness is related to the cognitive nature of Islamic law because various proposals for the nature and structure of the purposes of the Islamic law reflect cognitions of the nature and structure of the law itself.
- Universal purposes of Islamic law represent the law's holistic characteristics and universal principles.
- Purposes of Islamic law play a pivotal role in the process of *ijtihād*, in all of its various forms, which is the mechanism by which the system of Islamic law maintains its 'openness.'
- Purposes of the Islamic law are perceived in several hierarchical ways, which correspond to the hierarchies in the system of Islamic law.

⁸⁷ Bin Bayyah, *‘Alāqat Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh*. p. 133.

⁸⁸ Aḥmidān, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 11-23.

- Purposes provide multiple dimensions that help resolve and understand ‘apparent contradictions’ and ‘opposing tendencies’ in the scripts and the fundamental theories of the law.⁸⁹

The study concludes and summarises the definition and meaning of *Maqāṣid al-Sharī‘ah* as general, specific, and particular purposes and pearls of wisdom that are intended by the Lawgiver for the worldly and otherworldly interests of the humankind.

2.1.2 Relation Between *Uṣūl al-Fiqh* and *Maqāṣid al-Sharī‘ah*

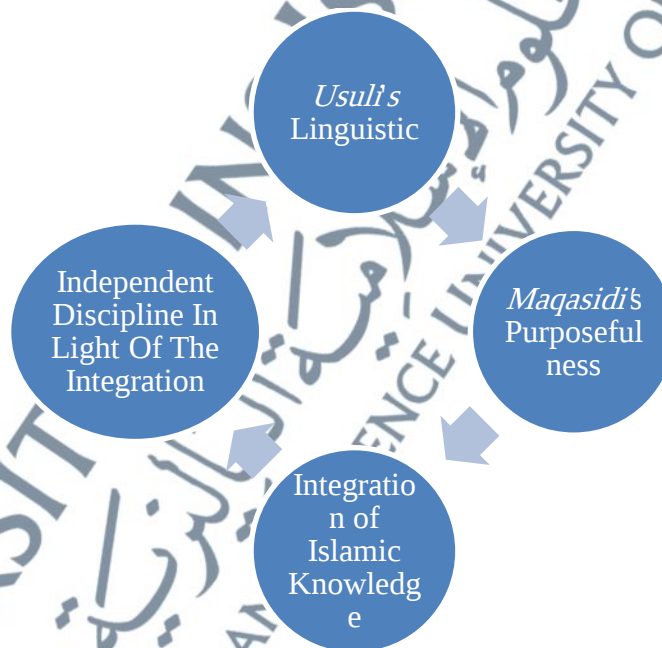


Figure 1.0: Relations of *Usul Fiqh* and *Maqāṣid al-Sharī‘ah*. This figure demonstrates the relation between *Usul al-Fiqh* and *Maqāṣid al-Sharī‘ah* and how *Maqāṣid al-Sharī‘ah* can be an independent discipline despite having a relation with *Usul al-Fiqh*.

⁸⁹ Auda, *Maqasid al-Shari'ah as Philosophy of Islamic Law*. p. 54-55.

2.1.2 (a) *Usuli's Linguistic*

Ibn 'Āshūr, when defining *Uṣūl al-Fiqh*, stresses that the companions already knew the principles of the Islamic jurisprudence of the prophet through their linguistic knowledge and their concern of the *Maqāṣid al-Sharī'ah*.⁹⁰ This highlights the close relationship between *Uṣūl al-Fiqh* and *Maqāṣid al-Sharī'ah* in understanding the primary sources of Islam and deriving ruling from them.

Ibn 'Āshūr spotlights hidden insights in the *Maqāṣid* discourses dealing with some of the propositions of *Uṣūl al-Fiqh*. He stresses that the unnoticed and forgotten insights can be found in the discussions of the notions of sustainability (*munāṣabah*), and imagination (*ikhalah*) in the inquiries into the methods of identifying and confirming the underlying cause (*masālik al-'illah*). They are also to be found in the discussions on textually unregulated benefits (*maṣāliḥ mursalah*), the multiple contiguous narrations (*tawātur*), matters of necessary knowledge (*ma'lūm bi al-ḍarūrah*), and interpreting unrestricted terms (*muṭlaq*) as qualified ones (*muqayyad*), whether there are similarities or differences between the motive (*mujīb*) and the requisite (*mujāb*).⁹¹

In his prefatory of his edition to al-Shāṭibī's masterpiece titled *al-Muwāfaqāt*, Abdullah Draz emphasizes the facets of linguistic and higher purposes of Shari'ah as two fundamental principles of *Uṣūl al-Fiqh* discourses.⁹² Besides, Draz and Ibn 'Āshūr share the same remark as they criticize the lack of *Maqāṣid al-Sharī'ah* insights in the *Uṣūl al-Fiqh* studies in comparison to the linguistic facet. In his remark of this feature, Draz sums up that there are two fundamental principles of extracting the Islamic rulings, namely the science of Arabic linguistic and science of the spirits

⁹⁰ Ibn 'Āshūr, *Ta'rīfāt al-'Ulūm*. p. 23.

⁹¹ Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 168.

⁹² Al-Shāṭibī, *al-Muwāfaqāt*. p. 1/26.

and purposes of *Shari'ah*. While the former is overloaded, jurists pay no heed to the latter except signal that took place in the section of analogy (*qiyās*).⁹³

In respect of the linguistic aspect, Ibn 'Āshūr stresses that most of the linguistic rules have been taken care of it in the discipline of *Uṣūl al-Fiqh*.⁹⁴ Interestingly the remark quoted in his description of the five modes should be used by jurists in order to understand the *Shari'ah* better. The first mode is to understand its expressions and grasp the meanings of those expressions per language use and legal polysemy (*naql shar'ī*). The second mode is to search for anything which conflicts with the indications (*adillah*) offered by the *mujtahid* and in respect of which he has expended all possible efforts to discover their meanings. The third mode is to give, employing analogy that whose law in the texts of the Lawgiver has not been granted the same rule as that referred to therein. The fourth mode is to give a specific rule to a certain act or event whose rule has not been provided by the textual indicants of the *Shari'ah* as known to the *mujtahids*, nor is there an equivalent to which it can be connected by analogical deduction. The fifth mode is to accept some textually established rules of the *Shari'ah* only as someone who does not know their causes or the inner wisdom of the *Shari'ah* in enacting them.⁹⁵

It means that, despite his courageous declaration of the need to reformulate the whole and classify it as an independent discipline called “science of the higher objectives of the *Shari'ah*”,⁹⁶ the *Uṣūl al-Fiqh* primary facet of linguistic rules still deemed as a noteworthy part of exploring the purposes of *Shari'ah*. This might be the vital element, in term of linguistic feature, of the felicitous relation between *uṣūl al-fiqh*

⁹³ Ibid., 1/27.

⁹⁴ Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 183.

⁹⁵ Ibid., p. 183-184.

⁹⁶ Ibid., p. 172.

and *maqāṣid al-sharī'ah*.

In addition, several scholars highlighted the approximate insight, for instance, the *Maliki* scholar, al-Qarāfi describing that *Shari'ah* may be divided into two categories, one of which is referred to as the fundamentals of Islamic jurisprudence that mostly embodied of the maxims of rulings stemmed from the Arabic words, and the other of which is made of up of a large number of clear, highly significant, universal juristic principles which encompass the secrets and wisdom of Islamic Law.⁹⁷

It might be, in this sense, that al-Shāṭibi extensively discusses 'The Aims Of The Lawgiver In Laying Down The Shari'ah For Comprehension By The Subject' as the second category of the purposes of Lawgiver.⁹⁸ In this category, he acknowledges that the significant bases of this issue were pointed out by al-Shāfi'i in his *al-Risālah*.⁹⁹ In addition to the second, the first category is the intention of the Lawgiver in laying down the *Shari'ah*. The third is the intention of the Lawgiver underlying legal obligations. And the fourth is the intention of the Lawgiver in bringing the subject within the fold of the rules of the *Shari'ah*.¹⁰⁰

Furthermore, according to Ibn Khaldūn, the linguistic expertise of early Muslims is sufficient for them to understand the sources of Islamic Law deeply. Nothing more than the linguistic habit they possessed was needed for deriving ideas from words. They also were the source for most of the norms needed in exceptional cases for deriving laws.¹⁰¹

⁹⁷ Al-Qarāfi, *al-Furūq*. p. 1/62.

⁹⁸ Al-Shāṭibi, *al-Muwāfaqāt*. p. 2/383.

⁹⁹ *Ibid.*, 2/384.

¹⁰⁰ *Ibid.*, p. 2/337-471.

¹⁰¹ Ibn Khaldūn, *al-Muqaddimah*. p. 3/18.

2.1.2 (b) *Maqāṣidi's* Purposefulness

Despite the shared facet of the Arabic linguistic rulings between both disciplines, that further draw attention to the relation between them, there are striking differences worth to be highlighted. The very distinction stemmed from the meanings of both disciplines, hence differentiating their focuses. For instance, if we are looking to the *qawā'id uṣūliyyah* (maxims of the *uṣūl al-fiqh*) to extract the rulings from the al-Quran and Sunnah, the results are only the ruling in the absence of the wisdom and underlying purposes of *Shari'ah*. For instances, in 4:22, Allah says:

"And marry not women whom your fathers married,- except what is past: It was shameful and odious,- an abominable custom indeed."

In dealing with the verse, several maxims could be used before issuing a ruling such as a maxim saying, *al-nahy al-muṭlaq yaqtadī al-takrār wa al-dawām*, which means "absolute forbidding term indicates repeated and continuous disengaging."¹⁰² Accordingly, the ruling extracted is that such marriage is forbidden; thus, a Muslim should always avoid it at any cost.¹⁰³ The ruling does not mention about the purposes of *Shari'ah* and wisdom behind it.

The result is in accordance with the essential characteristic of *Uṣūl al-Fiqh*. This resulted in propositions and enquiries that revolved around the deduction of provisions (*aḥkām*) from the literal expressions and words (*alfāz*) of the Lawgiver. Such was done through methodological rules enabling the person to know them in deriving positive legal rulings from those expressing or extracting specific suggested attributes

¹⁰² Al-Dāwūdī, *Qawā'id Uṣūl al-Fiqh wa Taṭbīqātuhā*. p. 334.

¹⁰³ Al-Qurtubī, *al-Jāmi' li Aḥkām al-Qur'ān*. p. 5/76.

and qualities (*awṣāf*), as distinctly pointed out by Ibn ‘Āshūr.¹⁰⁴

Nevertheless, the result would be different if the verse is understood in light of the *Maqāṣid* perspective as it focuses on the underlying purpose of the forbidding, which is avoiding harm and achieving a common good. The verse thus strongly condemns the act, rationalizing the prohibition with three characteristics, namely guilt, odious and abominable customs.¹⁰⁵ The terrible consequences of marriage show that the verse is at a high level of forbidding and not same with other disobediences even they share the same feature of disobedience.

Regarding this, al-Shāṭibi eloquently insists that the underlying meaning of laying down the *Shari’ah* by the Lawgiver is that obedience and disobedience are allotted significance based on the significance of the arising interests and injuries.¹⁰⁶ Thus, in the perspective of *Maqāṣid al-Sharī’ah*, there are levels of rulings as they are related to the interests and harms caused by them. In that regard, it gives a broad comprehension of the verse in term of its wisdom and in-depth understanding, especially when interpreting them with the other verses related to the theme of marriage.

As a result, the views pointed out to demonstrate that despite the shared feature of insisting the importance of Arabic linguistic rulings by *Uṣūl al-Fiḥ* and *Maqāṣid al-Sharī’ah*, indeed there are undeniable differences of approach. For instance, unlike *Uṣūl al-Fiḥ*, Arabic linguistic rulings are not only used for deriving Islamic law’s ruling but to understand the underlying meanings, objectives and wisdom of the Islamic scriptures. From the *Maqāṣid* perspective, linguistic facet paves the way for

¹⁰⁴ Ibn ‘Āshūr, *Maqāṣid al-Sharī’ah al-Islāmiyyah*. p. 166-167.

¹⁰⁵ Ridā, *Tafsīr al-Manār*. p. 4/379.

¹⁰⁶ Al-Shāṭibi, *al-Muwāfaqāt*. p. 2/580.

exploring the purposes of *Shari'ah* in order to understand better the ruling and its characteristics instead of limiting itself to deriving process, hence applying it in the realm of life and the new challenges and issues as well. al-Shāṭibi remarkably emphasizes on the noteworthiness of Arabic linguistic for the understanding of the purposes of *Shari'ah* as he says that levels of people's understanding of purposes of *Shari'ah* depend on the levels of their knowledge in Arabic.¹⁰⁷

On the other hand, *Uṣūl al-Fiqh* that is mainly consisted of the linguistic rulings, has a few dimensions of *Maqāṣid al-Sharī'ah*. The notions of *munāsabah*, *maṣlahah*, *istiḥsān* and others are parts of *uṣūl al-fiqh* despite their development taken by the *Maqāṣid* discipline. In this respect, Abu Zahrah mentions that the study of *Maqāṣid* and the relationship between Islamic rulings with the *maṣlahah* (the interest and good behind the rulings) gained a very little space in the *Uṣūl al-Fiqh* studies was a shortcoming. He also found that there were some scholars, such as Ibn' Abd al-Salam, Ibn Taimiyya and Ibn al-Qayyim, who had endeavoured to contribute to the field through their books and writings. Then al-Shāṭibi had successfully done the responsibility in his book *al-Muwāfaqāt*. Al-Shāṭibi, therefore, opened a new way in the *Uṣūl al-Fiqh* study.¹⁰⁸

In sum, the purposefulness of *Shari'ah* has been extensively developed in the *Maqāṣid* discourses, even it was born in the *Uṣūl al-Fiqh*, and the linguistic facet is the major part of *Uṣūl al-Fiqh* despite its extreme importance for *Maqāṣid al-Sharī'ah*. At this point, Bin Bayyah summarizes the purposes of *Shari'ah* and utilize them in three scopes. Firstly, the actualization of *Uṣūl al-Fiqh* in light of *Maqāṣid* in order to widen the realm of the former's principles such as *istiḥsān*, *istislah* and others. Secondly, in

¹⁰⁷ Ibid., 4/453.

¹⁰⁸ Abu Zahrah, *al-Shāfi'ī*. p. 372-373.

the light of the actualization, independent thinking (*ijtihād*) on the new issues will be available. Third, the selection of appropriate thoughts that realize the purposes of Shari'ah, even if left idle.¹⁰⁹

2.1.2 (c) Integration Of Islamic Knowledge With Special Reference To *Fiqh*, *Uṣūl al-Fiqh* And *Maqāṣid al-Sharī'ah*

As light and guidance for humanity, al-Quran and its clarifier as well, prophetic traditions, necessarily need to be thoroughly apprehended and accurately practised. Thus, the nature of Islamic scriptures that to be apprehended and practised undoubtedly paves the way for the born of the Islamic disciplines like exegesis, *fiqh*, *Uṣūl al-Fiqh*, *hadith* and others. In this case, al-Quran itself contains many verses considering the urgency of *fiqh* or apprehension the Lawgiver's purposes so that people can practice them in their life. For instance, Allah says in *sūrah al-Tawbah*, verse 122:

“Nor should the Believers all go forth together; if a contingent from every expedition remained behind, they could devote themselves to studies in religion, and admonish the people when they return to them,- that thus they (may learn) to guard themselves (against evil).”

Concerning the relation between *maqāṣid* and *Fiqh*, al-Fasi clearly expresses that the *Shari'ah* consists of laws and rules (*aḥkām*) which have their purposes, on the other

¹⁰⁹ Bin Bayyah, *‘Alāqat Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh*. p. 137-144.

hand, it is also purposes (*maqāṣid*) which have their laws and rules.¹¹⁰ Therefore, it is clear that it is a functional relation, just like *fiqh* and *uṣūl al-fiqh*, as previously mentioned.

Accordingly, Islamic knowledge is also integrative by nature. In this regard, while elucidating the hierarchy of knowledge, al-‘Amiri the philosopher, stresses that the integration of *‘ilm al-ḥadīth* as material for Islamic knowledge, *‘ilm al-kalām* as its ultimate objective, *‘ilm al-fiqh* as the medium between *‘ilm al-ḥadīth* and *‘ilm al-kalām*, and *‘ilm al-lughah* as a tool for all the knowledge.¹¹¹

Moreover, the meaning of *fiqh* itself, as provided by al-Fārābī proves this integration as he elucidates the meaning of *fiqh* as the art that enables man to infer the determination of whatever that was not explicitly specified by the Lawgiver. The *Maqāṣid* dimension is precise in al-Fārābī’s elucidation as he added that a jurist should strive to infer correctly by taking into account the Lawgiver’s purpose with the religion he legislated for the nation to which he gave that religion.¹¹² In addition, Ibn Khaldūn defines it as the laws derived from the Qur'an and the Sunnah (traditions) and the evidence that the Lawgiver has provided for knowledge of (laws). The laws evolved from the whole of this evidence are called "jurisprudence" (*fiqh*).¹¹³

It is worth noting to assert that both *Uṣūl al-Fiqh* and *Maqāṣid al-Sharī‘ah* have a relation with *fiqh* in term of their functional roles as the principles of Islamic jurisprudence that are extremely important in understanding the Islamic scriptures.

This relation is perceived by referring to the Ibn ‘Āshūr’s definition of *Uṣūl al-Fiqh* as

¹¹⁰ Al-Fāsi, *Maqāṣid al-Sharī‘ah wa Makārimuhā*. p. 152.

¹¹¹ Al-‘Āmiri, *al-I‘lām bi Manāqib al-Islām*. p. 106-107.

¹¹² Al-Fārābī, *Iḥṣā’ al-‘Ulūm*. p. 85-86.

¹¹³ Ibn Khaldūn, *al-Muqaddimah*. p. 3/3.

previously cited. In term of the historical development of the disciplines, *Uṣūl al-Fiqh*'s emergence is deemed late compared to *fiqh*, so is *Maqāṣid* since it was born in the womb of *Uṣūl al-Fiqh*, as explained before. The reason lies in the historical background of the *Uṣūl al-Fiqh* book *al-Risālah*, which is a reaction to Abd al-Rahman bin Mahdi's letter requesting that al-Shāfi'i compose a booklet to make him comprehend the Islamic Law's methods.¹¹⁴ To explain further, it might be useful to depict Ibn Khaldūn's thoughtful explanation as follows:

"It should be known that this discipline is of recent origin in Islam. The early Muslims could dispense with it. Nothing more than the linguistic habit they possessed was needed for deriving ideas from words. The early Muslims themselves also were the source for most of the norms needed in exceptional cases for deriving laws. They did not need to study the chains of transmitters, because they were close to the (transmitters) in time and had personal knowledge and experience of them. Then the early Muslims died, and the first period of Islam was over.

All the sciences became technical, as we established earlier. Jurists and religious scholars of independent judgment now had to acquire these norms and basic rules, in order to be able to derive the laws from the evidence. They wrote them down as a discipline in its own right and called it "principles of jurisprudence." The first scholar to write on the subject was al-Shāfi'i. He dictated his famous *al-Risālah* on the subject. In it, he discussed commands and prohibitions, syntax and style, traditions, abrogations, and the position of ratio indicated in a text in relation to analogy."¹¹⁵

Despite the interrelation of the disciplines, it should be noted that unlike the functional

¹¹⁴ Al-Bayhaqi, *Ma'rifat al-Sunan wa al-Āthār*. p. 1/199.

¹¹⁵ Ibn Khaldūn, op. cit., p. 3/18.

role of *Uṣūl al-Fiqh* to *fiqh*, *Maqāṣid* has not been paid ample attention in the *fiqh* discourse, hence was considered one of the causes of backwardness of *fiqh* study.¹¹⁶

Nevertheless, considering the nature of the integration of knowledge in the Islamic intellectual tradition, Seyyed Hossein Nasr insists that there existed a hierarchy and interrelation between various disciplines. In addition, according to him, the discovery order and appropriate relationship between various disciplines was the goal of the leading Islamic intellectual figures.¹¹⁷

2.1.2 (d) Stand-alone *Maqāṣid al-Sharī'ah* In Light of Integration of Islamic Knowledge

Like *Uṣūl al-Fiqh*, *Maqāṣid al-Sharī'ah* as a field of study too has its exciting development and had been overwhelmingly examined, written about and gained its significant status in the 20th century. Later on, this historical context of development had given birth to the debate of the stand-aloneness of the discipline of *maqāṣid al-sharī'ah*. Ibn 'Āshūr deemed as among the strong advocates of formulating an independent discipline named *Maqāṣid al-Sharī'ah*. He says:

“We need to reformulate the whole and classify it as an independent discipline called “science of the higher objectives of the *Shari'ah*. In other words, we should leave the discipline of *Uṣūl al-Fiqh* as it is, a source from which the methods of formulating legal argumentation could be derived. As for those elements of it which fall within the

¹¹⁶ Ibn 'Āshūr, *Alays al-Ṣubḥ bi Qarīb*. p. 177-178.

¹¹⁷ Bakar, *Classification Of Knowledge In Islam*. p. xi.

purview of our purpose of systematizing the study of *Maqāṣid al-Sharī'ah*, we should incorporate them as part of the foundational principles of this noble discipline: *'Ilm Maqāṣid al-Sharī'ah*.”¹¹⁸

Concerning that, Attia strongly criticises the idea held by Ibn ‘Āshūr, as in his view, this would be harmful to both disciplines, since it would consequently freeze *Uṣūl al-Fiqh* in its present state and deprive it of the spirit of *Maqāṣid*. In addition, it would exclude *Maqāṣid* from the functional roles which they perform at present.¹¹⁹

Meanwhile, Ibn ‘Āshūr’s contemporary, ‘Allal al-Fāsi explicitly spotlights that *Maqāṣid* is part of the fundamental sources of Islamic Law and the ruling extracted by applying *maṣlaḥah* or *istiḥsān* as well as other kinds of reasoning evidence should be deemed Islamic ruling.¹²⁰ Therefore, according to him, *Maqāṣid* is not an evidence that stands on its own, but one which stands with every other evidence and a part thereof. The same goes to Bin Bayyah as he clearly says that he has refuted the theory of separation of *Maqāṣid al-Sharī'ah* from *Uṣūl al-Fiqh* and clarified the relation of them. In his conclusion, there are three types of relationship. Next, *Maqāṣid* has basic values over and above the ideology of *Uṣūl al-Fiqh*. Second, the general principles are interrelated with the discourses of *Uṣūl al-Fiqh*. Thirdly, it is more precise, as both connections somehow act as articulators, clarifications and complements.¹²¹

Back to the idea of establishing *Maqāṣid* as an independent discipline, after extensively presenting and analysing the Ibn ‘Āshūr’s insight on the issue, al-Hasani reckons that if it is valid to speak of *Maqāṣid al-Sharī'ah* as autonomous from *Uṣūl*

¹¹⁸ Ibn ‘Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p.172.

¹¹⁹ Ettia, *Naḥw Taf’īl Maqāṣid al-Sharī'ah*. p. 267.

¹²⁰ Al-Fāsi, *Maqāṣid al-Sharī'ah wa Makārimuhā*. p. 151.

¹²¹ Bin Bayyah, *‘Alāqat Maqāṣid al-Sharī'ah bi Uṣūl al-Fiqh*. p. 134.

al-Fiqh, then it must be spoken of as a relative autonomy required by methodological necessity since the entire process of juristic reasoning is based on *Maqāṣid al-Sharī'ah*. Significantly, he treats *Uṣūl al-Fiqh* as *Maqāṣid*-based science by breathing into it the spirit of *Maqāṣid al-Sharī'ah*, while at the same time drawing attention to the relative autonomy of these two disciplines on the levels of the method, subject matter and aim.¹²² Both terms 'integration' and 'relative autonomous'¹²³ as highlighted by al-Hasani in demonstrating the relationship convey the meaning of the autonomy in light of the integration of Islamic knowledge.

In this respect, al-Raysūni demonstrates that the existence of *Maqāṣid* principles and maxims is a most potent manifestation of the maturity and autonomy of the discipline, let alone a large number of studies and researches pertaining it.¹²⁴ Notwithstanding, this is relatively autonomous since it does not neglect the interrelation of various Islamic disciplines just like the development of other Islamic disciplines without utterly separating themselves from the Islamic knowledge orbit.¹²⁵

In conclusion, this research supported the idea of *Maqāṣid* as an independent discipline given the integration. The primary reason of the support is the historical development of Islamic knowledge, as briefly outlined in this chapter, justifies this independent state of this discipline, just like the other disciplines that were born centuries ago. In this regard, Ibn Khaldūn indicates the beginning of the historical development of Islamic knowledge, saying:

"The basis of all the traditional sciences is the legal material of the Qur'an and the

¹²² Ettia, *Naḥw Taf'īl Maqāṣid al-Sharī'ah*. p. 266.

¹²³ Al-Hasani, *Naẓariyat al-Maqāṣid 'ind al-Imām Muhammad al-Ṭāhir Ibn 'Āshūr*. p. 438.

¹²⁴ Al-Raysūni, *al-Qawā'id al-Asās li 'Ilm Maqāṣid al-Sharī'ah*. p. 6-7

¹²⁵ Ibid., p. 7-8

Sunnah, which is the law given us by God and His messenger, as well as the sciences connected with that material, by means of which we are enabled to utilize it. This, further, requires as auxiliary sciences the sciences of the Arabic language. Arabic is the language of Islam, and the Qur'an was revealed in it.

The different kinds of traditional sciences are numerous because a responsible Muslim must know the legal obligations God placed upon him and his fellow men. They are derived from the Qur'an and the Sunnah, either from the text, or through consensus, or a combination.

Thus, he must first study the explicit wording of the Qur'an. This is the science of Qur'an interpretation.

Then, he must study the Qur'an, both regarding the manner in which it has been transmitted and related on the authority of the Prophet who brought it from God, and with reference to the differences in the readings of the Qur'an readers. This is the science of Qur'an reading.

Then, he must study how the Sunnah is related to its originator (Muhammad), and he must discuss the transmitters who have handed it down. He must know their circumstances and their probity, so that the information one receives from them may be trusted, and so that one may be able to know the part of it, in accordance with the implications of which one must act. These are the sciences of tradition.

Then, the process of evolving the laws from their fundamental principles requires some normative guidance to provide us with the knowledge of how that process takes place. This is the (science of the) principles of jurisprudence.

After one knows the principles of jurisprudence, one can enjoy, as its result, the knowledge of the divine laws that govern the actions of all responsible Muslims. This is jurisprudence.

Furthermore, the duties (of the Muslim) may concern either the body or the heart. The (duties of the heart) involve the faith and the distinction of what is to be believed and what is not to be believed. This concerns the articles of faith which deal with the essence and attributes (of God), the events of the Resurrection, Paradise, punishment, and predestination, and entails discussion and defence of these subjects with the help of intellectual arguments. This is speculative theology."¹²⁶

Obviously, Ibn Khaldūn spotlights the birth of the knowledge, including the hints of integration of them. For a more obvious example of the birth of a new discipline, Ibn Khaldūn provides his insights on the emergence of the discipline called *taṣawwūf* or Sufism as a systematically treated discipline.

"When the sciences were written down systematically and when the jurists wrote works on jurisprudence and the principles of jurisprudence, on speculative theology, Qur'an interpretation, and other subjects, the Sufis, too, wrote on their subject. Some Sufis wrote on the laws governing asceticism and self-scrutiny, how to act and not act in imitation of a model (saints). That was done by al-Muhasibi, in his *Kitāb al-Ri'āyah*. Other (Sufi authors) wrote on the behaviour of (Sufis) and their different kinds of mystical and ecstatic experience in the "states." Al-Qushayri in his *Kitāb al-Risālah*, and as-Suhrawardi in the *Kitāb 'Awārif al-Ma'ārif*, as well as others, did this.

Al-Ghazālī combined the two matters in the *Kitāb al-Iḥyā'*. In it, he dealt

¹²⁶ Ibn Khaldūn, *al-Muqaddimah*. p. 2/359.

systematically with the laws governing asceticism and the imitation of models. Then, he explained the behaviour and customs of the people (Sufis) and commented on their technical vocabulary. Thus, the science of Sufism became a systematically treated discipline in Islam. Before that, mysticism had merely consisted of divine worship, and its laws had existed in the breasts of men. The same had been the case with all other disciplines, such as Qur'an interpretation, the science of tradition, jurisprudence, the principles of jurisprudence, and other disciplines. (They were only later on) treated systematically."¹²⁷

Accordingly, in the context of *Maqāṣid al-Sharī'ah*, it has been developing since many centuries in various disciplines including *Uṣūl al-Fiqh* and has its discourse emphasising on the purposes of *Shari'ah*, its principles and maxims, or to recall the previous citations of al-Qarāfi and Draz, its focal point is the dimension of the spirits and wisdom of *Shari'ah*.

Moreover, the numerous studies on the discipline increase the significance of its stand-aloneness. In the case of *tasawuf*, Ibn Khaldūn succinctly reviews several fundamental works of literature concerning the discipline and mentions its independence. In this context, *Maqāṣid al-Sharī'ah* deserves at least the same as a significant number of studies on it has been witnessed, including the apparent contributions on the topic by al-Shāṭibi and Ibn 'Āshūr. Evidently, Imam has listed numerous works related to *Maqāṣid* studies in his 10 volumes book, from the classical days more than a thousand year ago to our time, as evaluated by him.¹²⁸

Nevertheless, this study insists on the integrative feature of Islamic knowledge.

¹²⁷ Ibid., p. 3/52.

¹²⁸ Imam, *al-Dalīl al-Irshādī*.

In light of the result, this research explores the roles of *Maqāṣid* approach. It independently examines specific family-related purposes as they signify as essential impact to the study of contemporary *fiqh* of family. As can be seen further, family-related relations are genuinely fundamental in Islam. Therefore, the purposes of it are highlighted in the Islamic scriptures. The study chooses the *nasab* status of the illegitimate child issues for the contextualising and applying the *Maqāṣid* approach in the context of *fiqh* of family in Malaysia.

2.2 The Roles of *Maqāṣid* Approach

As tremendously mentioned in the Islamic scriptures, the very core facet of *Shari'ah* is to apprehend its messages and apply it in life. For instance, Allah says in *sūrah Fussilat*, verse 33:

“Who is better in speech than one who calls [men] to Allah, works righteousness, and says, “I am of those who bows in Islam”?”

Indisputably, there is a need for comprehension before application, and during the application, in order to ensure that people's intention in acts undertaken conform with the intention of the Lawgiver in legislation.¹²⁹ Both apprehension and application are related to the topic of roles of *Maqāṣid* approach.

Ibn al-Qayyim concluded the essence of *Shari'ah* by noting that:

¹²⁹ Al-Shāṭibi, al-*Muwāfaqāt*. p. 2/604.

“The *Shari’ah* is built on the foundation of wisdom and people’s welfare in this world and the afterlife. It is all about justice, mercy, wellbeing and wisdom. Whatever departs from justice to oppression, from mercy to its opposite, from wellbeing to depression and from wisdom to foolishness, has nothing to do with the *Shari’ah* even if it is claimed to be part of it based on some manipulations.”¹³⁰

The interesting idea that Ibn al-Qayyim called ‘general *Maqāṣid*’ has a significant impact on all or most of the areas and circumstances of the law, as Ibn’ Āshūr pointed out in his description of *Maqāṣid*.¹³¹ Moreover, this general *Maqāṣid* should not be limited,¹³² as it has been derived by scholars through the inductive examining on the Islamic scriptures. This category of *Maqāṣid* is powerful and regarded as universal principles before understanding and practising the Islamic scriptures.

For a better appreciation of the purposes, this study highlights how *Maqāṣid* approach could play significant roles in the Islamic jurisprudence. To explain further, this study divides the *Maqāṣid* approach into five leading roles that give impacts to the research on Islamic jurisprudential issues. The study also further elaborates specific or sub-roles of each leading roles that provide practical reason and explanation. The definition of roles is to illustrate their impacts, not to send a message that they are distinct from each other. Instead, the roles are interrelated — for example, the primacy of the Quran, which is considered to be the foundation of all other functions. At the same time, it is mentioned separately for the reason of spotlighting its distinguished facet. The same goes for the others since the intent of the specification is to highlight their positions given the interrelationship between them.

¹³⁰ Ibn al-Qayyim, *A’lām al-Muwaqqi’in*. p. 3/429.

¹³¹ Ibn ‘Āshūr, *Maqāṣid al-Sharī’ah al-Islāmiyyah*. p. 251.

¹³² Bin Bayyah, *Alāqat Maqāṣid al-Sharī’ah bi Uṣūl al-Fiqh*. p. 31.



Figure 2.0: Summary of the Major and Minor Roles of the *Maqāsid* Approach.

2.2.1 Primacy of The Quran

As an ultimate source of Islam, indisputably, al-Quran is considered the supreme guidance granted by God to people for the betterment of their life here and hereafter. Meanwhile, the second source, namely *Sunnah* is justified so by using numerous Quran's commands obligating people to follow the prophet as the illustrator of the Quran. The relation could be apprehended by al-Shāfi'i's argument in his *al-Risālah* when he explains the categories of perspicuous declaration.

- (i) Consist of what He has declared to his creatures by texts in the Quran.
- (ii) Consist of those duties the obligation of which He established in His book, but the modes of which He made clear by the tongue of His prophet.

- (iii) Consists of that which prophet established by example or exhortation, but regarding which there is no precisely defined rule from God in the Quran.
- (iv) Consists of what God commanded His creatures to seek through *ijtihad*.¹³³

Besides the illustrative role of Sunnah is mentioned in the argument of al-Shāfi'i, it literally conveys the message of the primacy and centrality of al-Quran as both legitimacies, the Sunnah and *ijtihad* can only be so through the command of the Quran. Al-Shāfi'i also stresses that no misfortune will ever descent upon any of the followers of God's religion for which there is no guidance in the book of God to indicate the right way.¹³⁴

He maintains this primacy idea as he argues that the abrogation of Quranic verses can only occur with the Quranic verses themselves; hence he contends that the Sunnah cannot abrogate Quranic verses, rather it should only follow what is laid down in the book, and that the Sunnah is intended to explicate the meaning of communications of general nature outlined in the Quran.¹³⁵

In a more evident and extensive argument, al-Shāṭibi strongly articulates the idea of primacy and defends it. By presenting various verses of the Quran, *hadith*, insights of the companions of the Prophet, and also looking into the experiences of the scholars, he contends that a specialist on the Quran should be an expert of the *Shari'ah* in general.¹³⁶ All verses of the Quran can be considered a word as they are interpreted

¹³³ Al-Shāfi'i, *al-Risālah*, p.111-112.

¹³⁴ Ibid., p. 110.

¹³⁵ Ibid., p. 181.

¹³⁶ Al-Shāṭibi, *al-Muwāfaqāt*, p. 3/311-313.

intra-textually,¹³⁷ hence the Quranic text represents an interrelated and complete whole. The *Medinan* verses only can be aptly understood by thoroughly looking at the *Meccan* verses as the latter is the foundation for the former.¹³⁸ Moreover, the preservation of faith, life, intellect, progeny and property were fundamentally covered in the Meccan phase, even there were other verses revealed later strengthening and completing the concept.¹³⁹

Concerning the illustrative role of the Sunnah to the Quran, methodologically, the Sunnah posits secondary source of Islam as the latter is certain (*qat'ī*) and explained (*mubayyan*) while most of the former are ambiguous (*ẓannī*) and explainer (*mubayyin*). Besides that, there are numerous *hadith*, and *āthār* that approve this meaning.¹⁴⁰ In this respect, Abu Bakr al-Farisi reportedly says that the Prophet did not prohibit what is permitted by God, nor go against the Quran as it is the foundation of religion. In contrast, the *hadith* is only its building and branch.¹⁴¹ Accordingly, the meaning contained in the Sunnah has its root in the Quran; its role is to detail the abstract, clarify the ellipted phrased (*mushkil*) and elucidate the concise.¹⁴²

This first significant role has a massive impact on the Islamic thought in general, and *Maqāṣid* discourse in particular, as al-Quran is the supreme source of Islam. Regarding the *Maqāṣid* discourse, all its roles are extracted from and inductive examining of the Quran and the illustrations of the Sunnah, and through the

¹³⁷ Ibid., 3/355.

¹³⁸ Ibid., 3/344.

¹³⁹ Ibid., 3/345

¹⁴⁰ ibid., 3/366-367.

¹⁴¹ Al-Tawhīdī, *al-Baṣā'ir wa al-Dhakhā'ir*. p. 1/132.

¹⁴² Al-Shāṭibi, *op. cit.*, p. 3/370.

examining of scholars' thought. For instance, the purposefulness of the Quranic verses and the interrelating of universal (*kullīyyāt*) and particulars, are the Quranic principles.

2.2.1 (a) The Urgency Of Quranic Concepts For The Study Of *Maqāṣid*

This research maintains the primacy of the Quran as the first significant role of *Maqāṣid* discourse by reinstating the centrality of the Quranic concepts before others. The main purpose of the Quran, as elucidated by Iqbal, is to awaken in man the higher consciousness of his manifold relations with God and the universe.¹⁴³ In verse 2:2 al-Quran highlights guidance (*hudā*) as one of its primary purposes:

“This is the Book; in it is guidance sure, without doubt, to those who fear Allah.”

Various verses are affirming that the real purpose is to seek guidance from the Quran, as meaningfully asserted by al-Afghani.¹⁴⁴ He maintains the insight as he stresses that accordingly, the Quran, tacitly or directly, contains principles of all knowledge.¹⁴⁵ For the purpose, al-Quran consists of manifold concepts to guide humanity for a successful life here and hereafter. Thus, it is worth noting that the apprehending of the Quran would not be renewed until the understanding of the Quranic terms –its concepts and systematic arrangement alike- is renewed.¹⁴⁶

The concern on that has its root in the early Islamic heritage like the monumental

¹⁴³ Iqbal, *The Reconstruction Of Religious Thought In Islam*. p. 8-9.

¹⁴⁴ Busheikhi, *Dirāsāt Muṣṭalāḥiyyah*. p. 111.

¹⁴⁵ Al-Afghāni, *Khaṭīrat al-Afghānī*. p. 142.

¹⁴⁶ Busheikhi, op. cit., p. 108.

work of al-Aṣḥānī (d. 502 H) titled *Mufradat Alfaz al-Quran* as spotlighted by al-Zarkashī (d. 794 H).¹⁴⁷ In his preface of the book, al-Aṣḥānī conspicuously declares the pre-eminence of perceiving Quranic terms' meanings not only for the science of the Quran but all Islamic sciences. Consequently, all jurists and Muslim philosophers rely on the meanings in their juristic and philosophical judgments.¹⁴⁸

Regarding the uniqueness of the significant meanings contained in the small sacred book, as highlighted by scholars including al-Aṣḥānī,¹⁴⁹ Ibn Fāris the philologist made it clear as he explains the Islamization of the Arab language as one of the fundamental impacts of the Islam's revolutionary messages.¹⁵⁰ Accordingly, the terms *mu'min* (believer), *kāfir* (infidel) and *munāfiq* (hypocrite) as well as *ṣalāh* (prayer), *rukū'* (bowing) and *sujūd* (prostration) given new meanings apart from the basic linguistic meanings they had previously known.¹⁵¹

This does not mean that all concepts were regarded as non-Islamic before Islam, but as a highlight of the primacy of Quranic concepts. Evidently, there are pre-Islamic virtues affirmed by Islam even the new fundamental meanings also introduced and stressed. In this respect, Izutsu provides various instances, including the *jahiliyyah*'s highest ethical idea named *murū'ah* that contains various virtues exhorted very earnestly in the Quran. However, in adopting and assimilating them into its system of moral teachings, Islam purified and freshened them, making their energy flow into certain channels which it had prepared.¹⁵²

Nevertheless, there was severe criticism of Draz nearing the mid-20th century. They

¹⁴⁷ Al-Zarkashī, *al-Burhān fī 'Ulūm al-Qur'ān*. p. 2/173.

¹⁴⁸ Al-Aṣḥānī, *Mufradāt Alfāz al-Qur'ān*. p. 24.

¹⁴⁹ Ibid., p. 23.

¹⁵⁰ Ibn Fāris, *al-Ṣāhibī fī Fiqh al-Lughah*. p. 44.

¹⁵¹ Ibid., p. 45.

¹⁵² Izutsu, *Ethico Religious Concepts In The Quran*. p. 75.

were referring to the studies on moral, but Draz views that the authors and their works including Ibn Ḥazm's *Mudāwat al-Nufūs*, Ibn Miskawayh's *Tahdhīb al-Ākhlāq*, Isfahani's *al-Dharī'at Ilā Makārim al-Sharī'ah*, and al-Ghazālī's *ihyā'*, only intended to put down in writing the fruits of their meditations and philosophical studies, and in which the Qur'anic text itself is either missing or only present in a secondary position.¹⁵³

Seemingly, beyond the certain context of the critique, it was also meant to urge researchers to re-examine different topics in light of the Quranic concepts thoroughly. Regarding the facets of the concepts, this research succinctly emphasizes that

- (1) Al Quran and al-Sunnah are related to the purposes of *Shari'ah* and serving them. Since the verses of the Quran and prophetic traditions are purposeful, as repeatedly argued, then its concepts embodied by different verses should be so.
- (2) The Quranic concepts are related to the Islamic rulings as they have rulings serving them and not merely a philosophical exercise in the absence of practical impacts. In this regard, the discussion mentioned above on the relation between *Maqāṣid* and *fiqh* is referred to.

Thus, the concepts are related to the purposes of *Shari'ah* and its rulings. The better examination of the most related Quranic concepts of this study is presented further in the same chapter.

2.2.2 Interrelating of Universals And Particulars

¹⁵³ Draz, *Moral World Of The Quran*. p. 2.

As insisted before, all the following roles only deemed fundamental by the Quranic injunctions. The same goes with the second role of *Maqāṣid* approach in understanding the divine texts significantly in order to harmonize the literally ‘conflicting’ texts as mentioned later. The wholeness feature of *maqāṣid* approach urges Muslim to read the Islamic scriptures by looking into the governing principles, namely universals (*kullīyyāt*) or been referred to as *al-muḥkamāt*. This is mentioned clearly in the 3: 7-8 of the Quran as follows:

“He it is Who has sent down to thee the Book: In it are verses basic or fundamental (of established meaning); they are the foundation of the Book: others are allegorical. But those in whose hearts is perversity follow the part thereof that is allegorical, seeking discord, and searching for its hidden meanings, but no one knows its hidden meanings except Allah. And those who are firmly grounded in knowledge say: "We believe in the Book; the whole of it is from our Lord:" and none will grasp the Message except men of understanding. "Our Lord!" (they say), "Let not our hearts deviate now after Thou hast guided us, but grant us mercy from Thine own Presence; for Thou art the Grantor of bounties without measure.”

The prayer taught by God following the verse of *muḥkamāt* obviously indicates the dangerous methodological consequences for those who ignore the governing universals. According to Ibn ‘Āshūr, *muḥkamāt* is essential principles of Islamic faith, law, ethics and teachings.¹⁵⁴ Many jurists, like the classic al-Shāṭibī and the contemporary al-Qaraḍāwī, stressed the fundamental of discerning universals before examining the Islamic Law. For example, al-Shāṭibī explained the pre-eminence of

¹⁵⁴ Ibn ‘Āshūr, *al-Taḥrīr wa al-Tanwīr*. p. 3/155

universal principles over particular texts,¹⁵⁵ while al-Qaradāwī named it ‘combining between the particular texts and the universal purposive principles’.¹⁵⁶

One of the essential features of these universals is that they cannot be abrogated as they are supreme and governing the understanding and interpretation of the Islamic scriptures. Considering that the majority of the revealed verses in the Meccan phase was universal in principles, it can be implied that there were only a few abrogations. However, in reality, there should not be any abrogation to the universals, even though it is rationally possible.¹⁵⁷ Explaining further, al-Shāṭibī argues that the statement can be concluded by thoroughly employing inductive reasoning.¹⁵⁸ The reasoning and its significance are briefly explained in the 1.4. Furthermore, the universals are deemed certain and unambiguous as well as general and central before apprehending the Islamic Law.¹⁵⁹

To better understand, it should be noted that what is meant by universals are two. Firstly, those enunciated explicitly in the Islamic scriptures, and those derived through the inductive process. The first can be exemplified by the 4:58:

"Allah doth command you to render back your Trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things."

¹⁵⁵ Al-Shāṭibī, al-*Muwāfaqāt*. p. 3/219-220

¹⁵⁶ Al-Qaradāwī, *Dirāsāt fī Fiqh al-Maqāṣid*. p. 135.

¹⁵⁷ Al-Shāṭibī, op. cit. p. 3/90.

¹⁵⁸ Ibid., p. 3/91.

¹⁵⁹ Ibid., p. 3/221.

As for the second, they are those which are arrived at through an inductive reading of several specific texts and rulings, such as the preservation of the essentials, exigencies, and embellishments, as well as all the general objectives of the Law and overarching principles of the jurisprudence, such as, for example, the principle according to which "Necessity ends the forbidden permissible," and "Hardship brings ease."¹⁶⁰

Meanwhile, what is meant by the particulars is evidence pertaining to specific issues, such as a verse which conveys such-and-such a meaning, or a Prophetic hadith which serves as evidence in favour of certain ruling on certain question, or particular instances of analogical reasoning.¹⁶¹

2.2.2 (a) Conciliation Between Universals and Particulars

Another minor role of *Maqāṣid* approach is conciliation between particular texts and universals of which ‘superficial contradiction’ occurs in the mind of scholars in their investigating of Islamic scriptures. If that happens, the particulars should be interpreted in light of the universals or neglected if that is more apt in certain situation.¹⁶²

¹⁶⁰ Al-Raysūnī, *Naẓariyat al-Maqāṣid ‘ind al-Imām al-Shāṭibī*. p. 369-370.

¹⁶¹ Ibid., p. 370.

¹⁶² Al-Shāṭibī, *al-Muwāfaqāt*. p. 3/220-222.

Accordingly, one of the underlying conditions before interpreting the Islamic scriptures is ensuring the compatibility of the interpretation with the highest objectives of the *Shari'ah* that are universal. In this regard, besides insisting the wisdom of *Shari'ah* as essential in interpreting the texts, al-Durayni even stressed that the most accurate interpretation of texts gained from the utilizing of *Maqāṣid* before interpreting them.¹⁶³ Since the role of conciliation is the essential impact of the relation between universals and particulars, then a holistic perspective should be highlighted in examining the universal levels as well as the relation between general and specific purposes.

2.2.2.2 Finding Answers for The Newly Emerging Issues

Besides that, the other minor role of *Maqāṣid* approach is that universals help to find answers for contemporary emerging issues. Considering this, al-'Izz explains that if someone seeks to know the ruling of killing ant and bee, then he can find the answer in the 99:7-8 of the Quran as God says:

“Then shall anyone who has done an atom's weight of good, see it! And anyone who has done an atom's weight of evil, shall see it.”

The same goes for the verse 2:205:

“But Allah loveth not mischief.”

¹⁶³ Al-Durayni, *al-Manāḥij al-Uṣūliyyah*. p. 171-172.

Besides, anyone who interests to know the ruling of giving water to dog, and killing snake and scorpion, then he can find the answer in the 99:7-8.¹⁶⁴

To exemplify the insight of al-'Izz in the realm of family, it should be noted that any means relating to family-related matters that serve the universal meaning of the 99:7-8, are considered good, even though the means are not explicitly prescribed in the Islamic scriptures. Otherwise, it is considered as part of evil. As for the 2:205, any mischief in the familial matters is deemed as prohibited. Thus, it is easy to understand that Islam is opposing domestic violence, and any attempts to justify the act by misinterpreting the Islamic scriptures are unislamic.

Meanwhile, the statement pointed out by al-'Izz shows that there are several issues raised by him.

1. Firstly, there are universal principles and rulings in the Quran that could be found in many verses; for instance, the depicted verses as cited.

It is essential to acknowledge that the universals should not be limited to a certain number as the preeminent source of Islam, namely Quran is opened to be read and reread. In this regard, despite categorizing the universals into four major groups, al-Raysūni contends that it is concluded based on his thorough research. Hence he agrees the possibility to add groups as well as the universals in other studies.¹⁶⁵

¹⁶⁴ Ibn 'Abd al-Salām, *Shajarat al-Ma'ārif wa al-Aḥwāl*, p. 225.

¹⁶⁵ Al-Raysūni, *al-Kulliyāt al-Asāsiyyah li al-Sharī'at al-Islāmiyyah*, p. 73.

Bin Bayyah also concurs this opinion as he states that great *Maqāṣid* is open to be added and should not be restricted as mentioned before.

2. Secondly, the universals could be referred to find answers for new issues, as demonstrated in the earlier outline.

It has a close relationship with the principle of *maṣāliḥ mursalah* as the universals govern it. The principle has been applied for cases where no particular texts are affirming nor denying the ‘Islamicity’ of the interests (*masalih*) for some instances. Facing such cases, jurists of different schools employ the principle at various levels, including Hanafī and Shafī’i that have been claimed of refusing it, as academically affirmed by scholars.¹⁶⁶

Considering the significance of the universals, al-Shāṭibi states, if *ijtihād* is employed for discerning sources of benefit and harm regardless of what particular texts have to say, or is based on some ruling which is accepted by all on the authority of a scholar who has already engaged in *ijtihād* based on particular texts, this does not require knowledge of the Arabic language. Instead, all it requires is a complete, detailed knowledge of the purposes of the Lawgiver.¹⁶⁷

The fact that the universals governing the application of *al-masalih al-mursalah* is to avoid any attempts seeking to misuse the principle by providing solutions contradict the purposes of *Shari’ah*. Besides, the universals encourage people to creatively seek

¹⁶⁶ Hasan, *Naẓariyat al- Maṣlahah fī al-Fiqh al-Islāmī*. p. 588 and 326-388.

¹⁶⁷ Al-Shāṭibi, *al-Muwāfaqāt*. p. 4/491.

the best solutions and finding the aptest answers for their challenges and issues. Moreover, there are various levels of universals, and they are interrelated. An example is the first part of the Quranic verse in 16:90:

“Allah commands justice, the doing of good, and liberality to kith and kin ...”

Apparently, there are three universals mentioned in it which are ‘justice’, ‘doing of good’ and ‘liberality to kith and kin’. The universality feature of both the first and second are clearly understood as they constitute of many principles and branches, including the third specifically referred. Other than the reason that people worry not to forget about their kiths and kin,¹⁶⁸ the liberality also consists of particulars like doing good to parents and spending for their family. Thus, in this respect, it can be deemed universal too, but, unlike the first and second, its universality is lower than them.¹⁶⁹

2.2.3 Supervising the Realization of *Maqāṣid*

The third significant role of *Maqāṣid* approach is a reference in practising and operating the Islamic rulings. Despite having particular understanding agreed upon, it is still essential to refer to *Maqāṣid* before engaging in *ijtihād* and issuing legal decisions. In fact, this role is in line with one of the main concepts in the *Maqāṣid al-Sharī‘ah* named *i‘tibār al-ma‘ālāt* (consideration of outcomes), al-Shāṭibi establishes the foundation for this principle, saying:

¹⁶⁸ Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*. p. 14/256.

¹⁶⁹ Al-Raysūni, *al-Kullīyyāt al-Asāsiyyah li al-Sharī‘at al-Islāmiyyah*. p. 34-36.

“Heeding the outcomes of actions is consistent with the higher objectives of the Law, whether the actions concerned are in accordance with the Law or in violation thereof. Therefore, the person engaging in *ijtihād* is not to judge a human action, be it one of commission or omission, until after he has given a careful thought to the consequences to which the said action will lead.”¹⁷⁰

To further explain this related role, it is divided into two sub-roles, namely *istiḥsān* and blocking and opening the means.

2.2.3 (a) *Istiḥsān*

This role is related to several principles of Islamic law, for instance, the principle of *istiḥsān* (to consider something good) that is based on the principle of *al-ma’alat* (consideration of outcomes) in the situation of avoiding the using of *qiyās* (analogy) in deriving ruling and considering other principles like *maṣlaḥah* and *’urf* (custom) in order to prevent harm and grasp benefit.¹⁷¹

In the *Uṣūl al-Fiqh* term, *istiḥsān* means turning away from a ruling derived from the principle of analogy to another ruling due to significant reason.¹⁷² Thus, obviously in case of conflicting between different rulings derived from analogy and *istiḥsān*, the

¹⁷⁰ Ibid., p. 4/517-518.

¹⁷¹ Al-Shātibī, *al-Muwāfaqāt*. p. 4/526-530.

¹⁷² Al-Zarqā’, *al-Madkhal al-Fiqhī al-’Ām*. p. 1/89.

latter should always be given priority because it cures problems stemming from the applying of analogy in some instances.¹⁷³

2.2.3 (b) Blocking and Opening the Means

Besides, the role is also related to the principle of *sadd al-dharī'ah* (blocking the means) that is deemed as one of the fundamental secondary sources of the Islamic Law, in addition to other sources namely *istihsān*, *istiṣḥab*, *maṣlaḥah mursalah*, *'urf*, *shar' man qablanā*, and *qawl al-ṣaḥābī*.¹⁷⁴ Nevertheless, while means that lead to prohibited ends should be blocked, means that lead to permissible ends should be opened. It can be simply said that the rulings of means follow the rulings of ends and purposes.¹⁷⁵

Thus, to block or to open is the result of research on how to realize *Maqāṣid* for specific issues. Sometimes, there are purposes seem to be conflicting. Hence the different levels of purposes should be discerned as well as the aptest for certain context and time. Furthermore, it should be acknowledged that in many cases, the rulings of means open to change because the obligation is to realize the intended purposes, not the means itself.

In this regard, most rulings of means (*aḥkām al-wasā'il*) supported by Islamic scriptures are not permanent but changeable. This research used the word 'most' because there are several means deemed permanent, especially things related to

¹⁷³ Ibid., p. 1/93-94

¹⁷⁴ Bin Bayyah, *Amālī al-Dilālāt*. p. 469-632

¹⁷⁵ Al-Qarāfi, *al-Furūq*. p. 2/63-64.

worship (*ta'abbudī*). For that reason, *Shari'ah* aims at the differentiation between *'ibādāt* (ritual worship) and *mu'āmalāt* (social interactions).¹⁷⁶ The insight of reconciling between the categories of permanence and change as contended by scholars, including Iqbal, is recalled here as it is related to the principle of movement in the structure of Islam namely *ijtihād* which is concerned by this role.¹⁷⁷

2.2.4 Evaluating Hadith Transmission and Text

Since hadith studies are related to the study on transmission (*sanad*) and text (*matn*), hence one of its primary focuses is a method for investigation of the conditions of transmitters to ensure the authenticity of sources attributed to the prophet. Investigating the conditions of transmitters deemed the first major part of hadith studies. This is obvious by simply looking at definitions and meanings of the terms consisting of the hadith studies' literature. In this respect, al-Tahanawi (d. 1943) elucidates that the hadith studies concerned mainly with the authenticity of hadith that eventually related to the conditions of transmitters especially on their justice (*'adālah*), retention (*ḍabt*) and memorization (*hifẓ*).¹⁷⁸

On the other hand, the statement pointed out by al-Tahanawi indicates that there is also the second major part of the studies, even though it has not been given ample attention as the former. The second part emphasizes the text of hadith. Referring to the emphasis on both transmitter and text in the hadith studies, Mohammed al-Ghazālī

¹⁷⁶ Al-Shāṭibī, *al-Muwāfaqāt*. p. 2/581.

¹⁷⁷ Iqbal, *The Reconstruction Of Religious Thought In Islam*. p. 147-148.

¹⁷⁸ Al-Tahānawī, *Qawā'id fī 'Ulūm al-Ḥadīth*. p. 31.

concludes that the scholars of hadith put five prerequisites before accepting the attribution of hadith to the Prophet. The first three of them are concerned with the study of transmitting, whereas the rest related to the text.¹⁷⁹ The three that are related to transmitting are, firstly, the transmitter of a report must have a retentive memory, secondly, must be a person of just character and pious, and thirdly, both qualities must consistently exist in the chain of transmissions. The other two which are related to the text are the report must not be outlandish, and there is no hidden defect in a report. Based on both significant parts, the fourth fundamental role of *maqāṣid* approach divided into two specific minor roles, namely text and transmission.

2.2.4 (a) Hadith Text

The impact of *Maqāṣid al-Sharī'ah* to the study of hadith text is not a new concern as many examples of the application of this approach can be seen in Muslim scholars' writing. Before providing proves of this statement, this research divided the impact to the hadith text into three. Firstly impact on extracting the underlying purposes behind the commands and prohibitions mentioned in hadith, secondly, impact on criticising the hadith text (*naqd al-matn*), and thirdly, impact on the hadith transmission.

1. Impact on Extracting the Underlying Purpose Behind the Commands and Prohibitions in Hadith

The first impact is related to the general study of *Maqāṣid* as covered in the discussions on its meaning and the previous roles. Considering that *Maqāṣid* looks for

¹⁷⁹ Al-Ghazālī, *al-Sunnat al-Nabawiyyah bayn Ahl al-Fiqh wa Ahl al-Ḥadīth*, p. 15.

the underlying purposes and rationale behind rulings as the apparent feature of the Quran and hadith,¹⁸⁰ there are many practical instances found in the prophetic age. Evidently, al-Shalabi provides numerous instances of ratiocination depicted from the Prophet himself.¹⁸¹ This proves that *Maqāṣid* have been taken into account by the Prophet.

Furthermore, in order to purposefully understand the hadith, scholars stress the importance of exploring the intents of the Prophet's actions. Therefore, al-Qarāfi differentiates between the Prophet's actions in the capacity of a conveyer of the divine message, a judge and a leader.¹⁸² Ibn 'Āshūr further identifies twelve different capacities in respect of which statements or actions would ensue from the Prophet. They include legislation, issuing edicts, adjudication, the political leadership of the state, guidance, conciliation, advice to those seeking his opinion, counselling, spiritual uplifting of people, teaching great and lofty truths, disciplining, and non-instructive ordinary statements.¹⁸³

2. Impact on Criticizing the hadith text (*naqd al-matn*)

Meanwhile, the second is concerned with the criticizing of certain hadith texts when it is deemed problematic with the purposes of *Shari'ah*. Apparently, the utilizing of *Maqāṣid* to critically investigate hadith text is acceptable among the scholars of hadith. Consequently, one of the conditions considered incumbent before accepting or

¹⁸⁰ Al-Shāṭibi, *al-Muwāfaqāt*. p. 2/334-335.

¹⁸¹ Al-Shalabi, *Ta'īl al-Aḥkām*. p. 23-34.

¹⁸² Al-Qarāfi, *al-Furūq*. p. 1/426.

¹⁸³ Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 212-226.

rejecting hadith is not contradicting with the principles of *Shari'ah* as outlined by Ibn al-Jawzi.

“If you encounter a hadith that contravenes rationality, or contradicts principles, know then that it is fabricated.”¹⁸⁴

One of the meanings of ‘contravention of rationality’ is transgression the essential concept of grasping benefit and preventing harm that is very core in the *Maqāṣid* theory. While great purposes of *Shari'ah*, like preservation of religion, life, intellect, progeny and property, is one of the meanings of word ‘principles’ mentioned by Ibn al-Jawzi.¹⁸⁵ Besides that, Ibn al-Qayyim contends that any hadith that contains corruption, injustice, vain, praising falsehood, condemning truth or such acts, then the Messenger of God has nothing to do with it.¹⁸⁶ The features mentioned are harms that are opposed to the purposes of *Shari'ah*. Hence, the role of *Maqāṣid* in criticizing hadith is generally well accepted, especially theoretically, by the scholars of this discipline itself.

Moreover, methodological speaking, certain *Maqāṣid* deemed certainty or high probability as it extracted inductively from numerous verses of al-Quran and supported by many hadiths. Al-Shāṭibī made it clear by asserting the certainty quality in many occasions of his *al-Muwāfaqāt*, for instance, he said:

“The evidences that are under consideration here, however, are based on induction by enumeration through the entire corpus of probable evidences that converge on a single

¹⁸⁴ Al-Jawzi, *al-Mawḍu'āt*. p. 1/151.

¹⁸⁵ Al-'Awni, *al-Nazar al-Maqāṣidī wa Dawābiḥuh*. p. 62.

¹⁸⁶ Ibn al-Qayyim, *al-Manār al-Munīf*. p. 57.

meaning to yield a definitive meaning.”¹⁸⁷

General *Maqāṣid* is a conclusion of a study based on inductive reasoning as stressed earlier. Some of the purposes achieve a level of certainty, thus must be given authority to examine texts in individual reports (*aḥād*) as the reports considered probable (*zanni*). For the probable reports that contravene the purpose, where there is no way to interpret it in light of the purpose, then the purpose should be prioritized over the reports.¹⁸⁸

The point may be exemplified by Aisha’s critical responses towards several companions’ reports of hadith. For instance, Aisha criticized a hadith reported saying that the woman, animal and house as evil portents. She immediately corrected the report, articulating that “Arabs of the ignorance period used to say that woman, house, and animal were the sources of bad luck”. Then, she quoted a Quranic verse, 57:22, to further confirm her stand.¹⁸⁹

“No misfortune can happen on earth or in your souls but is recorded in a decree before We bring it into existence.”

A thorough reading of Aisha's critical thinking on the report shows that equality as one of the goals of the *Shari'ah*, as well as one of the most important consequences of the universality of the *Shari'ah*, has been taken into account by her.¹⁹⁰ Otherwise, the report would violate the higher purpose, thus causing gender injustice among people.

On the other, the purpose of preservation of intellect as one of the five basic

¹⁸⁷ Al-Shāṭibī, *al-Muwāfaqāt*. p. 1/50.

¹⁸⁸ Al-‘Awnī, *al-Nazar al-Maqāṣidī wa Dawābiṭuh*. p. 59.

¹⁸⁹ Al-Zarkashī, *al-Ijābat li Irād Ma Istadrakathu ‘Ā’Ishah ‘alā al-Ṣaḥābah*. p. 115.

¹⁹⁰ Ibn ‘Āshūr, *Maqāṣid al-Sharī’ah al-Islāmiyyah*. p. 329.

necessities, as outlined before, also considered. This can be understood by contemplating the verse quoted by her to correct the report. This verse strongly opposes the false believe on superstition, as supported by several other verses, for instance, 36:18-19 as follows:

“The (people) said: "for us, we augur an evil omen from you: if ye desist not, we will certainly stone you. And a grievous punishment indeed will be inflicted on you by us." They said: "Your evil omens are with yourselves: (deem ye this an evil omen). If ye are admonished? Nay, but ye are a people transgressing all bounds!"”

The next instance is based on an essential principle pointed out by Ibn al-Qayyim, saying that hadiths that praise bachelorhood must be considered forged hadiths.¹⁹¹ Obviously, the reason behind this generalization is its conflict with one of the general purposes of *Shari'ah*, namely preservation of progeny. Evidently, describing the significance of the preservation of family, Ibn ‘Āshūr asserts that, undoubtedly, the most crucial principle underlying any legislation for the family should consist in consolidating the bonds of marriage, kinship, and in-law relationship and elucidating the ways of dissolving these three bonds if they are liable to dissolution.¹⁹²

2.2.4 (b) Hadith Transmission

In reference to the previous study on the impact of *Maqāṣid* to hadith text, there are hints or implied indication on the critical role of the *Maqāṣid* approach to evaluate hadith transmission. In this regard, Ibn ‘Āshūr contends:

¹⁹¹ Ibn al-Qayyim, *al-Manār al-Munīf*, p. 127.

¹⁹² Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, p. 430.

“Jurists need to know the higher objectives of the *Shari’ah* as criteria for the acceptance of Prophetic Traditions and for the consideration of the opinions of jurists from among the Companions and early scholars, and also in the different ways of juristic reasoning and argumentation.”¹⁹³

Ibn ‘Āshūr exemplifies this by mentioning two instances, firstly the situation where Umar refused to accept the report of Fatimah bint Qays regarding the maintenance of a woman in her waiting period, secondly, the rejection of Aisha to the report of Ibn Umar stating that a deceased person is punished because his family weeps over him.¹⁹⁴

Referring to the instances given by Ibn ‘Āshūr, it proves this research argues that the impact on hadith transmission only may be seen after examining the text. Perhaps this is also one of the characteristics of an expert in hadith studies as defined by Ibn al-Qayyim, when he answered a question about the possibility for an individual to discern forged hadith with any guideline, without looking at the transmission. Among the features are skilful in everything relevant to discipline and skilled in the life of the Prophet and his instructions, and every aspect consists of his orders, prohibitions, and messages.¹⁹⁵

One of the notable examples of this is a hadith that was reportedly said, “the best of you in the first two centuries, who has no wife nor child.” One of the prominent scholars of hadith, Abu Hatim al-Razi (d. 277 A.H) and scholars who concur with him alike judge this report as forged.

¹⁹³ Ibid., p. 188.

¹⁹⁴ Ibid., p. 188.

¹⁹⁵ Ibn al-Qayyim, *al-Manār al-Munīf*. p. 43-44.

This is so even though no transmitter claimed to be a liar. If their argument were only based on transmission, the result of their judgment would only be weak, or extremely weak, and the judgment depended on the different evaluation of hadith scholars to Rawad bin al-Jarah. However, it was judged forged after considering the text, where *Maqāṣid* had been one of the dimensions applied in the consideration as the report contravenes the purpose preservation of progeny.¹⁹⁶

In sum, as an approach that is fundamental to interpret the Islamic scriptures, it can be concluded that the *Maqāṣid* approach also has an essential role in the hadith studies, text and transmission. Besides its essential in exploring the rationale and wisdom of a hadith, *Maqāṣid* is also useful in the study of hadith text and transmission, as previously argued.

2.2.5 Revisiting Ijtihād In the Islamic Scholarship Legacy

The fifth role refers to the application of *Maqāṣid* approach in revisiting and scrutinizing the Islamic interpretations and juristic opinions in our classical texts. This role is very fundamental, especially in contemporary days, where there are many classical opinions in the Islamic scholarship heritage that were based on the different reality and context. Moreover, some of them are different from our contemporary reality and context. In one side, the responsibility of revisiting and scrutinizing is crucial in order to realize the highest objectives of *Shari'ah*. On the other side, it is

¹⁹⁶ Al-‘Awni, *al-Nazar al-Maqāṣidī wa Dawābiṭuh*. p. 62-65.

applicable as long as the focal point is the changeable interpretations and opinions without violating the permanent rulings.

Furthermore, if the *Maqāṣid* approach is deemed fundamental in understanding the ultimate source of Islam, al-Quran, as well as its illustrator, hadith, then it is easier to argue about its role in revisiting the Islamic legacy. In this respect, according to Bin Bayyah, among the essential roles of *Maqāṣid* is attaining it to strengthen weak opinion over the strong opinion. This preference to the weak opinion stemmed from the knowledge of a jurist that it is considered better for today in term of achieving the purpose of *Shari'ah*.¹⁹⁷

Moreover, the relation between *Maqāṣid* and Islamic legacy may be perceived as a dialectic relation between eternal principles and changeable applications. Different challenges need different solutions without violating the permanent messages of Islam. According to Iqbal, the ultimate spiritual basis of all life, as conceived by Islam, is eternal and reveals itself in variety and change. A society based on such a conception of reality must reconcile, in its life, the categories of permanent and change.¹⁹⁸

As a result, this concept of *Maqāṣid* approach and its significant roles are relevant in examining many issues, including the familial relation and issues as specifically concerned herein. Hopefully, by utilizing this theory, it might be helpful to offer apt solutions for problems and realizing the highest objectives of Islam in life.

¹⁹⁷ Bin Bayyah, *Maqāṣid al-Mu'āmalāt wa Marāṣid al-Wāqi'āt*. p. 119-210.

¹⁹⁸ Iqbal, *The Reconstruction Of Religious Thought In Islam*. p. 147.

Finally, after presenting the roles of *Maqāṣid* approach, this research stressed that as could be seen, some of the roles are interrelated. For instance, the fifth role can be included in all other roles in general. This research has acknowledged this interrelation, but the reason behind this specification is to highlight the primary capacity of each role, in order to avoid neglecting its function as a reason not to specify. In this respect, this can be exemplified by the famous fundamental higher purposes of Shari'ah, namely the preservation of faith, life, intellect, progeny and property. A careful reading of the preservation shows that intellect and progeny can be included as part of life. However, both are distinguished, perhaps so that its significant dimensions could be differently perceived as it needed to be so.

2.3 Specific *Maqāṣid* of Family Relations

For a better crystallization of the concept of the *Maqāṣid* approach specifically in the context of family relations, this research explores and highlights its specific purposes. In light of the meanings of *Maqāṣid* and its aforementioned roles, it set forth by focusing on two main premises

- (1) Quranic concepts related to the family, emphasizing on three related Quranic concept, *taqwā*, *usrah*, and *nasab*.
- (2) Examining the *Maqāṣid* concerning family matters based on the *taqwā* concept.

2.3.1 Selected Quranic Concepts Regarded Family

As previously outlined, there are three terms chosen to articulate the Quranic concepts regarded as family relations. The reason for the selection is that two out of three terms (*taqwā*, *usrah* and *nasab*), *taqwā* and *usrah*, are fundamental for the study of family in Islam. The former is highly concerned as the great concept for the Islamic law in general, and in the Islamic family law in particular, as further argued. Meanwhile, the latter needs no proofs of its significance to be examined differently herein as its literal meaning, ‘family’, is the best proof. The third term, *nasab*, deemed indispensable for this research as it is referred explicitly as studied in the next chapter within the study on *nasab* status of an illegitimate child in light of *Maqāṣid* approach in the Malaysian context.

In term of priority, this research primarily considered *taqwa* as the fundamental concept as the *Maqāṣid* of family relations. Then, it is followed by the term *usrah*, while *nasab* is examined in the next chapter. It is considered as part of the term *usrah* despite its particular reference in this research.

2.3.1 (a) *Taqwā*: Its Concepts and Relations with Family Matters

Taqwā is a Quranic term that has repeatedly been used in various verses, especially with regard to all the related words derived from the root word *wa-qa*, for instances *waqā*, *taqī*, *qi*, *yūqa*, *ittaqa*, *ittaqū*, *ittaqayta*, *tattaqū*, *tattaqūn*, *yattaqūn*, *al-taqwā* and

al-muttaqīn.¹⁹⁹ Based on the concordance of the Quran by Muhammad Fuad Abd al-Baqi, this research has shown that there are 258 root-word-related verses in the Quran in different places and contexts.²⁰⁰ The number confirmed what had been said by Ibn al-‘Arabi (d. 543 H) that there is no word in the Quran had been repeated more frequently than the word *al-taqwā*.²⁰¹ Ibn ‘Āshūr quotes that when he contends the essential of *taqwā* for the salvation in the hereafter.²⁰²

2.3.1 (b) *Taqwā*: From Term to Concept

The root word for *taqwā* is *waqa*, its noun, *wiqāyah*, literally means safeguarding something from what may harm and hurt it.²⁰³ Al-Aṣḥānī depicts several verses in the Quran conveying the meaning; two of them are:

“But Allah will deliver them from the evil of that Day,” [76:11]

“He will preserve them from the Penalty of the Blazing Fire.” [44:56]

The real meaning of the term *taqwā* is to make oneself wary of something he/she fears. Then, the word sometimes means ‘fear’ for the reason of naming something based on its requirements. In Islamic practice, *taqwā* is meant to protect oneself from

¹⁹⁹ Al-Bāqī, *al-Mu‘jam al-Mufahris li Alfāz al-Qur’ān al-Karīm*. p. 847-851.

²⁰⁰ Ibid.,

²⁰¹ Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*. p. 54.

²⁰² Ibid.

²⁰³ Al-Aṣḥānī, *Mufradāt Alfāz al-Qur’ān*. p. 686.

committing sin by avoiding the forbidden and doing so by omitting those acceptable things and actions.²⁰⁴

The interpretation given by al-Aṣḥānī was divided into two meanings, the literal and the Islamic, the latter obviously derived from the former. Moreover, the meaning conforms to other literature, for instance, Ibn Manzur (d. 711 H) in his *Lisān al-‘Arab*²⁰⁵ and Ibn al-Fakahani (d. 731 H) in his *al-Ghayah al-Quswa*, which illustrates the meaning and purposes of *taqwā* explicitly.²⁰⁶

One of the best reports to illustrate the meaning of ‘safeguarding’ and ‘protection’ is what was reported that Umar bin al-Khattab asked Ubay bin Kaab about *taqwā*. Ubay said, "Have you ever walked on a path that has thorns on it?" Umar said, "Yes." Ubay asked, "What did you do then?" to which Umar replied, "I rolled up my sleeves and struggled." Ubay said, "That is *taqwā*."²⁰⁷

Moreover, a modern scholar, Edward W. Lane, and the contemporary, Mir Mustansir, both are generally in line with the meaning of *taqwā* as previously outlined. Concerning the root word of *taqwā* and others that derived from it, Lane describes them by using English words like ‘preserve’, ‘guard’, ‘cautious’, ‘pious’, ‘careful’, and ‘wary’. The Islamic meaning of the word *taqwā* as described by al-Aṣḥānī can also be seen in the lexicon with a slightly different explanation.²⁰⁸ Meanwhile, Mustansir opines that *taqwā* literally means ‘wariness, restraint’. As a technical term,

²⁰⁴ Ibid.

²⁰⁵ Ibn Manẓūr, *Lisān al-‘Arab*. p. 15/401.

²⁰⁶ Al-Fākahānī, “Al-Ghāyat al-Quswā fī al-Kalām ‘alā Āyat al-Taqwā.” p. 214-215.

²⁰⁷ Ibn Kathīr, *Tafsīr al-Qur’ān al-‘Azīm*. p. 1/164.

²⁰⁸ Lane, *Arabic-English Lexicon*. p. 3059.

it is often translated ‘piety, righteousness’, but perhaps, according to him, a better translation would be ‘God-mindedness’ or ‘God-consciousness’.²⁰⁹

Consequently, based on the presented meanings, it is worth highlighting that *taqwā* should not merely be understood as a fear of God without explanation that such fear stemmed from a high interest of protecting oneself against the harmful or evil consequences of one’s conduct. Fazlur Rahman put it clearer by elucidating that ‘fear of God’ means fear of the consequences of one’s actions whether in this world or the next. In other words, it is the fear that comes from an extreme sense of responsibility, here and in the hereafter, and not the fear of a wolf or an inhuman tyrant, because the God of the Qur’ān has infinite mercy although He also exerts dire punishment in this world and the hereafter.²¹⁰

Nevertheless, it must be noticed that the term *taqwā* is not merely a simple term, for all related terms derived from the root word carry deeper meanings that support each other to form a concept. Such understanding could be seen in the interpretations of the *taqwā* represented by several of the scholars listed, for example, al-Aṣfahānī, who conspicuously proclaims the preeminence of the interpretation of the significance of Quranic words not only for the science of the Quran but for all Islamic sciences. Consequently, all jurists and Muslim philosophers rely on the meanings in their juristic and philosophical judgments, as outlined earlier.²¹¹

As a result, the meanings explained in the al-Aṣfahānī’s work is a conclusion of numerous words that originated from the same root word, as can be found easily in his

²⁰⁹ Mir, *Dictionary of Quranic Terms and Concepts*. p. 157.

²¹⁰ Rahman, *Major Themes Of The Quran*. p. 29

²¹¹ Al-Aṣfahānī, *Mufradāt Alfāz al-Qur’ān*. p. 24.

book. It can be exemplified by the citation made by this research when explaining the term *taqwā*. It is worth mentioning that revelation itself, al-Quran and the Prophet's illustration is a set of concepts. In fact, they are not isolated from each other but wonderfully systematised.²¹²

To better apprehend *taqwā* as a fundamental Quranic concept, this study supports its idea by providing several sources carrying this message. In his book on the meanings of numerous Quranic terms and its counterparts, al-Hakim al-Tirmidhi (d. 320 H) puts the term *taqwā* as a counterpart to the term *hudā* which means guidance. The reason is when the heart has inclined to the light of God, so it would be in the protection, for the meaning of *taqwā* is protection from the hell.²¹³

Obviously, the term *taqwā* is included as among the meanings conveyed by one of the essential words in the Quran, namely *hudā* as it deemed one of the primary purposes of Islam as highlighted before. This indicates the significance of *taqwā* as a core concept of Islam. Other than being a central message of the Prophet Muhammad, al-Quran recorded that many other prophets also called for *taqwā*. For simple instances, in chapter *al-shu'ara'*, Noah, Hud, Salih, Lut and Shuaib called their people to *taqwā*.

“Behold, their brother Noah said to them: "Will ye not fear (Allah)?" [26:106]

Behold, their brother Hud said to them: "Will ye not fear (Allah)? [124]

Behold, their brother Salih said to them: "Will you not fear (Allah)? [26: 142]

²¹² Busheikhi, *Dirāsāt Muṣṭalāḥiyyah*. p. 99.

²¹³ Al-Tirmidhī, *Taḥṣīl Naḥā'ir al-Qur'ān*. p. 23.

Behold, their brother Lut said to them: "Will ye not fear (Allah)? [26:161]

Behold, Shu'aib said to them: "Will ye not fear (Allah)? [26:177]

As a result, the call to *taqwā* is universal and not merely limited to the message of Prophet Muhammad (pbuh) since the Quran is regarded as preservation and continuation of the messages called by the previous messengers of God as clearly described in the 7:157 as follows:

"Those who follow the messenger, the unlettered Prophet, whom they find mentioned in their own (scriptures),- in the law and the Gospel;- for he commands them what is just and forbids them what is evil; he allows them as lawful what is good (and pure) and prohibits them from what is bad (and impure); He releases them from their heavy burdens and from the yokes that are upon them. So it is those who believe in him, honour him, help him, and follow the light which is sent down with him,- it is they who will prosper."

Other than considering *taqwā* as a universal message compassing previous messages, this study argued that there is another universality within the message of Prophet Muhammad. This universality implies the different contexts of *taqwā* related verses occur in the Quran. Apparently, the call for *taqwā* occurs both in the Meccan and Medinan phases as it occurs in the Meccan chapters like *al-A'raf* and *al-Nahl*, as well

as in the Medinan chapters like *al-Baqarah* and *Muhammad*.²¹⁴ Consequently, al-Shāṭibi spotlights a fundamental issue concerning *taqwā* as a universal concept in the Quran when he contends that the Medinan chapter, *al-Baqarah*, is the illustrator for the Meccan chapter, *al-An'am*. The latter found the bases of *taqwā*, while the former explicated it through rulings.²¹⁵

Furthermore, as a universal concept, *taqwā* is not limited to the matters of belief only, but rather compassing various fields of life. This is the reason why the messages of *taqwā* occur in various aspects of life in the Quran, as cited earlier. Ibn 'Ashūr indicates this in his interpretation of verse 2:2 of the Quran in which he explains the relationship between guidance and *taqwā*. God says:

"In it is guidance sure, without doubt, to those who fear Allah"

As a great concept of the Quran, guidance has to do with a wide range of areas of life. Therefore, some people benefit from guidance in religious matters, some in politics and governance, some in morality and virtue, and some in law and Islamic jurisprudence. All of them are considered people who mindful of God and they benefit the guidance based on their levels of *taqwā*.²¹⁶ Accordingly, the concept of *taqwā* is also concerned with the family matters as found in numerous verses of the Quran, as shown later.

²¹⁴ Al-Shay', *al-Makkī wa al-Madanī fī al-Qur'ān al-Karīm*. p. 71.

²¹⁵ Al-Shāṭibi, *al-Muwāfaqāt*. p. 3/344.

²¹⁶ Ibn 'Ashūr, *al-Tahrīr wa al-Tanwīr*. p. 1/227

2.3.1 (c) Ethical Purposes of *Taqwā*

This research emphasizes on ethical purposes of the concept of *taqwā* derived from the Quran and supported by analyses from various scholars. In light of the presented meaning of *taqwā*, this study argues that Quran's usage of the term *taqwā* itself consists of ethical dimensions that concern with the ideas of safeguarding, protecting and preserving people from any worldly or otherworldly harms as outlined before. In fact, according to the Quran, the inner torch that can enable a human being to discern between right and wrong already inspired by God into their selves, before it turned to be more evident with the guidance of God by the books He revealed and messengers He sent. This is one the meaning of verse 91:8 of which is one of the numerous verses using term *taqwā*. God says:

“And inspired it (with conscience of) what is wrong for it and (what is) right for it.”

Accordingly, the term *taqwā* in the Quran deals with the different contexts but consistently brings the ethical message of safeguarding people from harms and bad conducts. Thus, if verse 91:8 explicates the primordial state of being able to discern between right and wrong, verse 8:29 maintains by expounding that the criterion to judge between right and wrong is the result of *taqwā*.

"O ye who believe! if ye fear Allah, He will grant you a criterion (to judge between right and wrong), remove from you (all) evil (that may afflict) you, and forgive you: for Allah is the Lord of grace unbounded."

The following table contained several verses supporting the argument:

Table 1.0: Verses Relating To *Taqwā* in The Quran

Verse	Context
O mankind! worship your Lord, Who hath created you and those before you, so that ye may ward off (evil). [2:21] Say (unto them, O Muhammad): Who provideth for you from the sky and the earth, or Who owneth hearing and sight; and Who bringeth forth the living from the dead and bringeth forth the dead from the living; and Who directeth the course? They will say: Allah. Then say: Will ye not then keep your duty (unto Him)? [10:31]	Relation with God
O ye who believe! Fasting is prescribed for you, even as it was prescribed for those before you, that ye may ward off (evil); [2:183] Their flesh and their food reach not Allah, but the devotion from you reacheth Him. Thus have We made them subject unto you that ye may magnify Allah that He hath guided you. And give good tidings (O Muhammad) to the good. [22:37] The pilgrimage is (in) the well-known months, and whoever is minded to perform the pilgrimage therein (let him remember that) there is (to be) no lewdness nor abuse nor angry conversation on the pilgrimage. And whatsoever good ye do Allah knoweth it. So make provision for yourselves (Hereafter); for the best provision is to ward off evil. Therefore keep your duty unto Me, O men of understanding.	Worship
And there is life for you in retaliation, O men of understanding, that ye may ward off (evil). [2:179] The forbidden month for the forbidden month, and forbidden things in retaliation. And one who attacketh you, attack him in like manner as he attacked you. Observe your duty to Allah, and know that Allah is with those who ward off (evil). [2:194]	Preservation of life
O ye who believe! Observe your duty to Allah, and give up what remaineth (due to you) from usury, if ye are (in truth) believers. [2:278] Observe your duty to Allah. Allah is teaching you. And Allah is knower of all things. [2:282] O ye who believe! Devour not usury, doubling and quadrupling (the sum lent). Observe your duty to Allah, that ye may be successful. [3:130]	Financial Transaction

O mankind! Lo! We have created you male and female, and have made you nations and tribes that ye may know one another. Lo! the noblest of you, in the sight of Allah, is the best in conduct. Lo! Allah is Knower, Aware. [49:13] O mankind! Be careful of your duty to your Lord Who created you from a single soul and from it created its mate and from them twain hath spread abroad a multitude of men and women. Be careful of your duty toward Allah in Whom ye claim (your rights) of one another, and toward the wombs (that bare you). Lo! Allah hath been a watcher over you. [4:1] And let not your hatred of a folk who (once) stopped your going to the inviolable place of worship seduce you to transgress; but help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression, but keep your duty to Allah. Lo! Allah is severe in punishment. [5:2] O ye who believe! Be steadfast witnesses for Allah in equity, and let not hatred of any people seduce you that ye deal not justly. Deal justly, that is nearer to your duty. Observe your duty to Allah. Lo! Allah is Informed of what ye do. [5:8]	General human relations
Your women are a tilth for you (to cultivate) so go to your tilth as ye will, and send (good deeds) before you for your souls, and fear Allah, and know that ye will (one day) meet Him. Give glad tidings to believers, (O Muhammad). [2:223] And make not Allah, by your oaths, a hindrance to your being righteous and observing your duty unto Him and making peace among mankind. Allah is Hearer, Knower. [2:224] When ye have divorced women, and they have reached their term, then retain them in kindness or release them in kindness. Retain them not to their hurt so that ye transgress (the limits). He who doeth that hath wronged his soul. Make not the revelations of Allah a laughing-stock (by your behaviour), but remember Allah's grace upon you and that which He hath revealed unto you of the Scripture and of wisdom, whereby He doth exhort you. Observe your duty to Allah and know that Allah is Aware of all things. [2:231] If they desire to wean the child by mutual consent and (after) consultation, it is no sin for them; and if ye wish to give your children out to nurse, it is no sin for you, provide that ye pay what is due from you in kindness. Observe your duty to Allah, and know that Allah is Seer of what ye do. [2:233] O Prophet! When ye (men) put away women, put them away for their	Family relations

(legal) period and reckon the period, and keep your duty to Allah, your Lord. Expel them not from their houses nor let them go forth unless they commit open immorality. Such are the limits (imposed by) Allah; and whoso transgresseth Allah's limits, he verily wrongeth his soul. Thou knowest not: it may be that Allah will afterward bring some new thing to pass. [65:1]

Then, when they have reached their term, take them back in kindness or part from them in kindness, and call to witness two just men among you, and keep your testimony upright for Allah. Whoso believeth in Allah and the Last Day is exhorted to act thus. And whosoever keepeth his duty to Allah, Allah will appoint a way out for him. [65:2]

And for such of your women as despair of menstruation, if ye doubt, their period (of waiting) shall be three months, along with those who have it not. And for those with child, their period shall be till they bring forth their burden. And whosoever keepeth his duty to Allah, He maketh his course easy for him. [65:4]

That is the commandment of Allah which He revealeth unto you. And whoso keepeth his duty to Allah, He will remit from him his evil deeds and magnify reward for him. [65:5]

O ye who believe! Ward off from yourselves and your families a Fire whereof the fuel is men and stones, over which are set angels strong, severe, who resist not Allah in that which He commandeth them, but do that which they are commanded. [66:6]

The table provided is merely intended to demonstrate the ethical dimensions of *taqwā* in different contexts. Therefore, the depicted few verses are only to be exemplified, not to cover all the *taqwā*-related verses or to illustrate all the contexts to which they are entitled. Nevertheless, the verses themselves prove the ethical dimensions of *taqwā*, hence supporting an analysis insisting that if we search through this system for one central idea, one fundamental virtue, in which all commandments are condensed, we will find it in the notion of *taqwā*.²¹⁷ Draz's in-depth statement is in line with what al-Ghazālī defined, according to him, that all worldly and other worldly virtues are

²¹⁷ Draz, *Moral World Of The Quran*. p. 288.

likely to be combined and then integrated into the same quality called *taqwā*.²¹⁸

Concerning the fundamental of *taqwā*, Izutsu opines that the second category of ethico-religious terms is ultimately reducible to two most fundamental concepts in striking contrast to each other, absolute trust in God and pious fear of Him (*taqwā*).²¹⁹ To better understand this, it must be put in mind that he distinguished between three different categories of ethical concepts in the Quran. Firstly, those that refer to and describe the ethical nature of God, secondly, those that describe the various aspects of the fundamental attitude of man towards God, and thirdly, those that refer to the principles and rules of conduct regulating the ethical relations among individuals who belong to, and live within the religious community of Islam.²²⁰

Notwithstanding, Rahman holds an entirely different way in emphasizing the ethical dimensions of *taqwā* as he contends that such a concept is meaningful only within a social context.²²¹ In other places in his book, he refers *taqwā* in different expressions but a similar spirit, for instance, as keen moral perception and motivation,²²² moral responsibility,²²³ and inner torch which can enable one to distinguish between right and wrong, justice and injustice.²²⁴

Therefore, the ethical dimensions of *taqwā* are illustrated by the Quran itself as exemplified in the above table and strengthened by the analyses provided by various scholars. The discourse mentioned above also implicitly demonstrated that *taqwā* is also concerned with the rulings as its practical implication.

²¹⁸ Al-Ghazālī, *Minhāj al-‘Ābidīn*. p. 97.

²¹⁹ Izutsu, *Ethico Religious Concepts In The Quran*. p. 18.

²²⁰ Ibid., p. 17.

²²¹ Rahman, *Major Themes Of The Quran*. p. 37.

²²² Ibid., p. 38.

²²³ Ibid., p. 39.

²²⁴ Ibid., p. 120.

Consequently, Islamic jurisprudence is fundamental in the ethical discourse in Islam. Any moral doctrine worthy of the name is necessarily based on the idea of obligation. This is its most fundamental basis, the pivot, the nucleus around which the whole ethical system revolves, whose absence would destroy the very essence and substance of practical wisdom. For, without obligation, there is no responsibility. Without responsibility, there can be no return of justice, whence chaos, disorder and anarchy, not just *de facto*, but *de jure*, according to the so-called moral principle itself.²²⁵

2.3.1 (d) Multi-Dimensional of *Taqwā* In Family Related Verses in al-Quran

One of the crucial fields that insist on the fundamental of *taqwā* as its eminent guidance in dealing with related matters is family. Apart from the presented verses concerning *taqwā* and family relations as can be seen in the table, this research offers the following reading on two chapters of the Quran, to visualize how the concept of *taqwā* significantly appears in the verses relating to the familial relations.

(1) *Taqwā* and Familial Matters in *Sūrah al-Baqarah*

Firstly, the longest chapter in the Quran, *al-Baqarah*, contains numerous verses highlighting the significance of *taqwā* when dealing with familial rulings and matters. Concerning *al-Baqarah*, this research recalled the cited statement by al-Shāṭibi explicating that the Medinan chapter, *al-Baqarah*, is the illustrator for the Meccan chapter, *al-An'am*. The latter found the bases of *taqwā*, while the former explicated it through rulings. This included the verses concerning family-related rulings as they are part of the Medinan chapter, as extensively shown in verses 2:221-242 therein.

²²⁵ Draz, *Moral World Of The Quran*. p. 13.

In short, the verses deal with details relating to family disputes or other aspects of family life that may arise for which God's rulings and guidance have to be sought. Hence, we find the *sūrah* dealing with oaths, divorce, child bearing, breastfeeding, and so on. However, family legislation cannot endure and be effective without a firm basis of morality, faith, and piety.²²⁶

In light of the group of verses set out in verse 2:221 referring to the forbidden marriage between the Muslims and the pagans, verse 2:222 is considered the beginning of the familial verses; it began with a question to the prophet concerning the courses of women, followed by verse 2:223 calling for the order of *taqwā* in a marital relationship. And then verses 2:224-225 pointed to the preceding verse, which instructed people to have a *taqwā*-based relationship by forbidding them from misusing the name of Allah in their oaths against doing good, acting right (*taqwā*) or making peace between persons. Draz asserts the essential meaning of the verses to understand the succeeding verses better.²²⁷ Verses 2:224-225 are as follows:

And make not Allah's (name) an excuse in your oaths against doing good, or acting rightly, or making peace between persons; for Allah is One Who heareth and knoweth all things. Allah will not call you to account for thoughtlessness in your oaths, but for the intention in your hearts; and He is Oft-forgiving, Most Forbearing.

Those verses deserved an in-depth contemplating on the fundamental of *taqwā* in family relations as they are perceived prelude for the succeeding verses. This collection of verses, which is not just about the spousal relationship, but also about divorce, stressed the fundamental meaning of *taqwā* as its ethical basis. For instance,

²²⁶ Al-Ghazālī, *Naḥw al-Tafsīr al-Mawḍūʿī*. p. 20.

²²⁷ Draz, *al-Nabaʾ al-ʿAẓīm*. p. 200-201.

the verses 2:226-232 emphasised on the guidance and rulings when dealing with divorce, each of them is related, and verse 2:231 insisted *taqwā* as a general command in order to realize the reconciliation (*iṣlāḥ*), honour or equitability (*ma'rūf*), kindness (*iḥsān*) and not transgressing the limits of God (*ḥudūd Allāh*) as occurred in different verses. The verses 226-232 are as follows:

"For those who take an oath for abstention from their wives, a waiting for four months is ordained; if then they return, Allah is Oft-forgiving, Most Merciful.

But if their intention is firm for divorce, Allah heareth and knoweth all things.

Divorced women shall wait concerning themselves for three monthly periods. Nor is it lawful for them to hide what Allah Hath created in their wombs, if they have faith in Allah and the Last Day. And their husbands have the better right to take them back in that period, if they wish for reconciliation. And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them. And Allah is Exalted in Power, Wise.

A divorce is only permissible twice: after that, the parties should either hold Together on equitable terms, or separate with kindness. It is not lawful for you, (Men), to take back any of your gifts (from your wives), except when both parties fear that they would be unable to keep the limits ordained by Allah. If ye (judges) do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom. These are the limits ordained

by Allah; so do not transgress them if any do transgress the limits ordained by Allah, such persons wrong (Themselves as well as others).

So if a husband divorces his wife (irrevocably), He cannot, after that, re-marry her until after she has married another husband and He has divorced her. In that case, there is no blame on either of them if they re-unite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, which He makes plain to those who understand.

When ye divorce women, and they fulfil the term of their (*'iddat*), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things.

When ye divorce women, and they fulfil the term of their (*'iddat*), do not prevent them from marrying their (former) husbands, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course Making for) most virtue and purity amongst you and Allah knows, and ye know not."

In this regard, al-Ghazālī sharply contends that the solution for domestic problems is

based on excellent education and commitment to *taqwā*.²²⁸ The other rulings in the next verses, 2:233, 2:237 and 2:241 also bound with the eminent Quranic concept when mentioning the importance of consultation between spouses, family maintenance, rights of children, and other post-divorce duties. These are those verses:

"The mothers shall give such to their offspring for two whole years, if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be Treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way. If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them. If ye decide on a foster-mother for your offspring, there is no blame on you, provided ye pay (the mother) what ye offered, on equitable terms. But fear Allah and know that Allah sees well what ye do." [2:233]

"And if ye divorce them before consummation, but after the fixation of a dower for them, then the half of the dower (Is due to them), unless they remit it or (the man's half) is remitted by him in whose hands is the marriage tie; and the remission (of the man's half) is the nearest to righteousness. And do not forget Liberality between yourselves. For Allah sees well all that ye do." [2:237]

"For divorced women Maintenance (should be provided) on a reasonable (scale). This is a duty on the righteous." [2:241]

²²⁸ Al-Ghazālī, *Naḥw al-Tafsīr al-Mawḍūʿī*, p. 21.

(2) *Taqwā* and Familial Matters in *sūrah al Talaq*

Secondly, one of the short chapters in the Quran, namely *al-Talaq* draws attention to the principle of *taqwā* in each verse mentioning divorce and its consequences. The objectives of this chapter are to describe divorce decisions and their effects, such as cycles, child suckling, maintenance, and enabling the divorcee to live in the house. Those decisions were considered to be similar to those referred to in *al-Baqarah*. Among other objectives are indicating the wisdom behind the ruling of the period, forbidding injustice and oppression towards them, taking for a witness before marriage and divorce, and commanding consultation between parents in matters related to their children.²²⁹

The first verse itself consists of the command to *taqwā* as a warning to people from overlooking the rulings of divorce and period.²³⁰ God says:

"O Prophet! When ye (men) put away women, put them away for their (legal) period and reckon the period, and keep your duty to Allah, your Lord. Expel them not from their houses nor let them go forth unless they commit open immorality. Such are the limits (imposed by) Allah; and whoso transgresseth Allah's limits, he verily wrongeth his soul. Thou knowest not: it may be that Allah will afterward bring some new thing to pass."

²²⁹ Ibn ‘Āshūr, *al-Tahrīr wa al-Tanwīr*. p. 28/293.

²³⁰ *Ibid.*, 298.

Moreover, as usually occur in the Quran, the verses commanding people to practice *taqwā* wholeheartedly also mention the benefits that would be resulted from it as can be seen in the following verses.

“... And for those who fear Allah, He (ever) prepares a way out, And He provides for him from (sources) he never could imagine ...” [65:2-3]

“... for those who fear Allah, He will make their path easy.” [65:4]

“if any one fears Allah, He will remove his ills, from him, and will enlarge his reward.” [65:5]

Perhaps among the pearls of wisdom behind the mentioning of its benefits are highlighting the notion *taqwā* in the family relations and enhancing people to be ethical when facing the discomfort and hardship of their spousal relationship. Some various other chapters and verses enhance the argument of observing family relations in light of *taqwā*. However, this research viewed that the aforementioned is ample to stress the relation. Therefore, it should be noted that if there are social dimensions of *taqwā*,²³¹ there are also familial dimensions of *taqwā*.

2.4 Specific Purposes of Family Relations

As previously outlined, *taqwā* is related to the higher purposes of *Shari'ah* as well as its rulings. Accordingly, this research further studied the impacts of *taqwā* -based

²³¹ Rahman, *Major Themes Of The Quran*. p. 43.

reading in understanding and interpreting such verses, together with describing the purposes of *family* derived from the Islamic scriptures, eventually demonstrated the purposefulness feature of *taqwā* concerning familial rulings. The purposes are divided into four parts, namely:

- (1) the preservation of progeny,
- (2) actualization interest and avoiding injury,
- (3) care of family, and
- (4) preservation of spiritual and emotional within the family.

The reason for the selection is the universality of the intent in the light of the specificity of the family rulings. As a result, all other particular purposes are put under the mentioned purposes, as further explained. Besides, the purposes are studied in the perspective of *taqwā* Quranic concept, hence maintaining this research's consistency of recognizing the concept as preeminent in the Islamic Law, including in family-related rulings.

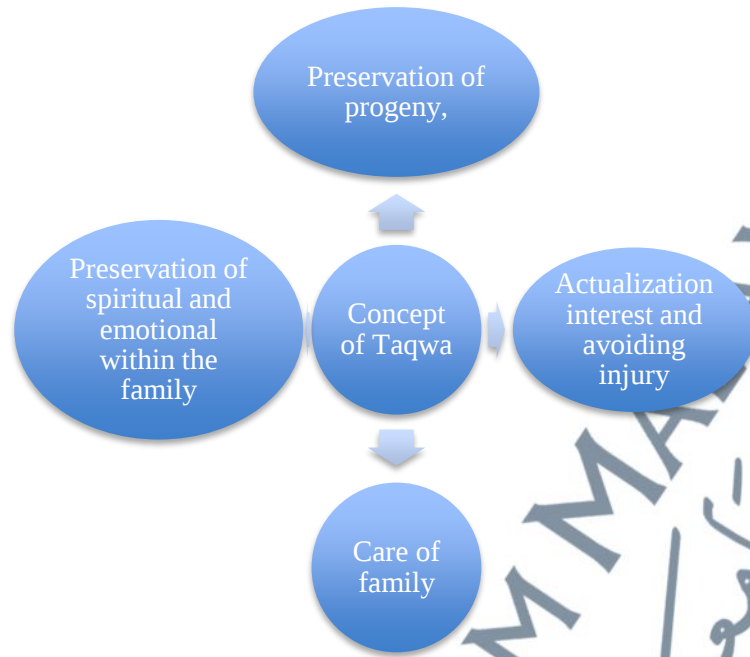


Figure 3.0: Summary of the Specific Purposes of Family Relations.

2.4.1 Preservation of Progeny

This purpose has been widely known in the Islamic literature, classical and contemporary, for its presence in the five necessities of Islam. According to al-Ghazālī, there are five interests of marriage; first is the sustainability of lineage.²³² As a result, that is also the reason why same-sex marriage is extremely prohibited in Islam, as it contributes to the vanishing of human species.²³³

Meanwhile, al-Shāṭibī considered the preservation of progeny as the primary purposes of *Shari'ah*, while the secondary purposes serve it to realize the primary.²³⁴ Therefore, in order to realize the primary purpose, the Lawgiver exhorts people to reproduction, prohibits the killing of daughters and abortion, and considers reproduction as a

²³² Al-Ghazālī, *Ihya' Ulūm al-Dīn*. p. 2/325.

²³³ Al-Shāshī, *Maḥāsīn al-Sharī'ah*. p. 594.

²³⁴ Al-Shāṭibī, *al-Muwāfaqāt*. p. 2/661-662.

requirement of marriage, hence the family planning can only be done by the agreement between both spouses.²³⁵

Moreover, because of the importance of this protection, when speaking of the relationship between the preservation of wealth for the future of children and orphans, al - Quran in 4:9 advises people not to leave behind them weak offspring, finally ends by urging people to do *taqwā*, which means to be mindful of God, for the treatment of their offspring. God says in verse 4:9 as follows:

And let those fear (in their behaviour toward orphans) who if they left behind them weak offspring would be afraid for them. So let them mind their duty to Allah, and speak justly.

Furthermore, people are commanded to protect the wealth of the orphans, and render the rights of the vulnerable children, because if they had mismanaged the responsibilities, the same fate would happen to their children in the future.²³⁶ Thus, it can be simply understood that the preservation of the orphans' wealth in the context of the verse eventually serves the preservation of progeny.

This topic is also concerned with the purpose of preservation of descent or lineal identity (*nasab*). Some people are confused between the difference of progeny (*nasl*) and lineage, accordingly assume that the level of necessity of the latter is the same as the former. Instead, according to Ibn 'Āshūr, the latter is deemed less important than the former, as there is no imperative reason for the community to know that X is the

²³⁵ Ettia, *Naḥw Taqīl Maqāṣid al-Sharī'ah*. p. 143.

²³⁶ Ibn 'Āshūr, *al-Taḥrīr wa al-Tanwīr*. p. 4/253.

offspring of Y. What is required, instead, is the life of individuals of the species and the proper management of their affairs.²³⁷

Clearly, Ibn ‘Āshūr does not deny the importance of the preservation of lineal identity. Instead, he stresses on the level of imperativeness. Thus, he further argues that uncertainty about the offspring’s relationship with their parents destroys the latter’s natural innate inclination to protect their children. Similarly, this uncertainty removes the offspring the feeling of gratitude and filial devotion towards their parents. However, this harm does not reach the level of necessity, for the mothers’ care of the children can still satisfy part of what is meant by procreation.²³⁸

The discourse on the values of marriage with a perspective to the preservation of the progeny paves the way for further study on the specific purposes of marriage. It covers all other uses that serve the purpose of necessity.

2.4.2 Actualization Interest and Avoiding Injury

It is widely agreed upon that, the underlying meaning of laying down the *Shari’ah* by the Lawgiver is that obedience and disobedience are allotted significance based on the significance of the interests and injuries arising from them.²³⁹ This principle must be applied in every area of life, including the family in which the definition of *iṣlāḥ* occurs many times, in some way using the word itself as in verses 2:228 and 4:34, or

²³⁷ Ibn ‘Āshūr, *Maqāṣid al-Sharī’ah al-Islāmiyyah*. p. 304.

²³⁸ Ibid., p.

²³⁹ Al-Shāṭibi, *al-Muwāfaqāt*. p. 2/580.

sulh which means peace or amicable settlement between themselves, specifically for a woman who fears ill-treatment or desertion from her husband, as can be seen in verse 4:128.

In the meantime, different terms have also been used to illustrate the meaning more appropriately. For example, the word *ma'rūf* used in 2:229 and 2:231 to define honour or an equal term as a necessity for those who wish to be held together. Consequently, any hurt and injury must be avoided at any cost, even verse 2:231 warns that such an act is deemed making the revelation of God a jest. God says in verse 2:231:

When ye divorce women, and they fulfil the term of their ('Iddat), either take them back on equitable terms or set them free on equitable terms; but do not take them back to injure them, (or) to take undue advantage; if any one does that; He wrongs his own soul. Do not treat Allah's Signs as a jest, but solemnly rehearse Allah's favours on you, and the fact that He sent down to you the Book and Wisdom, for your instruction. And fear Allah, and know that Allah is well acquainted with all things.

As earlier outlined, such verses demonstrate the aim of *Shari'ah* in preserving the family by giving them chances to reconcile. Nevertheless, the permissibility is bound with the requirement of equal term and avoiding harm.

Moreover, in such verses, al-Quran also reminds people never to transgress the limits imposed by God, *hudud Allah*, in order to realize their interest and avoid any kind of harm. Thus, eight out of fourteen times the word *hudud Allah* occurred in the relevant verses of marriage-divorce, of which 2:229, 2:230 and 65:1. The limits of God means all commands which obligated upon the spouses like the right of consorting each other

in kindness, and pleasant companionship.²⁴⁰ Since divorce is not inherently considered harmful, God permits people to take an interest in it, mainly when the marriage does not understand its purpose any longer.²⁴¹

In this regard, this work has drawn attention to the consideration of inequality and damage to women, not only during the process of reconciliation but also in the future. Evidently, this is the very meaning of *i'tibār al-ma'ālāt* (consideration of outcomes) as presented earlier.

Interestingly, that is one of the core meanings of *taqwā* for it does not only denote preserving oneself from the current harm, as can be related with the present discussion, yet including the future possibility harm and injustice too. Seemingly, al-Shāṭibi was aware of this meaning as he provides several proofs of his call to establish the idea of consideration of outcomes, including the proofs containing commands to be mindful of *taqwā*.²⁴² The application of this principle in examining the familial issues is highly fundamental, as shown further.

2.4.3 Care of Family

The care of family, most importantly children, is one of the fundamental purposes of marriage in Islam. Therefore marriage and divorce in Islam is not a jest, but a solemn covenant, as expressed in verse 4:21. The care of family is not only meant the physical and material, but also spiritual, emotional and educational as altogether are imposed

²⁴⁰ Al-Ṭabari, *Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān*. p. 4/148.

²⁴¹ Al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i*, 1910. p. 3/112.

²⁴² Al-Shāṭibi, *al-Muwāfaqāt*. p. 4/519-520.

by God. Accordingly, achieving harmony, affection, compassion, preservation of piety within the family, and ordering the financial aspects of the family deemed among the higher intents of *Shari'ah* pertain to the family.²⁴³

Evidently, the obligation of the maintenance is manifested in verse 2:233, in which the husband shall bear the cost of their food and clothing on equitable terms, according to his financial means. In order to prevent the post-divorce injustice, which eventually leads to the harm to the family, the command is strengthened by verses 65:6-7 that seriously orders for the care of the wife and children. Those verses are in line with the ethical message of *taqwā*, the basis for this study, and even their occurrences are also within the context as earlier outlined. The verses are as follows:

"Lodge them where ye dwell, according to your wealth, and harass them not so as to straighten life for them. And if they are with child, then spend for them till they bring forth their burden. Then, if they give suck for you, give them their due payment and consult together in kindness; but if ye make difficulties for one another, then let some other woman give suck for him (the father of the child).

Let him who hath abundance spend of his abundance, and he whose provision is measured, let him spend of that which Allah hath given him. Allah asketh naught of any soul save that which He hath given it. Allah will vouchsafe, after hardship, ease."

Interestingly, by applying the theory of connections between the verses and chapters, called *'ilm al-munāsabah*, this study discovered that the succeeded verses in the

²⁴³ Ettia, *Naḥw Taf'īl Maqāṣid al-Sharī'ah*. p. 143-147.

chapter *al-Talaq*, especially 65:8-9, warn people from the societal and civilizational evil stemmed from the injustice and harm towards their wives and families, or due to their transgression of the limits of God since the marriage is a solemn covenant, as previously outlined.

Several scholars highlight this essential societal meaning in their exegeses, for instances, Ibn 'Āshūr,²⁴⁴ Syed Qutb,²⁴⁵ and al-Ghazālī.²⁴⁶ Consequently, this thoughtful reading supports this study's argument about the ethical meaning of *taqwā*, especially the preceded and succeeded versus tacitly commanding people for *taqwā*. It also contributed to the emphasis on the civilizational aspect of family relations, as clearly outlined by Ibn' Āshūr.²⁴⁷ In this regard, the purpose of care of family is considered very important for it could lead to the societal and civilizational crisis.

Moreover, material hardship or economic disadvantage somehow contributes to the emotional and educational problem as resulted from several studies. To better explain this correlation, according to a study, economic pressure was related to parental emotional distress when children moved into preschool years. This distress was associated with observed conflict between the couple, which in turn, was associated with higher levels of observed harsh parenting. Harsh parenting during early childhood was directly related to childhood problem behaviour during middle childhood. This was true even after earlier child problem behaviour was taken into account. These results suggest that economic pressure, emotional distress, and couple

²⁴⁴ Ibn 'Āshūr, *al-Tahrīr wa al-Tanwīr*. p. 28/333.

²⁴⁵ Qutb, *fī Zilāl al-Qur'ān*. p. 6/3605.

²⁴⁶ Al-Ghazālī, *Naḥw al-Tafsīr al-Mawḍū'ī*. p. 466.

²⁴⁷ Ibn 'Āshūr, *Maqāṣid al-Sharī'ah al-Islāmiyyah*. p. 430.

conflict are associated with parenting and thus may contribute to externalizing problems in later childhood.²⁴⁸

2.4.4 Preservation of Religiosity and Emotional within the Family

The Quran repeatedly emphasizes the religiosity in different occasions of the Quran. For instance, in verse 20:132, God commands His prophet, and all believers to enjoin prayer on their household, and do keep observing it. That is among the very core features of *taqwā*, hence the verse is ended by saying that the sequel is for righteousness. The next instance is in the 66:6 in which the believers are commanded to save themselves and their families from a fire whose fuel are men and stones. The command of saving used the term '*qu*', originated from the same root word of *taqwā*, as explained before.

Several verses relating to the families of the prophets, such as Ibrahim and Jacob, have also been seen on other occasions in the Quran to be relevant spiritual elements within the family. In verse 2:132, both said to their sons that Allah has chosen for them the true faith. Therefore they should not die except in the faith of Islam. Consequently, several scholars hold that the preservation of personal piety in the family should be classed among the essentials.²⁴⁹

Regarding the emotional, it is meant as the tranquillity, love and mercy as mentioned altogether in verse 30:21. In order to achieve this objective, it is forbidden to combine

²⁴⁸ Neppi, "The Effects of Economic Hardship: Testing the Family Stress Model over Time." p. 12-21.

²⁴⁹ Ettia, *Naḥw Taf'īl Maqāṣid al-Sharī'ah*. p. 146

the two sisters and the sisters of the parents to marriage at the same time as is clearly stated in verse 4:23. The purpose of marriage, principally, is to actualize harmony and connection. Since combining leads to violating the purpose, there is no reason to permit it.²⁵⁰

Moreover, these purposes differentiate between the sexual desire between human and animal species. Ibn ‘Āshūr articulates this, saying, while sexual desire between the males and females of animal species is satisfied instinctively, human beings, soon after their creation realized the motives and ends as well as concomitants of the sexual act. They found in the combination of all the senses of love and affection, tenderness and mercy, cooperation and procreation, complementarity and unity, the grounds paving the way for the formation of family units, households, and the establishment of kinship ties, tribes, peoples and nations. Throughout all this, they discerned and discovered various notions of good, righteousness, knowledge, and civility.²⁵¹

Accordingly, the purposes are related to the purpose of chastity, as meaningfully occurred in the Quran in 4:24, 5:5 and 24:33. In order to realize this purpose, marriage is ordered, and extramarital sexual intercourse is prohibited. As a result, the Prophet considered sexual intercourse between husband and wife as a charity.²⁵² The preservation of this purpose has led Muslim scholars not to hold the opinion of forbiddance the marriage of an infertile, man or woman, but only exhort it.²⁵³ In other terms, this purpose can be called as part of the intent of ordering relations between the

²⁵⁰ Al-Shāshi, *Maḥāsīn al-Sharī’ah*. p. 267.

²⁵¹ Ibn ‘Āshūr, *Maqāṣid al-Sharī’ah al-Islāmiyyah*. p. 431.

²⁵² Hajjaj, *Ṣaḥīḥ Muslim*, n.d. p. 2/697.

²⁵³ Ibn Qudāmah, *al-Mughnī*, 2008. p. 5/457.

sexes.²⁵⁴

Finally, even though this preservation could be examined in the care of family, this research studied it separately to specify its essential as highlighted in the Islamic scriptures as cited in the preceded paragraphs. Moreover, this specification is also intended to show the need to balance between the material, as presented earlier, religiosity, and emotional purposes.

2.5 Conclusion

This chapter conceptualises the meanings of *Maqāṣid al-Sharī'ah* and its relationship with the *Uṣūl al-Fiqh*, and shows the relationship between both disciplines and follows by examining *Maqāṣid* separately in light of the integration of Islamic knowledge. Moreover, this chapter then explains and elaborates the significant roles of *Maqāṣid al-Sharī'ah* including its minor roles by highlighting the primacy of the Quran, interrelating of universals and particulars, supervising the realization of *Maqāṣid*, *Maqāṣid* perspective impact on the hadith studies, and its essential role in revisiting *ijtihād* in the Islamic legacy. Thus, this chapter concludes that the *Maqāṣid* approach is deemed fundamental prior to understanding and realizing the messages of *Shari'ah*.

Finally, considering the essential of the Quranic concept, namely *taqwā*, specifically in the familial matters, the purposes of familial relations are examined in light of it. This study discovers that there are four purposes of familial rulings, namely the

²⁵⁴ Ettia, *Naḥw Taf'īl Maqāṣid al-Sharī'ah*. p. 142.

preservation of progeny, actualization interest and avoiding injury, care of family, and preservation of spiritual and emotional within the family. Each of these purposes is interrelated, and As a result, it is imperative to employ the *Maqāṣid* approach when examining Islamic law. This includes the familial matters precisely the case of *nasab* that is discussed later in the next chapter.

