THE JURISTIC CONCEPT OF AL-MAŞLAḤA WA AL-NASS: AN APPROACH TO ANALYSE THE AḤĀDĪTH NABAWĪ S.A.W

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Abstrak


Introduction

The notion of juristic concept of al-nass wa al-mašlaḥa or al-mašlaḥa wa al-nass (interchangeable terms) has been introduced concisely by Ahmad al-Raysuni and Ahmad Jamal Barut in one of sub topics of the book entitles al-Ijtihād: al-Nass, al-Wāqiʿ, al-Mašlaḥa. In the introduction to the concept of al-mašlaḥa wa al-nass, Ahmad al-Raysuni claims that the current phenomenon of discussion among Muslim jurists on the subject of al-ʿaqal (reason) in accordance with al-naqĪl (transmitted), is somewhat similar to that of mašlaḥa in connection with nass. Furthermore, in practice, he affirms that apart from the Qur’ān,

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the Hadith of the Prophet s.a.w is a living source that aims to preserve the public interest of the life of humanity.

It appears that Ahmad al-Raysuni’s arguments on the significance of the concept of al-maṣlaḥa wa al-naṣṣ is pivotal to be further examined and analysed. For this reason, some related questions may arise here; what is the significance of the juristic concept of al-maṣlaḥa wa al-naṣṣ in the study of Hādīth Nabawī? If this concept has been chosen as an approach to analyse the Ahādīth Nabawī s.a.w, thus, what is the methodology of analysis of the Ahādīth Nabawī s.a.w within the framework of the juristic concept of al-maṣlaḥa wa al-naṣṣ?

To answer to these particular questions, this article will juristically discuss some sub-topics that begin with the definition of the juristic concept of al-maṣlaḥa wa al-naṣṣ. This will be followed then by sub-topic; the significance of Tārail al-aḥkām in relation to the theory of al-maṣlaḥa wa al-naṣṣ. Within this, the methodology of analysis of the Ahādīth Nabawī s.a.w will be discussed in the sense of juristic discussion. This article will be closing with a conclusion as well as some suggestions that relate to the main topic of article.

The Definition of the Concept of al-Maṣlaḥa wa al-Naṣṣ

In order to present the definition of the term al-maṣlaḥa wa al-naṣṣ, the discussion will be divided into literal\(^2\) and technical\(^3\) definitions. The literal definition of the term al-maṣlaḥa wa al-naṣṣ, is comprised of two Arabic

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\(^2\) Lexically, ‘literal’ is an adjective word which means, a) corresponding exactly to the original; b) concerned with the basic or usual meaning of a word or phrase. To comply with the term literal definition, maṣlaḥa will be given in the original meaning, which Muslim jurists’ works have used effectively in Islamic jurisprudence. In many Arabic Muslim jurists’ works, al-Taʿrīf lughatun is used, which means ‘literal definition’.

\(^3\) The term ‘technical definition’ is used in this chapter to indicate a large number of definitions made by Muslim jurists regarding the technical terms of maṣlaḥa. Many Arabic Muslim jurists’ works use the term al-Taʿrīf ḥṣīlahan or al-Taʿrīf Sharran, which can be translated as ‘technical definition’.
words i.e. al-maṣlahā and al-nāṣṣ, and one Arabic letter, i.e. wa. The technical definition of al-maṣlahā wa al-nāṣṣ will be referred to within the scope of the elaboration and analysis made by Muslim jurists who were involved both directly and indirectly with the subject of maṣlahā in conjunction with the legal text, nāṣṣ.

a) Literal Definition

In the framework of Islamic jurisprudence, many Muslim jurists have defined the word maṣlahā on the basis of a literal rather than an etymological4 definition. To Abu al-Husayn al-Basri (d. 478H/1085M), maṣlahā means ‘goodness’ and maṣāliḥ means ‘good things’. He adds that, in Islamic jurisprudence, the term al-maṣāliḥ al-shariʿa refers to the actions, which the individual is compelled to perform in Islamic law such as ‘ibāda, (worship)5. Based on Zamakhshari’s definition, maṣlahā is referred to as naẓara fī maṣāliḥ al-muslimīn, which means: ‘he considered the things that were for the good of the Muslim’6. Ibn Manẓūr and al-Fayruzabadi define the word maṣlahā as husn al-hal, which means: ‘the good condition’7.

It is thus evident from the aforementioned that a sense of good is inherent in the term maṣlahā and that it always refers to human life, particularly Muslim life. Therefore, later Muslim jurists tend to define

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4 Etymology is the study of the origin and history of words and their meaning. In etymology definition, the root of maṣlahā is s-l-h which becomes sīlāh and means al-nafṣ. This is used to indicate that something, or a person becomes good, right and virtuous. In many Arabic dictionaries such as al-Qanūn al-Muhīt and Mukhtar al-Sīhah, the similar word maṣlahā is al-Sīlāh which is contrast with the word al-fasad means corruption and invalidity. In a rational sense, maṣlahā means ‘a means’, ‘a goal’ and ‘a cause’ which is good. For instance, a pen in the light of maṣlahā is useful for writing. In this case, a pen is a cause for the writing, which is referred to as maṣlahā.


maslaha literally as ‘benefit’ or ‘interest’ or ‘utility’ in conjunction with Sharī‘a that is concerned with human welfare and justice as well as equity. This definition concludes the examination of the literal meaning of maslaha.

In the term al-maslaha wa al-nasṣ, wa is an Arabic letter that is called hurf ‘aff, a letter which indicates a specific connection between two words. One of the main functions of the letter wa in the Arabic language is yufid al-jam‘, that is, to join two words together and form a relationship between them. In this work, it is presumed that the function of wa is to describe maslaha as being parallel with nasṣ or even as being convergent with it.

The word nasṣ or nusūṣ generally means texts, script and provision. In Islamic legal theory, nasṣ refers to a legal text. The Qur’ān has been termed a legal document, as has the Hadīth which is the second source of Islamic law after the Qur’ān. As a result, both the Qur’ān and the Hadīth are classified as nasṣ and form the primary sources of Islamic legal theory. Muslim jurists unanimously accept nasṣ as valid and accredited by the legal sources of Islamic law. It has also been termed the Quranic legislation, of which the Prophet Muhammad s.a.w was the founder; it being initially applied during the time of Mecca.

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10 Bakar, Mohd. Daud (1996), The Discernment of Maslaha in Islamic Legal Theory, in Monograﬁ Syariah, Kuala Lumpur: Academy of Islamic Studies, University of Malaya, p.103.
12 Ibid.
13 al-Dakar, Mu‘jam, p.542.
and Medina. In addition, nass is also known as dalîl, ‘evidence’ or ‘proof’ and naql, ‘transmitted’, terms that are common in juristic discussion on the subject of Islamic law. In summary, the literal definition of the word nass refers to the primary sources, either the Qur‘ān or the Hadith wherein are contained a dalîl, a naql, a legal text and a legal document for Islamic law.

b) Technical Definition

As a study of maṣlaḥa is one of the main objectives of this article, it is important to examine the definition of the term maṣlaḥa in conjunction with nass. As a starting point, al-Ghazâlî claims that the term maṣlaḥa itself has no single standard definition. This is partly due to the term itself; the meaning being sometimes very clear, sometimes less so and sometimes completely absent. Due to this ambiguity, the term has received a great deal of attention from many jurists. The views of a representative of these have been chosen as source material for this work. Al-Ghazâlî maintains that in general, maṣlaḥa is an expression for seeking manṣūra (something useful), whilst simultaneously indicating the removal of madarrah (something harmful). Juristically, he defines maṣlaḥa as the preservation of the muqṣūd, an objective of the sharî‘a which is concerned with five issues, i.e. the preservation of religion, life, intellect, lineage and property. In conjunction with nass, al-Ghazâlî defines mu‘tabara as a type of maṣlaḥa that has textual evidence in favour of its consideration, and which is therefore valid and utilizable as a legal principle for qiyaṣ. Moreover, Fakhr al-Din al-Râzî (d.606H/1209M) emphasizes that maṣlaḥa is very close to munâsib and munâsaba, which suggests ‘affinity with a strong feeling of interest’. Al-Râzî also claims that God’s commandment revealed through the text coincides with maṣlaḥa. Therefore, he claims that God’s commandment has no ‘illa, (ratio legis) and it is wrong for jurists to search for and

20 Ibid., p.284.
justify the 'illa behind it\textsuperscript{22}. To al-Shāṭībī, mašlāha means maqṣūd\textsuperscript{23}, likewise, al-Ghazālī’s point of view asserts that mašlāha was the foundation of the theory maqāṣid al-sharīʿa\textsuperscript{24}. Moreover, in collaboration with nāṣṣ, al-Shāṭībī maintains that every specific injunction of the Qur’an and the Sunna has a specific purpose or rationale or ‘illa that contributes to the achievement of general purpose, maqāṣid al-sharīʿa\textsuperscript{25}. At this stage, mašlāha is parallel with ‘illa regarding the revealing of God’s commandment to humans in the sense of mašlāha.

Ibn ‘Ashur undertakes a particular close study of the terms al-mašlāha al-qarīyya and al-mašlāha al-zanīyya\textsuperscript{26}, which is valuable as a technical definition of mašlāha in accordance with nāṣṣ. He asserts that al-mašlāha al-qarīyya means any particular common good in the light of a definitive legal text, therefore no interpretation or ta’wil can be made of it. For instance, the existence of al-mašlāha al-qarīyya on the subject of the pilgrimage which is obligatory for those who are capable of performing it\textsuperscript{27}, is made clear by the definitive nāṣṣ of the Sūra ‘Ali ‘Imrān: 97\textsuperscript{28}. The sense of mašlāha exists in this particular form of definitive nāṣṣ and is exemplified by Sūra ‘Ali ‘Imrān: 97, which

\textsuperscript{22} Ibid.
\textsuperscript{28} The full translation of Sūra ‘Ali ‘Imrān: 97: “In it are manifest signs: (for example), the Maqṣūm (place) of Abraham; whosoever enters it, he attains security. And Hajj (pilgrimage to Mecca) to the house (Kabba) is a duty that mankind owes to Allah, those who can afford the expenses (for one’s conveyance, provision and residence); and whoever disbelieves [i.e. denies Hajj (pilgrimage to Mecca), then he is a disbelievers of Allah], then Allah stands not in need of any of ‘Alāmin (mankind, jinn and all that exists)”.
See al-Hilālī, Muḥammad Taqī al-Dīn (1404H), The Translation of The Noble Qur’an In The English Language, Madinah, p.86.
concerns the condition of performing pilgrimage that is obligatory for those Muslims who are capable of it. Here, the mašlaḥa is absolutely definite, and there is no room for reinterpretation or ta'wil, particularly regarding the condition of performing pilgrimage.

Notwithstanding al-mašlaḥa al-qar'iyya as a definitive nass, the term al-mašlaḥa al-zanniyya has been defined technically by Ibn ‘Ashur as any particular common good achieved by non-definitive nass and through the process of legal reasoning on the basis of assumption, zanniyya. For example, the Hadīth, ‘no judge should be judging when he is angry’ is taken from authoritative sources such as Şahih Bukhārī and Şahih Muslim and the existence of al-mašlaḥa al-zanniyya is inherent in its content, which is concerned with improper acts of judgement such as one undertaken when angry. A second example of the process of legal reasoning on the basis of assumption, is the use of dogs to guard the homes of townsfolk who resided in dangerous locations such as Qayrawan, a town in Tunisia. The point of al-mašlaḥa al-zanniyya in this case is the Islamic ruling regarding the keeping of dogs by al-hādar (the townspeople); an action that most Maliki jurists disapprove of. As al-Sheikh Abu Muhammad b. Abi Zayd had a dog in his house, he claimed that if Imam Malik himself knew how dangerous the situation was, he would certainly have a lion guarding his house rather than just a dog.

Later jurists have offered a comprehensive definition of the term al-mašlaḥa wa al-nass. Ahmad al-Raysunī defines it as the interaction between the concept of al-mašlaḥa and al-nass (in Arabic; al-Tāʾāmul al-Maslaha maʿa al-Nuṣūṣ). He emphasises that every single nass and its ruling is intended to fulfill the mašāliḥ concerning humanity in seeking something useful (manfāʿa) or removing something harmful (mafāsīd) from their lives. In order to clarify the interaction between the concept
of *mašlaḥa* and *nass*. Ahmad al-Raysuni presents the following three methods:

(a) the criteria of *nass* in determining the existence of *mašlaḥa*

Al-Raysuni insists that belief in *nass* means belief in its supremacy and this leads to the fundamental principles such as justice, mercy and *mašālih*, for as Allah states: “And We have sent you (O Muhammad) not but as a mercy for the ālāmin (mankind, jinn and all that exists)”, 21:107. This verse indicates directly that the ultimate aim in sending the Prophet Muhammad s.a.w was an act of mercy to the ālāmin, which is connected with the subject of *mašālih*. Moreover, he supports Ibn Taymiyya’s view that most of the principles and activities in *Sharifica* that take place in the light of *nass* are directed towards achieving the concept of *mašālih*. In conclusion of this point, he claims that most *nuṣūṣ* have basic criteria that are employed to determine the value and the types of *mašlaḥa*.

(b) the interpretation of *mašlaḥa* from *nuṣūṣ*

According to al-Raysuni, the interpretation of *mašlaḥa* from *nuṣūṣ* involves the analysis and study of seeking the *maqāsid*, that is, the objective of Islamic law, by means of *nuṣūṣ*. This methodology entails an examination of every single Islamic ruling in *nuṣūṣ*, and its interpretation in conjunction with the concepts of *maqāsid* and *mašlaḥa*. He adds that by using this method, the hypothesis that ‘every single Islamic ruling is in accordance with the *mašlaḥa* can be proven juristically.

(c) the implementation of *mašlaḥa* through *nuṣūṣ*

This method is a consequence of the preceding one, whereby following the interpretation of *mašlaḥa* from *nuṣūṣ*, the implementation of *mašlaḥa* must be undertaken. It is significant to note that the basic paradigm for the implementation of *mašlaḥa* is valuable in forming an analysis of the method employed by the Prophet s.a.w and his companions. To simplify, the "Sunna-cum-Ḥadīth" is the best example of the implementation of *mašlaḥa* through *nuṣūṣ*. Al-Raysuni claims that

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there is much evidence to prove how the Prophet implemented the concept of *maslaha* during his lifetime. Therefore, the study of *Sunna* or *Hadith*, with special attention paid to the elucidation of the concept of *maslaha*, is valuable in terms of the analysis of the basic principle in the implementation of *maslaha* through *nusūs*\(^\text{37}\).

The preceding methods proposed by Ahmad al-Raysuni indicate a basic foundation for the technical definition of the term *al-maslaha wa al-nass*. These methods are also believed to further develop the elaboration of the form of *maslaha mu’tabara*, which is considered to be a fundamental principle for *maslaha* in dealing with *nass*.

In conclusion, the definition of the term *al-maslaha wa al-nass* from the various aforementioned perspectives, is clarified by the following indicator which shows a framework explaining its concept. This model depicts the initial parallel nature of *maslaha* and *nass*, which becomes a convergence at the point where a legal principle is formed. At this stage, firstly, the subject of *maslaha* has been discussed in many ways as parallel with the subject of *maqāsid*, *‘illa*, *ijtihād* and *‘aqal*. Secondly, the subject of *nass* has also been discussed in many ways as parallel with the subject of the *Qurʾān*, the *Sunna*, *qaṭ‘iy* and *zanni*. Meanwhile, both of these subjects i.e. *maslaha* and *nass* are also in many ways have been examined as parallel with each others. Eventually, these two subjects become a convergence at the point, which is called as *maslaha mu’tabara* or the accredited validity of the legal principle in Islamic legal theory. In order to elaborate how the juristic concept of *al-maslaha wa al-nass* becomes an approach to analyse the *Ahādīth Nabiwi* s.a.w, thus, the next sub topic will discuss on the significance of *Ta‘lil al-ahkām* in relation to the theory of *al-maslaha wa al-nass*.

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**Al-Maslaha**

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(*al-Maqāsid*), (*‘illa*), (*ijtihād*), (*‘aqal*)

PARALLEL CONVERGENCE

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(*Qurʾān*), (*Hadith*), (*qaṭ‘iy*), (Zanni*)

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The Significance of Ţa'li̇l al-Aḥkām in Relation To The Theory of al-Maṣlaḥa wa al-Nass

It is important to know the definition of Ţa'li̇l al-Aḥkām prior to the juristic discussion regarding its relation to the theory of al-maṣlaḥa wa al-nass. Juristically, the term Ţa'li̇l al-Aḥkām is rooted in the concept of ʿilla (ratio legis), which is at the heart of Qiyās38 (analogical deduction). The Muslim jurists are in unanimous agreement that ʿilla is the effective cause in Islamic jurisprudence. Shawkānī has drawn up three alternative definitions of the term ʿilla39. Firstly, ʿilla is referred to as sabab, meaning ‘cause’; secondly, ʿilla is referred to as manāt al-ḥukm, meaning the cause of the law (ḥukm); thirdly; ʿilla is referred to as amārah al-ḥukm, meaning the sign of the law (ḥukm). When the term ʿilla becomes Ţa'li̇l al-Aḥkām al-Sharī'a, it is defined as the process of seeking the effective cause of Islamic law, particularly in the Qur'ān and the Hadīth.40

Many attempts have been made by later jurists to translate Ţa'li̇l al-Aḥkām al-Sharī'a into English. Muhammad Khalid Mas'ud, for example, takes the term Ţa'li̇l al-Aḥkām to mean ‘the determination of the cause of Divine commandments by logical and linguistic analysis’41. Again, Mohammad Hashim Kamali tends to define Ţa'li̇l al-Aḥkām as ratiocination whereby searching for the effective cause of a ruling42 is undertaken in Islamic law. On the face of it, these two approaches are apparently similar; however, Khalid Mas'ud’s definition is more juristic in that he uses the method of logical and linguistic analysis in determining the cause of Divine commandments.

The above discussion on the definition of Ta'ālīl al-Ahkām highlights its function as a method of analysis of Divine commandments particularly from the Qur'ān and the Hadīth Nabāwī. Moreover, the process of Ta'ālīl al-Ahkām becomes a crucial subject in the science of Islamic jurisprudence, due to its significance in determining the ultimate objectives of Islamic law (Maqāṣid al-Sharī‘a), public interest (Maslaha) and the wisdom at the heart of each Divine commandment (ḥikma). Indeed, Ta'ālīl al-Ahkām has become an essential process in establishing the theory of Maslaha, as 'Abdullah al-Kamali demonstrates in the Arabic version, al-Uṣūl al-Mabnīyya 'ala al-Maṣāliḥ. In other words, the process of Ta'ālīl al-Ahkām is critical in clarifying both Maqāṣid al-Sharī‘a and Maslaha through the concept of al-maslaha wa al-nass.

Some Muslim jurists paid attention to the significance of Ta'ālīl al-Ahkām in relation to the theory of al-maslaha wa al-nass. For al-Shāṭibi, Ta'ālīl al-Ahkām is part of the process istiqrā’ bi al-nuṣūṣ, (the induction into legal texts) in justifying the concept of maslaha in Islamic legal theory. The main function of the process of Ta'ālīl al-Ahkām, is seeking and finding the Maqāṣid al-Sharī‘a (the ultimate objectives of Islamic law), despite differing opinions on its validity in Islamic legal theory. Again, many later jurists, such as Muhammad Abū Zahra, are agreed that Ta'ālīl al-Ahkām is the major cause in establishing the ‘ilm al-Maqāṣid, the science of Maqāṣid. Hammadi al-'Ubaydi, for example, states that the process of Ta'ālīl al-Ahkām is a necessary condition for maslaha from al-Shāṭibi’s perspective (Dawābiḥ al-Maṣālahā ‘ind al-Shāṭibi).

46 Ibid., viii, p.391.
48 There are five qualifications of maslaha from al-Shāṭibi’s point of view: a) al-Majāl al-Zamānī means the scope of maslaha which covers wordy and hereafter, b) al-Majāl al-Mawdū‘ī means the application of the concept al-Inmīfīr, utility in Islamic legal theory, 3) The authority of Maqāṣid al-Sharī‘a, 4) Ta'ālīl al-Ahkām, 5) The priority of universality into maslaha. See al-'Ubaydi, Hammadi, (1992), al-Shāṭibi wa Maqāṣid al-Sharī‘a, Damsiyq: Dār al-Qutaibah, p.139-147.
Al-Shāṭibī adds that Ta‘lîl al-Aḥkâm may be applied in various contexts including ‘ibadâ and mûdâma, as both these concepts are referred to in the Qur’ân and the Hadîth where the sense of ta‘bbudiyya exists\(^{49}\). In this way al-Shāṭibī highlights the universality of the concept of ta‘bbudiyya, as Muhammad Khalid Mas‘ud observes: “ta‘bbud and ma‘na/maṣlaḥa (.....) are not opposite terms for al-Shāṭibī”\(^{50}\). Thus, ta‘bbud, is parallel with maṣlaḥa; the process of seeking the maqsûd and hikma in textual evidence. The concept of al-maṣlaḥa wa al-nass is thus seen to apply (together with the process of Ta‘lîl al-Aḥkâm) in seeking the maqsûd and hikma with special reference to textual evidence from the Qur‘ân and the Hadîth.

Pending detailed discussion, it is worth noting here that most of the Maliki and Hanbali jurists seem to agree that there is no distinction between the ‘illa and the Ḥikma\(^{51}\). In other words, the term ‘illa and Ḥikma are virtually interchangeable. From this perspective, the process of Ta‘lîl al-Aḥkâm has its main purpose that is to identify and justify the ‘illa and the Ḥikma by means of two indicators; firstly, the indication given by nass, (or textual evidence from the Qur‘ân and the Hadîth s.a.w)\(^{52}\) and secondly, the indication justified by Ijmā‘ (consensus). Here Ijtihād will be applied through tanqih al-manāt (isolating the ‘illa) as distinct from the other two methods referred to as takhrij al-manāt (extracting the ‘illa) and tahqīq al-manāt (ascertaining the ‘illa) respectively\(^{53}\). However, the scope of this study will limit detailed consideration to the first consideration, that is the purpose of identification and justification of ‘illa or Ḥikma within the process of


\(^{50}\) On this topic, Khalid Mas‘ud brought four characterizations of ta‘bbud by various statements, which were made by al-Shatibi. Firstly, “al-rujū‘ ila mujarrad ma ḥaddahu al-Shari‘a” (recourse only to what the Lawgiver has determined); Secondly, “al-Inqiyād li awāmir Allāh” (being bound by the commands of God); Thirdly, “ma huwa ḥaqqun illâh khāṣṣatun” (that is the exclusive right of God); Fourthly, “rājî‘un ilā ‘adamu ma‘qūliyyāt al-ma‘na (refers to the non-intelligibility of its reason). See Mas‘ūd, *Op.cit.*, p.202.


The juristic concept of Al-Maslahah Wa Al-Nass:

Ta'li’ al-Ahkām given by nass (textual evidence) of the Qur’ān and the Haddith s.a.w. The second indicator justified by Ijmā’ will therefore not be referred to in this article.

In examining how the process of Ta’li’ al-Ahkām is applied to textual evidence in the Qur’ān and the Haddith, specific methodology must be taken into application, especially the use of certain Arabic particles, such as kay-la (so as not to), li ajli (because of), li, fa, anna, li-äll, min ajli, la ‘allahu kađha, bi-sabab kađha, etc., all of which are key terms in the process of Ta’li’ al-Ahkām. Also to be considered is the application of istiqrā’ bi al-nass, (the induction to legal texts) which is also associated with the process of Ta’li’ al-Ahkām. As Ibn Qayyim and al-Shāṭibi argue, in cases where the ‘illa is not indicated by textual evidence, the process of istiqrā’ using the indication of al-kulliyat al-istiqrā’iyya (universal rules known inductively).

To give a clear example of how the process of Ta’li’ al-Ahkām and its methodology can be applied to the textual evidence of the Qur’ān and the Haddith in order to seek the ‘illa and the hikma in the light of the theory of Al-Maslahah Wa Al-Nass, the next sub topic will discuss this matter in the sense of juristic discussion.

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56 According to Hammadi al-Ubaydi, al-Shatibi was not the only jurist who introduces the process of istiqrā’ into the textual evidence but also Ibn Qayyim in his work Fīm al-Muwāqfāt, emphasizes istiqrā’ as a method of istinbāt al-Ahkām, (inferring or deducing a somewhat hidden meaning of Islamic ruling from a given text) in seeking the maslahah or the hikma. See al-Ubaydi, Op.cit., p.139.
57 ibid.
The Process of Taʿlīl al-Aḥkām and its Methodology of Analysis of Naṣṣ

a) Naṣṣ from the Qurʾān or the Ḥadīth

b) Identification of ʿilla through:
   b.1) certain associated Arabic particles
       or
   b.2) the application of al-kulliyat al-istiqrāʾiyya
       or
   b.3) seeking the ʿikma

c) Justification of the ḥukm or ruling

d) Finding the maqṣūd/maqāṣid or maṣlaha

The paradigm above signifies the significance of the juristic process of Taʿlīl al-Aḥkām and its methodology of analysis of naṣṣ; it operates within a four-step juridical methodology of sequence. Step a) begins with the selection of a particular naṣṣ from the Qurʾān or the Ḥadīth, then moves towards the process of Taʿlīl al-Aḥkām in step b. There are then three alternative processes of Taʿlīl al-Aḥkām whereby identification of ʿilla is: i) through the association of certain Arabic particles, or ii) the application of al-kulliyat al-istiqrāʾiyya, or iii) seeking the ʿikma. At the stage, the ruling or ḥukm from a particular naṣṣ can normally be justified by the preceding process. When the ʿilla or the ḥukm has been identified in step b, the process continues to the final step d, which is the finding of the maqṣūd or maqāṣid or maṣlaha.

It can be seen that there are many instances of naṣṣ (particularly from the Qurʾān and the Ḥadīth) to which the process of Taʿlīl al-Aḥkām may be applied in the framework of the steps above. As an example, these steps and processes can be applied to the Quranic text (al-Maʿida: 5:38) as follows:
a) **Nass from the Qur’an**: (al-Ma’ida: 5:38)

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\text{وَالشَّرِّقُ وَالشَّرِّقَةُ فَاقْتَفَعُوا أَيْدِي́هِمَا حَرَّاً بِمَا كَسَبُوا نَكْلاً مِّنَ اللهَ}
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Translation: As to the thief, male or female, cut off his or her hands: a punishment by way of example, from Allah, for their crime: Allah is exalted in power. Full of wisdom.

b) **The process of ta’lil al-akhkām** by using b.1) which is the identification of ‘illa through certain associated Arabic particles. From the above verse, the particle fa in the term ..... indicates two things; firstly, līl-ta’qīb (the punishment) and secondly, līl-‘illa (the cause). In this case, the particle fa indicates the cause of the punishment which logically follows the theft; thus, the thief itself is the cause of the punishment to cut off a thief’s hand according to the legislation of hudūd law. To put it clearly;

The ‘illa: the theft itself is the absolute cause according to the Quranic text (al-Ma’ida: 5:38).

c) **The Justification of hukm or ruling**: that is obligatory for the punishment of cutting off a thief’s hand in the application of hudūd law to be carried out.

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

Many Muslim jurists are unanimous in agreeing that a great number of Ḥadīth have been compiled which deal both directly and indirectly with the subject of maṣlaḥa. From the perspective of the process of ta’lil al-akhkām in the framework of the concept of al-маṣlaḥa wa al-나ṣṣ, it would therefore be useful to apply the paradigm to at least one example from the Ḥadīth, as the secondary source in Islam after the Qur’ān. To some extent, the paradigm will demonstrate how the methodology of analysis of the Ḥadīth Nabāwi can be applied to any

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text of the prophet s.a.w within the framework of the juristic concept of al-maṣlaḥa wa al-nāṣṣ.

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

َكُلُّ مُسْتَكْرِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ خَماَمٌ

Translation:
The Prophet s.a.w said, *Every intoxicant is wine and every intoxicant is forbidden.*

b) **The process of taʾlīl al-ḥaḵām** through the Ḥadīth above is clearly shown by the term muskir (intoxicant) which becomes the obvious ‘illa in the prohibition of alcohol.

c) **The justification of ḥukm or ruling:** that is forbidden to drink any kind of alcohol according to the clear nass of the Ḥadīth and from the obvious ‘illa, which is stated as muskir (intoxicant).

d) **Finding the maqṣūd/maqāṣid or maṣlaḥa:** the ruling which forbids the drinking of alcohol or any kind of intoxicant derives from both the wisdom of preserving of the efficacy of the human intellect and of preventing the dysfunctional behavior that manifest itself as a consequence of alcohol.

Thus, applying the paradigm to these two examples demonstrates clearly the application of the juristic concept of al-maṣlaḥa wa al-nāṣṣ particularly to the legal text of the Prophet s.a.w as a new approach to analyse the Ḥadīth Nabāwī s.a.w. In this paradigm, the process of taʾlīl al-ḥaḵām interlocks with the concept of al-maṣlaḥa wa al-nāṣṣ is designed to seek the effective cause (‘illa), the ruling (ḥukm) and finally in finding the ultimate purpose or objective of Islamic law.

**Conclusion**

The juristic discussion on the significance of the juristic concept of al-maṣlaḥa wa al-nāṣṣ as an approach to analyse the Aḥādīth Nabāwī s.a.w, examined in this article highlights Islamic law as dynamic law for humanity. Every single injunction of Islamic law deriving from Islamic

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legal texts such as the Ḥadīth s.a.w. has rational and reasonable sense. This conclusion has been reached through the process of taʿlīl al-aḥkām (ratiocination) of which has been designed to highlight the dynamic of Islamic law as a living law for humanity. Furthermore, through this process it can be seen that the application of Islamic law as Divine rule is based on the six constituents necessary to preserve and protect humanity; i.e. the preservation of life, religion, lineage, intellect, property and honour. Therefore, Islamic law decrees not only correct modes of worship, but also provide the basis of human fulfillment in daily life.