

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

By:

Ishak Hj. Suliaman *

Abstrak

Konsep al-Maşlahā wa al-Naşş yang diperkenalkan oleh ulama fiqh kontemporari seperti Ahmad al-Raysunī boleh dianggap sebagai satu pendekatan baru di dalam menganalisis Ḥadīth-ḥadīth Nabi s.a.w. Di dalam konsep ini, metodologi Ta'līl al-aḥkām memberi satu dimensi baru di dalam memaparkan maqāṣid dan hikmah hukum-hukum Islam yang terdapat di dalam Ḥadīth-ḥadīth Nabawī s.a.w. Bagi menghuraikan persoalan ini dengan lebih terperinci, artikel ini akan membicarakan definisi al-Maşlahā wa al-Naşş, perkaitannya dengan Ta'līl al-aḥkām, metodologi analisis dan kesimpulan yang berkaitan.

Introduction

The notion of juristic concept of *al-naşş wa al-maşlahā* or *al-maşlahā wa al-naşş* (interchangeable terms) has been introduced concisely by Ahmad al-Raysunī and Ahmad Jamal Barut in one of sub topics of the book entitles *al-Ijtihād: al-Naşş, al-Wāqī, al-Maşlahā*¹. In the introduction to the concept of *al-maşlahā wa al-naşş*, Ahmad al-Raysunī claims that the current phenomenon of discussion among Muslim jurists on the subject of *al-‘qal* (reason) in accordance with *al-naql* (transmitted), is somewhat similar to that of *maşlahā* in connection with *naşş*. Furthermore, in practice, he affirms that apart from the Qur'an,

* Dr. Ishak Hj. Suliaman, is a lecturer at the Department of al-Quran and al-Hadith, Academy of Islamic Studies, University of Malaya.

¹ See Ahmad al-Raysunī and Jamal Barut, (2002), *Al-Ijtihād: al-Naşş, al-Wāqī, al-Maşlahā*, Damsyiq: Dār al-Fikr.

the *Ḥadīth* 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-Raysunī'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 *Aḥādīth Nabawī* s.a.w, thus, what is the methodology of analysis of the *Aḥādīth 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 *Ta'līl al-aḥkām* in relation to the theory of *al-maṣlaḥa wa al-naṣṣ*. Within this, the methodology of analysis of the *Aḥādīth 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 literal² and technical³ definitions. The literal definition of the term *al-maṣlaḥa wa al-naṣṣ*, is comprised of two Arabic

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-Ta'rīf lughatan* is used, which means 'literal definition'.

See Hornby A.S. (1995), *Oxford Advanced Learner's Dictionary*, Oxford: Oxford University Press, p.393.

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-Ta'rīf Iṣṭilahan* or *al-Ta'rīf Shar'an*, which can be translated as 'technical definition'.

See Ba'albaki Ruhi, (2001), *Al-Mawrid: A Modern Arabic-English Dictionary*, Beirut: Dār El-Elm Lilmaalayin, p.118.

words i.e. *al-maşlaḥa* and *al-naşş*, and one Arabic letter, i.e. *wa*. The technical definition of *al-maşlaḥa wa al-naşş* 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 *maşlaḥa* in conjunction with the legal text, *naşş*.

a) Literal Definition

In the framework of Islamic jurisprudence, many Muslim jurists have defined the word *maşlaḥa* on the basis of a literal rather than an etymological⁴ definition. To Abu al-Husayn al-Basri (d. 478H/1085M), *maşlaḥa* means 'goodness' and *maşāliḥ* means 'good things'. He adds that, in Islamic jurisprudence, the term *al-maşāliḥ al-sharī'a* refers to the actions, which the individual is compelled to perform in Islamic law such as 'ibāda, (worship)⁵. Based on Zamakhshari's definition, *maşlaḥa* is referred to as *naẓara fī maşāliḥ 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 *maşlaḥa* as *ḥusn al-ḥal*, which means: 'the good condition'⁷.

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

⁴ Etymology is the study of the origin and history of words and their meaning. In etymology definition, the root of *maşlaḥa* is *ṣ-l-ḥ* which becomes *sīlāḥ* and means *al-naḥ*. This is used to indicate that something, or a person becomes good, right and virtuous. In many Arabic dictionaries such as *al-Qamus al-Muḥit* and *Mukhtar al-Sihah*, the similar word *maşlaḥa* is *al-Sīlāḥ* which is contrast with the word *al-fasad* means corruption and invalidity. In a rational sense, *maşlaḥa* means 'a means', 'a goal' and 'a cause' which is good. For instance, a pen in the light of *maşlaḥa* is useful for writing. In this case, a pen is a cause for the writing, which is referred to as *maşlaḥa*.

See al-Fayruzabadi, (1987), *al-Qāmus al-Muḥit*, Beirut: Muassasah al-Risalah, v.i, p.277, al-Razī, *Mukhtar*, p.448 and Hornby, *Op.cit.* v.i, p.277.

⁵ See al-Basrī, Abū al-Husayn Muhammad b. 'Alī (1964), *al-Mu'tamad fī Uşūl al-Fiqh*, Damascus: 'al-Ma'had al-'Ilmi al-Faransī li al-Dirāsah al-'Arabīyyah, v.ii, p.888.

⁶ Zamakhsharī, Abū al-Qāsim Maḥmūd b. 'Umar (n.d), *Asās al-Balāghah*, Qaherah: Dār al-Kutub al-Miṣriyyah, v.ii, p.23.

⁷ See Ibn Manẓūr, Muḥammad b. Mukarram b. 'Alī (n.d), *Lisān al-'Arab*, Beirut: Dār al-Şādir, v.ii, p.23.

maṣlaḥa literally as 'benefit' or 'interest'⁸ or 'utility'⁹ in conjunction with *Sharīʿa* that is concerned with human welfare and justice as well as equity¹⁰. This definition concludes the examination of the literal meaning of *maṣlaḥa*.

In the term *al-maṣlaḥa wa al-naṣṣ*, *wa* is an Arabic letter that is called *ḥurf ʿatf*, a letter which indicates a specific connection between two words¹¹. One of the main functions of the letter *wa* in the Arabic language is *yufīd al-jamʿ*¹², that is, to join two words together and form a relationship between them¹³. In this work, it is presumed that the function of *wa* is to describe *maṣlaḥa* as being parallel with *naṣṣ* or even as being convergent with it.

The word *naṣṣ* or *nuṣūṣ* generally means texts, script and provision¹⁴. In Islamic legal theory, *naṣṣ* refers to a legal text. The *Qurʾān* has been termed a legal document¹⁵, as has the *Ḥadīth* which is the second source of Islamic law after the *Qurʾān*. As a result, both the *Qurʾān* and the *Ḥadīth* are classified as *naṣṣ* and form the primary sources of Islamic legal theory. Muslim jurists unanimously accept *naṣṣ* as valid and accredited by the legal sources of Islamic law. It has also been termed the Quranic legislation¹⁶, of which the Prophet Muhammad s.a.w was the founder; it being initially applied during the time of Mecca

⁸ See Kamali, Mohamad Hashim (1986), *Principles of Islamic Jurisprudence*, Petaling Jaya: Pelanduk Publication, p.267.

⁹ See Bagby, Ihsan Abdul-Wajid (1986), *Utility in Classical Islamic Law: The Concept of Maslaha in Usul al-Fiqh*, Ph.D thesis, Faculty of Law, University of Michigan, p.10.

¹⁰ Bakar, Mohd. Daud (1996), *The Discernment of Maslaha in Islamic Legal Theory*, in Monograf Syariah, Kuala Lumpur: Academy of Islamic Studies, University of Malaya, p.103.

¹¹ See Baʿalbaki, *Op.cit.*, p.103.

¹² *Ibid.*

¹³ al-Dakar, *Muʿjam*, p.542.

¹⁴ Qalʿahji and Qanybi (1985), *Muʿjam Lughah al-Fuqahāʾ*, Beirut: Dār al-Nafāʾis, p.480.

¹⁵ Hallaq, Wael B. (1997), *A History of Islamic Legal Theories: An Introduction to Sunni Usul al-Fiqh*, Cambridge: Cambridge University Press, p.7.

¹⁶ Coulson, N.J., (1991), *A History of Islamic Laws*, Edinburgh: Edinburgh University Press, p.9.

and Medina. In addition, *naşş* is also known as *dalīl*, '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 *naşş* refers to the primary sources, either the *Qur'ān* or the *Hadith* wherein are contained a *dalīl*, a *naql*, a legal text and a legal document for Islamic law.

b) Technical Definition

As a study of *maşlahā* is one of the main objectives of this article, it is important to examine the definition of the term *maşlahā* in conjunction with *naşş*. As a starting point, al-Ghazālī claims that the term *maşlahā* itself has no single standard definition¹⁷. This is partly due to the term itself; the meaning being sometimes very clear, sometimes less so and sometimes completely absent¹⁸. 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-Ghazālī maintains that in general, *maşlahā* is an expression for seeking *maḥṣūḥ* (something useful), whilst simultaneously indicating the removal of *maḍarra* (something harmful). Juristically, he defines *maşlahā* as the preservation of the *maḥṣūd*, an objective of the *sharī'a* which is concerned with five issues, i.e. the preservation of religion, life, intellect, lineage and property¹⁹. In conjunction with *naşş*, al-Ghazālī defines *mu'tabara* as a type of *maşlahā* that has textual evidence in favour of its consideration, and which is therefore valid and utilizable as a legal principle for *qiyas*²⁰. Moreover, Fakhr al-Dīn al-Rāzī (d.606H/1209M) emphasizes that *maşlahā* is very close to *munāsib* and *munāsaba*, which suggests 'affinity with a strong feeling of interest'²¹. Al-Rāzī also claims that God's commandment revealed through the text coincides with *maşlahā*. Therefore, he claims that God's commandment has no *'illa*, (*ratio legis*) and it is wrong for jurists to search for and

¹⁷ al-Ghazālī, Abī Ḥāmid Muḥammad b. Muḥammad (1971), *al-Mustasfā fī 'Ilm Uṣūl*, Baghdad: Matba'ah al-Risālah, v.ii, p.72.

¹⁸ Bakar, *Op.cit.*, p.102.

¹⁹ al-Ghazālī, *Op.cit.*, v.i, p.286.

²⁰ *Ibid.*, p.284.

²¹ al-Rāzī, Fakhr al-Dīn Muḥammad b. 'Umar (1988), *al-Maḥṣūl fī 'Ilm Uṣūl al-Fiqh*, Beirut: Dār al-Kutub al-'Ilmiyyah, v.ii, p.218.

justify the ‘illa behind it²². To al-Shāṭibī, *maṣlaḥa* means *maqṣūd*²³, likewise, al-Ghazālī’s point of view asserts that *maṣlaḥa* was the foundation of the theory *maqāṣid al-sharīʿa*²⁴. Moreover, in collaboration with *naṣṣ*, al-Shāṭibī maintains that every specific injunction of the *Qurʾān* and the *Sunna* has a specific purpose or rationale or ‘illa that contributes to the achievement of general purpose, *maqāṣid al-sharīʿa*²⁵. At this stage, *maṣlaḥa* is parallel with ‘illa regarding the revealing of God’s commandment to humans in the sense of *maṣlaḥa*.

Ibn ‘Ashur undertakes a particular close study of the terms *al-maṣlaḥa al-qatʿiyya* and *al-maṣlaḥa al-ẓanniyya*²⁶, which is valuable as a technical definition of *maṣlaḥa* in accordance with *naṣṣ*. He asserts that *al-maṣlaḥa al-qatʿiyya* means any particular common good in the light of a definitive legal text, therefore no interpretation or *taʿwīl* can be made of it. For instance, the existence of *al-maṣlaḥa al-qatʿiyya* on the subject of the pilgrimage which is obligatory for those who are capable of performing it²⁷, is made clear by the definitive *naṣṣ* of the *Sūra ‘Alī ‘Imrān*: 97²⁸. The sense of *maṣlaḥa* exists in this particular form of definitive *naṣṣ* and is exemplified by *Sūra ‘Alī ‘Imrān*: 97, which

²² *Ibid.*

²³ al-Shāṭibī, Abū Ishāq Ibrāhīm b. Mūsā (1994), *al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, v.ii., p.25.

²⁴ Hassan, Mohamed Fadzli (2002), *Studies on the Principles and Theory of Maqasid al-Sharīʿah in the Sunni Schools With Their Application to Malaysia Law*, Ph.D thesis, University of Birmingham, p.138.

²⁵ al-Shāṭibī, *Op.cit.*, p.322.

²⁶ See Ibn ‘Ashūr, al-Tāhir (1998), *Maqāṣid al-Sharīʿah al-Islāmiyyah*, Petaling Jaya: al-Basāʾir, p.12.

²⁷ al-Kamali, ‘Abdullah Yahya (2000), *Min Fiqh al-Muwāzana bayna al-Maṣāliḥ al-Sharīyya*, Beirut: Dār Ibn Hazm, p.12.

²⁸ The full translation of *Sura ‘Āli ‘Imran*: 97: “In it are manifest signs; (for example), the *Maqam* (place) of Abraham; whosoever enters it, he attains security. And *Hajj* (pilgrimage to Mecca) to the house (*Kaʿba*) 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 ‘*Ālamin* (mankind, jinn and all that exists)”. See al-Hilālī, Muḥammad Taqī al-Dīn (1404H), *The Translation of The Noble Qurʾan 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 *maşlahā* is absolutely definite, and there is no room for reinterpretation or *ta'wil*, particularly regarding the condition of performing pilgrimage.

Notwithstanding *al-maşlahā al-qat'iyya* as a definitive *naşş*, the term *al-maşlahā al-ẓanniyya* has been defined technically by Ibn 'Ashur as any particular common good achieved by non-definitive *naşş* and through the process of legal reasoning on the basis of assumption, *ẓanniyya*²⁹. For example, the *Ḥadīth*, 'no judge should be judging when he is angry'³⁰ is taken from authoritative sources such as *Ṣaḥīḥ Bukhārī* and *Ṣaḥīḥ Muslim* and the existence of *al-maşlahā al-ẓanniyya* 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 Tunisia³¹. The point of *al-maşlahā al-ẓanniyya* in this case is the Islamic ruling regarding the keeping of dogs by *al-ḥaḍar* (the townspeople); an action that most Maliki jurists disapprove of. As al-Sheikh 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 house³² rather than just a dog.

Later jurists have offered a comprehensive definition of the term *al-maşlahā wa al-naşş*. Ahmad al-Raysunī defines it as the interaction between the concept of *al-maşlahā* and *al-naşş* (in Arabic; *al-Ta'āmul al-Maşlahi ma'a al-Nuṣūṣ*)³³. He emphasises that every single *naşş* and its ruling is intended to fulfill the *maşāliḥ* concerning humanity in seeking something useful (*manfa'a*) or removing something harmful (*mafasid*) from their lives. In order to clarify the interaction between the concept

²⁹ See Ibn 'Ashūr, *Op.cit.*, p.168.

³⁰ The text of the *Ḥadīth*:

حَدِيثُ أَبِي بَكْرَةَ عَنْ أَبِيهِ قَالَ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ:
لَا يَقْضِي الْقَاضِي وَهُوَ غَضَبَانُ

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

³¹ See al-Nadawī (1994), *al-Qawā'id al-Fiqhiyyah*, Damsyiq: Dār al-Qalam, p.359

³² See al-Kamali, *Op.cit.*, p.14.

³³ al-Raysunī, *Op.cit.*, p.49.

of *maṣlaḥa* and *naṣṣ*, Ahmad al-Raysunī presents the following three methods:

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

Al-Raysunī insists that belief in *naṣṣ* means belief in its supremacy and this leads to the fundamental principles such as justice, mercy and *maṣāliḥ*, for as Allah states; "And We have sent you (O Muhammad) not but as a mercy for the 'Alāmin (mankind, jinn and all that exists)", 21:107³⁴. This verse indicates directly that the ultimate aim in sending the Prophet Muhammad s.a.w was an act of mercy to the 'Alāmin, which is connected with the subject of *maṣāliḥ*. Moreover, he supports Ibn Taymiyya's view that most of the principles and activities in *Sharī'a* that take place in the light of *naṣṣ* are directed towards achieving the concept of *maṣāliḥ*. In conclusion of this point, he claims that most *nuṣūṣ* have basic criteria that are employed to determine the value and the types of *maṣlaḥa*³⁵.

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

According to al-Raysunī, the interpretation of *maṣlaḥa* from *nuṣūṣ* involves the analysis and study of seeking the *maqāṣid*, that is, the objective of Islamic law, by means of *nuṣūṣ*. This methodology entails an examination of every single Islamic ruling in *nuṣūṣ*, and its interpretation in conjunction with the concepts of *maqāṣid* and *maṣlaḥa*. He adds that by using this method, the hypothesis that 'every single Islamic ruling is in accordance with the *maṣlaḥa* can be proven juristically³⁶.

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

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

³⁴ See al-Hilālī, *Op.cit.*, p.441.

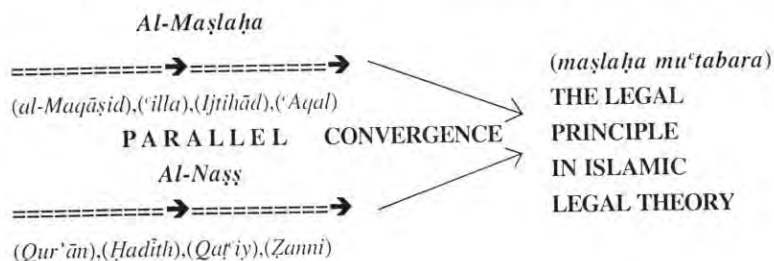
³⁵ al-Raysunī, *Op.cit.*, pp.50-52.

³⁶ *Ibid.*, pp.53-54.

there is much evidence to prove how the Prophet implemented the concept of *maşlahā* during his lifetime. Therefore, the study of *Sunna* or *Ḥadīth*, with special attention paid to the elucidation of the concept of *maşlahā*, is valuable in terms of the analysis of the basic principle in the implementation of *maşlahā* through *nuşūş*³⁷.

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

In conclusion, the definition of the term *al-maşlahā wa al-naşş* 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 *maşlahā* and *naşş*, which becomes a convergence at the point where a legal principle is formed. At this stage, firstly, the subject of *maşlahā* has been discussed in many ways as parallel with the subject of *maqāṣid*, *'illa*, *ijtihād* and *'aql*. Secondly, the subject of *naşş* has also been discussed in many ways as parallel with the subject of the *Qur'ān*, the *Sunna*, *qaṭ'iy* and *ẓanni*. Meanwhile, both of these subjects i.e. *maşlahā* and *naşş* 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 *maşlahā mu'tabara* or the accredited validity of the legal principle in Islamic legal theory. In order to elaborate how the juristic concept of *al-maşlahā wa al-naşş* becomes an approach to analyse the *Aḥādīth Nabāwī* s.a.w, thus, the next sub topic will discuss on the significance of *Ta'līl al-aḥkām* in relation to the theory of *al-maşlahā wa al-naşş*.



³⁷ *Ibid.*, pp.55-58.

The Significance of *Ta'līl al-Aḥkām* in Relation To The Theory of *al-Maṣlaḥa wa al-Naṣṣ*

It is important to know the definition of *Ta'līl al-Aḥkām* prior to the juristic discussion regarding its relation to the theory of *al-maṣlaḥa wa al-naṣṣ*. Juristically, the term *Ta'līl al-Aḥkām* is rooted in the concept of '*illa* (*ratio legis*), which is at the heart of *Qiyās*³⁸ (analogical deduction). The Muslim jurists are in unanimous agreement that '*illa* is the effective cause in Islamic jurisprudence. Shawkānī has drawn up three alternative definitions of the term '*illa*³⁹. Firstly, '*illa* is referred to as *sabab*, meaning 'cause'; secondly, '*illa* is referred to as *manāṭ al-ḥukm*, meaning the cause of the law (*ḥukm*); thirdly, '*illa* is referred to as *amārah al-ḥukm*, meaning the sign of the law (*ḥukm*). When the term '*illa* becomes *Ta'līl 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 *Ḥadīth*⁴⁰.

Many attempts have been made by later jurists to translate *Ta'līl al-Aḥkām al-Sharī'a* into English. Muhammad Khalid Mas'ūd, for example, takes the term *Ta'līl 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 *Ta'līl 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'ūd's definition is more juristic in that he uses the method of logical and linguistic analysis in determining the cause of Divine commandments.

³⁸ Shalibī, Muḥammad Muṣṭafā (1981), *Ta'līl al-Aḥkām*, Beirut: Dār al-Nahdah, pp.112-128; and al-'Unqarī (1408), *Ta'līl al-Aḥkām al-Syarī'ah: Dirāsah wa Taṭbīq*, Ph.D thesis, University of Muhammad ibn Sa'ud al-Islamiyya, p.34

³⁹ al-Shawkānī, Muḥammad b. 'Alī (1999), *Irshād al-Fuḥūl ila Taḥqīq al-Ḥaq min 'Ilm al-Uṣūl*, Beirut: Dār al-Kutub al-'Ilmiyyah, p.207.

⁴⁰ al-'Unqarī. *Op.cit.*, p.33.

⁴¹ Mas'ūd, Muḥammad Khālīd (1995), *Shatibi's Philosophy of Islamic Law*, Islamabad: Islamic Research Institute, p.284.

⁴² Kamali, Mohamad Hashim (1989), *Principles of Islamic Jurisprudence*, Petaling Jaya: Pelanduk Publication, p.420.

The above discussion on the definition of *Ta'līl al-Aḥkām* highlights its function as a method of analysis of Divine commandments particularly from the *Qur'ān* and the *Ḥadīth Nabāwī*. Moreover, the process of *Ta'līl al-Aḥkām* becomes a crucial subject in the science of Islamic jurisprudence, due to its significance in determining the ultimate objectives of Islamic law (*Maqāṣid al-Sharī'a*), public interest (*Maṣlaḥa*) and the wisdom at the heart of each Divine commandment (*ḥikma*). Indeed, *Ta'līl al-Aḥkām* has become an essential process in establishing the theory of *Maṣlaḥa*, as 'Abdullah al-Kamālī demonstrates in the Arabic version, *al-Uṣūl al-Mabnīyya 'ala al-Maṣāliḥ*⁴³. In other words, the process of *Ta'līl al-Aḥkām* is critical in clarifying both *Maqāṣid al-Sharī'a* and *Maṣlaḥa* through the concept of *al-maṣlaḥa wa al-naṣṣ*.

Some Muslim jurists paid attention to the significance of *Ta'līl al-Aḥkām* in relation to the theory of *al-maṣlaḥa wa al-naṣṣ*. For al-Shāṭibī, *Ta'līl al-Aḥkām* is part of the process *istiqrā' bi al-nuṣūṣ*, (the induction into legal texts) in justifying the concept of *maṣlaḥa* in Islamic legal theory⁴⁴. The main function of the process of *Ta'līl al-Aḥkām*, is seeking and finding the *Maqāṣid al-Sharī'a* (the ultimate objectives of Islamic law)⁴⁵, despite differing opinions on its validity in Islamic legal theory⁴⁶. Again, many later jurists, such as Muḥammad Abū Zahra, are agreed that *Ta'līl al-Aḥkām* is the major cause in establishing the 'ilm *al-Maqāṣid*, the science of *Maqāṣid*⁴⁷. Hammadi al-'Ubaydi, for example, states that the process of *Ta'līl al-Aḥkām* is a necessary condition for *maṣlaḥa* from al-Shāṭibī's perspective (*Ḍawābiḥ al-Maṣālaḥa 'ind al-Shāṭibī*).⁴⁸

⁴³ al-Kamālī, *Op.cit.*, p.79.

⁴⁴ al-Shāṭibī, *Op.cit.*, v.ii, p.315.

⁴⁵ *Ibid.*, v.iii, p.146.

⁴⁶ *Ibid.*, v.iii, p.391.

⁴⁷ Abū Zahra, Muḥammad, (1997), *Uṣūl al-Fiqh*, Qaherah: Dār al-Fikr, p.293;

⁴⁸ There are five qualifications of *maṣlaḥa* from al-Shāṭibī's point of view: a) *al-Majāl al-Zamānī* means the scope of *maṣlaḥa* which covers worldly and hereafter, b) *al-Majāl al-Mawḍi'ī* means the application of the concept *al-Intifā'*, utility in Islamic legal theory, 3) The authority of *Maqāṣid al-Sharī'a*, 4) *Ta'līl al-Aḥkām*, 5) The priority of universality into *maṣlaḥa*.

See al-'Ubaydi, Hammadi, (1992), *al-Shāṭibī wa Maqāṣid al-Sharī'a*, Damsyiq: Dār al-Qutābah, p.139-147.

Al-Shāṭibī adds that *Taʿlīl al-Aḥkām* may be applied in various contexts including *ʿibadā* and *muʿāmalā*, as both these concepts are referred to in the *Qurʾān* and the *Ḥadīth* where the sense of *taʿbbudiyya* exists⁴⁹. In this way al-Shāṭibī highlights the universality of the concept of *taʿbbudiyya*, as Muhammad Khalid Masʿud observes: “*taʿbbud* and *maʿna/maṣlaḥa* (.....) are not opposite terms for al-Shāṭibī”⁵⁰. Thus, *taʿbbud*, is parallel with *maṣlaḥa*; the process of seeking the *maqṣūd* and *ḥikma* in textual evidence. The concept of *al-maṣlaḥa wa al-naṣṣ* is thus seen to apply (together with the process of *Taʿlīl al-Aḥkām*) in seeking the *maqṣūd* and *ḥikma* with special reference to textual evidence from the *Qurʾān* and the *Ḥadīth*.

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 *ʿilla* and the *Ḥikma*⁵¹. In other words, the term *ʿilla* and *Ḥikma* are virtually interchangeable. From this perspective, the process of *Taʿlīl al-Aḥkām* has its main purpose that is to identify and justify the *ʿilla* and the *ḥikma* by means of two indicators; firstly, the indication given by *naṣṣ*, (or textual evidence from the *Qurʾān* and the *Ḥadīth* s.a.w)⁵² and secondly, the indication justified by *Ijmāʿ* (consensus). Here *Ijtihād* will be applied through *tanqih al-manāṭ* (isolating the *ʿilla*) as distinct from the other two methods referred to as *takhrīj al-manāṭ* (extracting the *ʿilla*) and *tahqīq al-manāṭ* (ascertaining the *ʿilla*) respectively⁵³. However, the scope of this study will limit detailed consideration to the first consideration, that is the purpose of identification and justification of *ʿilla* or *ḥikma* within the process of

⁴⁹ al-Shāṭibī, *Op.cit.*, v.ii, p.51

⁵⁰ On this topic, Khalid Masʿud brought four characterizations of *taʿbbud* by various statements, which were made by al-Shatibi. Firstly, “*al-rujūʾ ila mujarrad ma ḥaddahu al-Shariʿa*” (recourse only to what the Lawgiver has determined); Secondly, “*al-Inqiyād li awāmīr Allāh*” (being bound by the commands of God); Thirdly, “*ma huwa ḥaqqun lillah khāṣṣatan*” (that is the exclusive right of God); Fourthly, “*rājiʿūn ilā ʿadamī maʿqūliyyāt al-maʿna*” (refers to the non-intelligibility of its reason). See Masʿūd, *Op.cit.*, p.202.

⁵¹ Abū Zahra, *Op.cit.*, p.188.

⁵² al-Shawkānī, *Op.cit.*, pp.210-212.

⁵³ *Ibid.*, and Kamali, *Op.cit.*, p.213.

Ta'lîl al-Aḥkām given by *naşş* (textual evidence) of the *Qur'ān* and the *Ḥadīth* 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'lîl al-Aḥkām* is applied to textual evidence in the *Qur'ān* and the *Ḥadīth*, 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), *lī, fa, anna, li-all, min ajlī, la 'allahu kadha, bi-sabab kadha*, etc., all of which are key terms in the process of *Ta'lîl al-Aḥkām*⁵⁴. Also to be considered is the application of *istiqrā' bi al-naşş*, (the induction to legal texts) which is also associated with the process of *Ta'lîl al-Aḥkām*⁵⁵. As Ibn Qayyim⁵⁶ and al-Shāṭibī⁵⁷ 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*⁵⁸ (universal rules known inductively)⁵⁸.

To give a clear example of how the process of *Ta'lîl al-Aḥkām* and its methodology can be applied to the textual evidence of the *Qur'ān* and the *Ḥadīth* in order to seek the '*illa*' and the *ḥikma* in the light of the theory of *al-maṣlaḥa wa al-naşş*, the next sub topic will discuss this matter in the sense of juristic discussion.

⁵⁴ al-Shawkānī, *Op.cit.*, p.211.

⁵⁵ al-Shāṭibī, *Op.cit.*, v.ii, p.3.

⁵⁶ According to Hammadi al-'Ubaydī, al-Shatibi was not the only jurist who introduces the process of *istiqrā'* into the textual evidence but also Ibn Qayyim in his work *Ilām al-Muwāqāt* in, emphasizes *istiqrā'* as a method of *istinbāt al-aḥkām*, (inferring or deducing a somewhat hidden meaning of Islamic ruling from a given text) in seeking the *maṣlaḥa* or the *ḥikma*. See al-'Ubaydī, *Op.cit.*, p.139.

⁵⁷ *Ibid.*

⁵⁸ Mas'ūd, *Op.cit.*, p.279.

The Process of *Ta'līl al-Aḥkām* and its Methodology of Analysis of *Nass*

- a) *Nass* from the *Qur'ān* or the *Ḥadīth*
 - ↓
- b) Identification of *'illa* through;
 - b.1) certain associated Arabic particles
 - or
 - b.2) the application of *al-kulliyat al-istiqrā'iyya*
 - or
 - b.3) seeking the *ḥikma*
 - ↓
- c) Justification of the *ḥukm* or ruling
 - ↓
- d) Finding the *maqṣūd/maqāṣid* or *maṣlaḥa*

The paradigm above signifies the significance of the juristic process of *Ta'līl al-Aḥkām* and its methodology of analysis of *nass*; it operates within a four-step juridical methodology of sequence. Step a) begins with the selection of a particular *nass* from the *Qur'ān* or the *Ḥadīth*, then moves towards the process of *Ta'līl al-Aḥkām* in step b. There are then three alternative processes of *Ta'līl al-Aḥkām* whereby identification of *'illa* is: i) through the association of certain Arabic particles, or ii) the application of *al-kulliyat al-istiqrā'iyya*, or iii) seeking the *ḥikma*. At the stage, the ruling or *ḥukm* from a particular *nass* can normally be justified by the preceding process. When the *'illa* 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 *maṣlaḥa*.

It can be seen that there are many instances of *nass* (particularly from the *Qur'ān* and the *Ḥadīth*) to which the process of *Ta'līl 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-Ma'ida*: 5:38) as follows;

- a) **Naşş from the Qur'an:** (*al-Ma'ida*: 5:38)

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءُ بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ
وَاللَّهُ عَزِيزٌ حَكِيمٌ ﴿٣٨﴾

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'lîl al-aḥkām*** 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, *lil-ta'qîb* (the punishment) and secondly, *lil-'illa* (the cause)⁵⁹. 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 *ḥudūd* 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 *ḥukm* or ruling;** that is obligatory for the punishment of cutting off a thief's hand in the application of *ḥudūd* law to be carried out.
- d) **Finding the *maqşūd/maqāşid* or *maşlahā*:** The *ḥudūd* penalty and punishment for theft is to protect the lives and properties of the people⁶⁰.

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 *maşlahā*⁶¹. From the perspective of the process of *ta'lîl al-aḥkām* in the framework of the concept of *al-maşlahā wa al-naşş*, 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

⁵⁹ al-Kindī, *Op.cit.*, p.216.

⁶⁰ Kamali, *Op.cit.*, p.208.

⁶¹ Zayd, *Op.cit.*, p.13.

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

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

كُلُّ مُسْكِرٍ خَمْرٌ وَكُلُّ مُسْكِرٍ حَرَامٌ

Translation:

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

- b) **The process of *ta'līl al-aḥkām*** 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/maqāsid* 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 alcohol⁶².

Thus, applying the paradigm to these two examples demonstrates clearly the application of the juristic concept of *al-maṣlaḥa wa al-naṣṣ* particularly to the legal text of the Prophet s.a.w as a new approach to analyse the Ḥadīth Nabāwi s.a.w. In this paradigm, the process of *ta'līl al-aḥkām* interlocks with the concept of *al-maṣlaḥa wa al-naṣṣ* 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-naṣṣ* as an approach to analyse the *Aḥādith Nabāwi* s.a.w, examined in this article highlights Islamic law as dynamic law for humanity. Every single injunction of Islamic law deriving from Islamic

⁶² al-Ghazālī, *Op.cit.*, v.1, p.286.

legal texts such as the *Ḥadīth* s.a.w. has rational and reasonable sense. This conclusion has been reached through the process of *ta'līl 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.