Islamic Principles for Biomedical Issues

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Abstract
Due to the use of biotechnology in human life processes, conventional beliefs about people and their place in the natural order are facing ethical difficulties that were unheard-of. Rigid Muslim jurists have been sceptical of the advantages of contemporary medical technology because they see them as ethically dubious and potentially dehumanising. However, others have made efforts to explain biomedical issues from an Islamic perspective. This research article aims to explore those principles that deal with biomedical issues.
Keywords: *Biomedical, ethics, istiḥsān, maqaisd, qawaid e fiqhiyah*

1. Introduction:

There has been an obvious gap in the medical and juristic opinions regarding many biomedical issues. On one side, Muslim jurists lack comprehension of complex biomedical processes. On the other side, medical experts lack an in-depth understanding of Islamic jurisprudential principles. Moreover, the official stance of governments and the juristic opinions of jurists may also differ. Sometimes, the law may exist, but it is disregarded by the society at large. Furthermore, Muslim communities are divided into three groups by the ideological legacies of the colonial era: those who firmly believe in the principles of Islam, those who give in to the influence of the secular, and finally, those who make an effort to integrate both Islamic and secular ideas. These factors affect the way Muslim communities respond to biomedical issues.

2. Literature Review:

Concerns related to biomedicine, in fact, prompt experts from the fields of religion and sociology to assess the propriety of actions. The Western perspective on these emerging problems is rooted in the seminal work of Beauchamp and Childress, as presented in their book "Principles of Biomedical Ethics." Their approach involves an inquiry into ethical norms for the evaluation of human conduct, culminating in four principles of biomedical ethics: "respect for autonomy, beneficence, non-maleficence and distributive justice."[1]

Some Muslim jurists have expressed that these principles are compatible with Islam. For example, Gemal Serour and Zaki Hasan discuss their alignment with Islamic principles. *"Principles of Health Care Ethics"* edited by Raanan Gillon in 1994 contains their research articles. Serour explores the Islamic foundation of the four principles of biomedical ethics. He adds also that a human being should not be exploited for commercial purposes.[2] Beauchamp and Childress's four biomedical ethics have been aligned with the Islamic ethical apparatus:

(i) Autonomy:

Islam places a strong value on human dignity and respect, which is emphasized by the principle of autonomy. As the vicegerent of God on earth, he is seen as the pinnacle of God's creation, and esteemed by the Almighty in comparison to all other creations.[3] His life has been given a sacred status taking it is a serious transgression that would destroy mankind, while protecting it is akin to rescuing the whole human race. [4]

Man is endowed with the capacity for reason, which allows him to use free will. He is free to choose between good and evil, and both options

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[1]Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics* (Oxford, UK: Oxford. University Press, 2001), 12

[2]Gemal I. Serour, "Islam and the Four Principles" in *Principles of Health Care Ethics*, edt. Raanan Gillon (Chichester, England: John Wiley & Sons, 1994), 77

[3]See *Al-Isrā'* 17:70

[4]See *Al-Mā'idah* 5:32

are presented to him to evaluate how he would behave in this life. He is expected to lead a life based on the conviction of sound reasoning.[5] Muslim patients are therefore autonomous, free to decide regarding their lives and health, however, this freedom is not unfettered. These choices must stay within the parameters set out by *Sharī'ah*. A Muslim, for example, cannot choose to end his life.[6]

Hasan (1994) points out the majority of developing nations, including Pakistan, are paternalist by nature, and this must be considered in any discussion of a patient's autonomy. An individual is not seen as "truly free or autonomous" in these nations when making decisions. He is dependent upon a higher authority, usually male, for his welfare. In communities that are patriarchal, a father leads a family and his judgments are deemed enforceable; in tribal societies, the chief makes decisions; and in feudal societies, a lord controls the affairs. As a result, his family's interests become more important than his own. Additionally, to protect a patient from mental trauma, the family may also ask the doctor to withhold information about irreversible diseases from the patient, overriding his right to information. [7]

(ii) **Beneficence:**

This principle aligns with the Islamic concept of *amr bi 'l-ma'rūf wa nahyī an 'l-munkar*. The Muslim community has a shared responsibility to uphold good and eradicate harm. It affects both the collective and individual levels of human life. These two qualities have become the defining features of a Muslim nation. [8]

The idea of *al-naṣīḥah*, as explained by the Prophet (upon whom be peace and greetings), perfectly captures the essence of beneficence. Religion, according to him, is *al-naṣīḥah* (sincerity). He was asked to

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[5]See *Al-Baqarah* 2:111. *Al-Anfāl* 8:42
[6]See *Al-Baqarah* 2:195
[7]K. Zaki Hasan, "Isalm and the Four Principles: a Pakistani View" in *Principles of Health Care Ethics*, edt. Raanan Gillon, (Chichester, England: John Wiley & Sons, 1994), 97-98
[8]See *Āl 'Imrān* 3:110. *Āl 'Imrān*3:104. *Luqmān* 31:17

whom? In response, he replied to Allah, His Book, His Messenger, the Muslim leaders, and the general populace.[9] *Al-naṣīḥah*, according to Lane, is a sincere advice which is good for the person who is seeking it.[10] As a result, *naṣīḥah* has a broad meaning that might be referred to as beneficence.

Al-naṣīḥah calls on medical professionals to follow an ethical code that is patient-centred rather than doctor-centred. A doctor should warn his patients against hazards of quack medicine and supernatural remedies. He should inform them on the risks and cost of treatment sincerely. He is supposed to eliminate prejudice based on gender or age. Doctors' strike for an increase in salary goes against the concept of *naṣīḥah*.[11]

(iii) **Non-maleficence:**

Maleficence is the opposite of beneficence. In the context of a moral philosophy, non-maleficence is a good quality. Preventing harm to others is more significant than promoting good toward them. This is explained by the Prophet's saying: Muslim is the one who keeps his tongue and hands from hurting Muslims.[12]In the context of doctor-patient relationship, a doctor shall not use his knowledge to harm others. He shall not provide harmful medication to anyone, or carry out risky surgery without informed consent, or recommend such advice.[13] Other types of maleficence that should be avoided by a doctor are compulsion or coercion, family shaming, financial exploitation, wilful end of life, and stopping a

[9]Muslim ibn al-Ḥajjāj, *Al-Ṣaḥīḥ* (Bayrūt: Dār Ihyā' al-Turāth al-'Arabī, n.d.), 1:74. Ḥadīth: 55

[10]Edward William Lane, *An Arabic–English Lexicon* (London: Williams & Norgate, 1863), 8: 2802

[11]Hasan, "Isalm and the Four Principles: a Pakistani View", 99

[12]Muḥammad ibn Ismā'īl al-Bukhārī, *Al-Ṣaḥīḥ* (Bayrūt: Dār Ṭawq al-Najah, 1422/2001), 1:11. Ḥadīth: 11

[13]Peter F. Omonzejele, "Obligation of non-maleficence: moral dilemma in physician-patient relationship", *Journal of Medicine and Biomedical Research* 4, no.1 (2005), 23

life support system. Generally, withholding from a patient what he needs therapeutically (therapeutic nihilism) is maleficence.[14]

Sharī'ah's ethical values and a sound reason (*fiṭrah*) determine the morality of actions. The Islamic ethical discourse is basically consequential: it is based on the consequences of actions, not on their means only. The Messenger of Allāh (upon him be peace and greeting) said: "Verily, the actions depend on their ends."[15] When there is an absolute need (*ḍarūrah*), an unlawful action can be permitted for a short term until the need ends.[16] Alternatively, a lawful action may be disallowed because it leads to unlawful consequences. This doctrine is called *al-Sadd al-dharāi'*. [17]

(iv) Justice:

This principle requires an equal distribution of benefits and burdens (distributive justice). Islamic law also places a strong emphasis on justice and fairness.[18] Islam assures all parties of justice and equitable treatment, free from prejudice or favouritism. Even while making decisions against one's family and close relatives, one must retain his impartiality.[19] It emphasizes on allocating resources fairly to those who need them. It is required by Allah to return the trusts to the rightful owners.[20] Due to its high standards of equity and justice, the Prophet Muḥammad's nation has been called *Ummah Wasaṭ*. [21] According to Lane, *Ummah Wasaṭ* means a nation that conforms to the means of justice.[22]

Distributive justice may come at odds with cost-effectiveness of a treatment. The rich can afford the cost of treatments, and the poor may be

[14]Hasan, "Isalm and the Four Principles: a Pakistani View", 100
[15]Al-Bukhārī, *Al-Ṣaḥīḥ*, 8:103 Ḥadīth: 6493
[16]See *Al-Baqarah* 2:173
[17]Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* (Oxford, UK: Oxford University Press, 2009), 23
[18]See *Al-Naḥl* 16:90
[19]See *Al-Nisā'* 4:135
[20]See *Al-Nisā'* 4:58
[21]See *Al-Baqarah* 2:143
[22]Lane, *Arabic-English Lexicon*, 8: 2942

deprived of it. To guarantee fairness, the government must step in and subsidize the process. A just doctor shall put the care of his patients above his fee. He shall set himself free from selfishness and biases. His service should be available to everyone, regardless of class, race, or creed. [23]

3. Islamic Principles for Biomedical Issues:

The basis for evaluating the legal and ethical standing of biomedical techniques is first found in the primary sources of Islamic law. Then, secondary sources of Islamic law are searched. Finally, certain jurisprudential principles are used that have been derived from the spirit of a large number of the *Sharī'ah* text. These principles align with the objectives of the *Sharī'ah.* Furthermore, certain bodies of Muslim jurists and experts of biomedicine assemble to discuss emerging biomedical challenges whose findings are published. These documents also play a significant role in aligning biomedical issues with the *Sharī'ah*. Below is an overview of the leading Islamic principles for resolving biomedical issues:

3.1. Juristic Preference (*Al-Istiḥsān*):

Istiḥsān means to consider something good, approve it or prefer it over others.[24] It is not precisely defined by early Islamic jurists although Abū Ḥanīfah, Abū Yūsuf, and Muḥammad employed it in their judgments to provide ease and prevent hardship. Its early definition was given by al-Karkhī which was followed by later jurists.[25]

Imām Sarkhasī, an illustrious Ḥanafī jurist, elucidates that *istiḥsān* is a method of examining the effcets of two legal rules and choosing the one that removes difficulty and promotes ease. In *istiḥsān*, the implications of manifest analogy (*qiyās jalī*), which is based on an apparent *'illah*, are compared to hidden analogy (*qiyās khafī*), grounded in less apparent *'illah*

[23]Hasan, "Isalm and the Four Principles: a Pakistani View", 101

[24] Lane, *An Arabic–English Lexicon*, 2:570

[25]Saim Kayadibi, *Istiḥsān: The Doctrine of Juristic Preference in Islamic Law* (Kuala Lumpur: Islamic, Book Trust, 2010), 114

derived from general principles. The manifest analogy is then set aside in favour of hidden analogy. Hence, when a jurist acts on the hidden analogy, it is *istiḥsān*, essentially a form of *qiyās*.[26] The cause (*'illah*) for *istiḥsān* is found either in the Qur'ān and the Sunnah, or in the consensus, the public interest or necessity or custom. For example, the contract of *salam* (advanced payment for goods, usually food items), *istiṣnā'* (advanced payment for manufacturing items), and *ijārah* (rent) are allowed due to *istiḥsān*. [27]

There aren't any specific Qur'ānic verses about the legal connotation of *istiḥsān* but it commands people to adhere to the best of conduct (*al-iḥsān*).[28] However, roots of this doctrine can be seen in the era of the Rightly Guided Caliphate, particularly during the time of 'Umar (may Allah be pleased with him). Notably, he halted the amputation of the hands of thieves in times of famine, recognizing the exceptional circumstances when people were suffering extreme hunger.[29] Additionally, he declared three *ṭalāq* pronouncements, all in one go, as three divorces observing that people had hastily approached divorce matters instead of exercising patience. He forbade the trade in slave mothers and limited marriages to *Ahl al-Kitāb* women to certain circumstances only.[30] Similarly, he refrained from allocating the territories of Syria and Iraq to the Companions in the interest of public welfare.[31] In all these instances, he deviated from established rules based on considerations of public interest, equity, or similar reasons.

When *istiḥsān* is supported by a tradition (*athar*) or a widely accepted custom (*'urf*), Hanafis affirm it because they believe that these

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[26] Muḥammad b. Aḥmad Al-Sarkhasī, *Al-Mabsūṭ* (Bayrūt: Dār al-Ma'rifah,1414/1993), 10:145

[27] Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (Islamabad: International Institute of Islamic, Thought, 2000), 231-233

[28] See *Al-Zumar* 39:18

[29] Nyazee, *Islamic Jurisprudence*, 120-121

[30] Hasan, "Isalm and the Four Principles: a Pakistani View", 145

[31] Kayadibi, *Istiḥsān: The Doctrine of Juristic Preference in Islamic Law,* 121

practises serve the greater good of society. For instance, they hold that sales made by give-and-take without verbal exchange (*bay' al-ta'āṭī*) are legal due to *istiḥsān* based on custom. Access to public baths on paying a set fee regardless of how much water they consume or how long they spend is another instance of breaking the rules because of local customs.[32] In accordance with *istiḥsān*, Malikis recognise the principle of *istiṣlāḥ* or *maṣlaḥah* to spare the community pain and suffering and provide it with ease and comfort.[33] On the other hand, Imām Shāfi'ī disapproves of it, viewing it as an arbitrary legal exercise. He authored a book named *Ibṭāl al-Istiḥsān* (Invalidating Istiḥsān) and added a chapter to his *Kitāb al-Umm* on the same subject. He affirms that the Qur'ān, the *Sunnah*, *ijmā'*, and *qiyās* are the only sources from which the rulings can be inferred.[34]

Istiḥsān has asserted its role in jurisprudence to resolve a number of biomedical issues, such as permission for a male doctor to examine a female patient when a female doctor is not present, authorization for organ transplantation and blood transfusions, use of drugs containing alcohol for medicinal purposes, DNA testing to determine the paternity of a disputed child, authorization for the termination of a foetus that is likely to be born with genetic defects, approval for plastic surgery to correct any deformity, removal of artificial apparatus when treatment is beyond their means and no other resource is available, etcetera.

3.2. Doctrine of Public Interest (*Maṣlaḥah*):

Imām al-Ghazālī tells that *maṣlaḥah,* in a literal sense, is to seek benefit and avoid harm. In technical terms, anything which ensures the preservation of the five objectives of *Sharī'ah* (religion, life, intellect, progeny and property) is *maṣlaḥah*.[35] *Maṣlaḥah mursalah* is a kind of extended analogy. It is used when the jurist is unable to reach a definitive

[32]Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Lahore: Punjab University Law , College, 1991), 227
[33]Hasan, "Isalm and the Four Principles: a Pakistani View", 149
[34]Kamali, *Principles of Islamic Jurisprudence*, 218
[35]Abū Ḥāmid Muḥammad b. Muḥammad al-Ghazālī, *Al-Mustaṣfā* (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1413/1993), 174

decision in the given case and there is no explicit precedent (*aṣl*) in the text. The case is called "*mursalah*" because it appears as though the text has let go of that issue. At this point, the jurist must decide the matter by considering the objectives of the entire text as a whole (*maqāṣid sharī'ah*). He needs to come up with a new principle that will address the issue at hand.

In fact, protecting the interests (*maṣāliḥ*) of individuals of all ages is the fundamental goal of Islamic law. The Lawgiver takes the benefits (*maṣāliḥ*) of mankind into account. He tells that one of His Prophet's missions includes relieving them of their burden (*iṣr*) and freeing them from the fetters (*ighlāl)* of hardship.[36] He has set for them a religion easy to follow that removes hardships.[37] He spares His people the burden of strict laws that would become intolerable to them.[38] The objective of His commandments is to relieve mankind of hardship.[39] One instance of realisation of *maṣlaḥah* is permission to perform *tayammum* while water is unavailable for ablution.[40] Since the Lawgiver facilitates ease and removes difficulty, he directs that the missed Ramadan fast be made up on other days in case of illness or travel.[41] The law of retaliation (*Qiṣāṣ*) is given for the preservation of life.[42]

The foundations of the *maṣlaḥah* concept is also present in the Prophet Muḥammad's saying, "No harm shall be inflicted or reciprocated.[43] This hadith states that it is unlawful for a Muslim to harm another Muslim, either as initiation or in retaliation. The sole option to exact revenge for injustice is to take legal action to pursue justice.[44] As a warning to those who harm or suffer others, the Prophet Muhammad adds,

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[36]See *Al-A'rāf* 7: 157
[37]*Al-Ḥajj* 22:78
[38]*Al-Ṭalāq* 65:7
[39]*Al-Nisā'* 4:28
[40]*Al-Mā'idah* 5:6
[41]*Al-Baqarah* 2:185
[42]*Al-Baqarah* 2:179
[43]Ibn Mājah, *Al-Sunan* (Bayrūt: Dār al-Kutub al-'Arabiyyah, n.d.), 2: 784. Ḥadīth: 2341
[44]Muḥammad ibn 'Alī b. Wahhāb Ibn Daqīq al-'Īd al-Qushayrī, *Sharḥ al-Arba'īn al-Nawāwiyah* (Bayrūt: Mu'sisah al-Rayān, 1424/2003), 107

"Whoever harms others, Allah will harm him; and whoever causes hardship to others, Allah will cause hardship to him."[45]

While the Companions did not use the terminology *maṣlaḥah murṣalāh*, their actions demonstrate the basis of this principle. One of the instances is the compilation of the Qur'ān. Abu Bakr ordered the compilation to safeguard the religion. To avoid any distortion in the religion, 'Uthmān burnt the earlier copies of the Qur'ān and approved one standard copy. To protect life, 'Umar's decided that in *qiṣāṣ* all those people would be subjected to death who had participated in the death of a single individual. To protect intellect, 'Alī prescribed an eighty-lash penalty to those who consumed alcohol. To protect people's property, he also held artisans accountable for anything lost while under their care.[46]

For Malikis, *maṣaliḥ murṣalāh* is a significant secondary source of law. It is recognized by Hanafis as a variant of *istiḥsān* that is predicated on *maṣlaḥah*. Considering it within the bounds of *qiyās*, the majority of Shāfi'ī accept it. Only when it is founded on upholding the five *Sharī'ah* objectives does Imām Ghazālī approve of it; otherwise, it is similar to *istiḥsān*, which he disapproves of. Nonetheless, *maṣlaḥah* is not acknowledged as a source of law by Zahiris, certain Shāfi'ī such as al-Āmadī (d. 631/1233), and some Maliki such as Ibn Ḥājib (d. 646/1248). They assert that there is no *maṣlaḥah* outside of *Sharī'ah* which is all-inclusive. The Hanbalis refer to it as *istiṣlāḥ* and affirm it as well.[47]

The *maṣlaḥah* must meet three requirements outlined by al-Ghazālī: it must not contradict *Sharī'ah*'s text or change its meaning; it must not conflict with its established principles; and it must not be strange (*gharīb*) for it, meaning that it must fulfil one of the *maqāṣid* of *Sharī'ah*.[48] When a *maṣlaḥah* fulfils these requirements, it is referred to as *maṣlaḥah mu'tabarah*. And that does not meet these three requirements is rejected

[45]Ibn Mājah, *Al-Sunan*,2: 785 Ḥadīth No. 2342
[46]Nyazee, *Islamic Jurisprudence*, 242-243
[47]Kamali, *Principles of Islamic Jurisprudence*, 244–245
[48]Nyazee, *Islamic Jurisprudence*, 241-242

and is known as *maṣlaḥah mulghā*. The third kind is *maṣlaḥah gharīb* which is neither aacepted nor denied by the Sharī'ah.[49]

Examples of *istiḥsān*'s use in medical procedures also fall under the umbrella of *maṣāliḥ murṣalāh* because of the similarities between the two.

3.3. Objectives of the Islamic Law *(Maqāṣid al-Sharī'ah)*:

The term *maqāṣid* first appeared in the tenth century in al-Ḥakīm al-Tirmidhī's work. In the eleventh century, al-Juwaynī initially suggested five categories of *maqāṣid,* namely necessities (*ḍarūrāt*), public needs (*al-ḥājah al-'āmah*), moral behaviour (*makrūmāt*), recommendations (*mandūbāt*), and things for which a reason cannot be given. He further suggested that necessities include protection of faith, soul, mind, private parts, and money.[50] His student, al-Ghazālī generally disapproves using *maṣlaḥah* as a proof except in cases where it safeguards the five fundamental objectives. This idea was further expounded upon by Al-Āmidī. In the view of the Mālikī jurist al-Qarafī, the protection of honour (*ḥifẓ al-'irḍ*) is the six essential objective because *Sharī'ah* has imposed punishment for slander (*al-qadhf*). The same was endorsed by al-Subkī.[51]

Citing numerous verses from the Qur'ān, al-Shāṭibī, the mastermind of maṣāliḥ, asserts that the objectives of the *Sharī'ah* have been determined by analysing several passages of the text through an induction process (*istiqrā'*), and as such, they are regarded as definite (*qaṭ'ī*).[52] Hence, they cannot be defined by an impulse of human reason. This is because benefits and harms are not same for everyone; they might differ with different persons and circumstances. Therefore, he believed that the Legislator has the right to identify what is in the best interests of humanity. He observes

[49] Kamali, *Principles of Islamic Jurisprudence*, 239-241

[50] Jasser Auda, *Maqāsid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach* (London: The International Institute of Islamic Thought, 2007), 17

[51] Muhammad Hashim Kamali, *Maqāsid al-Sharī'ah Made Simple* (London: The International Institute of Islamic Thought, 2008), 11-12

[52] Ibrāhīm ibn Mūsa Abū Isḥāq al-Shāṭibī, The Reconciliation of the Fundamentals of Islamic Law, trans. Imran Ahsan Khan Nyazee (Reading, UK: Garnet Publishing, 2014), 2:4

that the main goal of the *Sharī'ah* is to liberate man from the sway of his whimsical desires, enabling him to choose to serve Allah, just as he would if he didn't have it.[53]

Al-Shāṭibī, nevertheless, asserts that certain goals, including the preservation of culture, equality, and freedom, are dependent on abstract ideals (*waṣf ba'īd*). These goals are called *al-Ashbāh*. In situations where the two conflict, the *maqāṣid* take precedence over *ashbāh*. Similar to this, the public interest should be upheld when it conflicts with private interests. For example, in order to organize *jihād*, a king in need of money would impose taxes. In this case, preserving a person's wealth is not as important as protecting *dīn* and the lives of the whole community.[54]

Each objective (*maqṣad*) has a proactive (*taḥṣīl*) and a protective (*ibqā'*) aspect. The former procures the objective, while the latter protects it from destruction. For instance, *dīn* is secured by obligatory prayers and protected by *jihād*. Life is sustained by giving nourishment and protected by *ḥudud, qiṣāṣ,* and *diyyah*. Marriage secures progeny and *ḥadd* against adultery protects it. Intellect is procured by education and health and protected by *ḥadd* against consuming alcohol. Last but not least, wealth is guaranteed by legal trade and inheritance and safeguarded by *ḥadd* against robbery and theft.[55]

Jurists have divided the *maqāṣid* into three groups: Necessities (*ḍarūriyyāt*), needs (*ḥājiyyāt*) and improvements (*taḥsīniyyāt*). Necessities are necessary for an individual or a community to function, and their loss will result in chaos. Among them are the protection of religion (*dīn*), life (*nafs*), offspring (*nasl*), reason (*'aql*), and money (*māl*). While needs are not necessary by themselves, they do help necessities function well, and losing them will cause hardship. To achieve this goal, the *Sharī'ah* grants exemptions (*istithnā*) or concessions (*rukhṣah*) in matters of devotion and other areas. Improvements aim to achieve perfection and refinement in

[53] Nyazee, *Islamic Jurisprudence*, 205-206
[54]Ibid, 211-212
[55]Ibid., 207

people's behaviour. They are intended to accomplish greater ethical or moral standards, and their loss impedes the advancement of morality or spirituality. For instance, the *Sharī'ah* recommends supernumerary prayers and generosity. These objectives are listed in decreasing order. In the pursuit of the *maṣlaḥah*, the *ḍarūriyyāt* receives the greatest strength, followed by the *ḥājiyyāt*, and the *taḥsīniyyāt* receives the least strengthening. The lower interest may be given up to safeguard the greater interest if there is a conflict between the interests of two classes. When there are several competing interests and it is impossible to choose one over the other, the prevention of harm comes before the pursuit of gain.[56]

Maqāṣid have also been categorized in different ways. These can be classified as primary (*al-aṣliyyah*) or subsidiary (*al-farʿiyyah*), universal (al-ʻāmmah) or specific (*al-khāṣṣah*); definitive (*al-qaṭʿiyyah*) or speculative (*al-ẓanniyah*). Additionally, Al-Shāṭibī has divided them into two categories: the goals specified by the Lawgiver (*maqāṣid al-sharʿī*) and the human interests (*maqāṣid al-mukallaf*). The several categories of *maqāṣid* demonstrate that their scope extends beyond the *aḥkām* of the *Sharīʿah*. They may include social, political, economic, and cultural matters. Furthermore, putting a particular *maṣlaḥah* in one category or another is merely subjective; there may be overlaps in interests.[57]

Modern scholars have a liking to broaden the concept of *maqāṣid* in response to global concerns. This concept dates back to Ibn Taymiyyah (d. 728/1238), who expanded on the traditional list of *maqāṣid* to include things like love for God, honesty, reliability, moral purity, keeping promises, maintaining familial relationships, and respecting the rights of neighbours.[58] In his philosophy of *maqāṣid*, Rashīd Riḍā (d. 1354/1935) incorporates religious, social, political, and economic change including women's rights. As the universal *maqāṣid* of Islamic law, Ibn ʻĀshūr (d. 1325/1907) advocates for equality, freedom, orderliness, and the maintenance of *fiṭrah*. Justice and freedom are included in the needs

[56] Kamali, *Maqāsid al-Sharīʿah Made Simple*, 4-6
[57] Kamali, *Maqāsid al-Sharīʿah Made Simple,* 6-7
[58] Ibid., 12

according to Muḥammad al-Ghazāly (d. 1416/1996). In addition, Yūsuf al-Qarḍāwī (b. 1345/1926) adds to his theory of *maqāṣid* the following: upholding human rights and dignity; calling people to worship God; cleansing souls; reestablishing moral principles; improving families; treating women fairly; building a powerful Islamic country and promoting international cooperation. The three highest and dominant *maqāṣid* proposed by Tahā al-'Alwānī (b. 1354/1935) are the oneness of God (*tawḥīd*), soul cleansing (*tazkiyah*), and the advancement of civilization on Earth (*'imrān*).[59]

3.4. Custom of a Community (*'Urf):*

In its literal sense, *'urf* refers to widely used terminology, colloquialisms, or customs.[60] It is defined as the habit, either verbal or practical, of a majority of the people of a community.[61] According to some, *'urf* is synonymous with *'ādah* which means a custom, manner, habit or wont.[62] Another relevant term is *ta'āmul* which is the practice that people use in their dealings and transactions.[63] In technical terms*, 'urf, 'ādah, or ta'āmul* refer to a normative practice, custom, or usage that is commonly accepted in a society and followed by morally upright individuals.[64]

The Ḥanafis place a high emphasis on the '*urf* and see it as a good justification for *istiḥsān*. For example, a transaction approved by custom is legitimate as long as it doesn't conflict with the Qur'ān and the *ḥadīth*.[65] Ibn 'Abidīn thinks it falls within the scope of *ijmā'.*[66]Al-Haṣfakī lays out three requirements for admitting 'urf as a source of law: it must be strongly supported by reason, align with the tenets of Sharī'ah, and be obvious in

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[59] Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law*, 7-8
[60] Lane, *Arabic- English Lexicon*, 5:2014
[61]Muṣṭafā Aḥmad Al-Zarqā, *Al-Madkhal al-Fiqhī al-'Āmm* (Damascus: Dār al-Qalam,1425/2004),2: 871
[62] Lane, *Arabic- English Lexicon*, 5:2191
[63] Ibid, 5:2158
[64] Kamali, *Principles of Islāmic Jurisprudence,* 248
[65]Abdur Rahim, *The Principles of Muhammadan Jurisprudence* (Madras: S.P.C.K. Depository, 1911), 136
[66] Muḥammad b. Amīn, Ibn 'Abidīn, *Radd al-Muḥtār* (Bayrūt: Dār al-Fikr, 1412/1992), 1: 38

normative practice.[67] Imām Mālik takes the custom of the people of Madīnah as *ijmā'*.[68] Some Ḥanafīs, such as Ibn 'Abidīn, also hold that the custom of people accompanies *ijmā*.[69]

The text's meaning should be interpreted in accordance with local customs (*'urf qawlī*). Its technical details make sense when seen in the context of *Sharī'ah* (*'urf shar'ī*). For instance, the term *al-ribā*, which means excess in literal terms, really refers to usury. A land's customs are referred to as *'urf fi'lī*.[70] Custom is not assessed on the basis of human reason or personal whims. Instead, it is evaluated according to how well it aligns with the text of *Sharī'ah*, the jurists' consensus (*ijmā'*), necessity (*ḍarūrah*), interest (*maṣlaḥah*), and the goals of Islamic law (*maqāṣid al-sharī'ah*).[71] It is acknowledged to have legal power if it is generally accepted in a nation; it should not be the practice of a small group of people, or a specific location. It must be reasonable and in line with sound mind. The fact that the tradition has emerged within the people's living memory suffices for it to have validity; no particular amount of time needs to pass. The custom of one era has no bearing on another; it is only authoritative for as long as it prevails. In a same vain, a nation's customs cannot override another nation's basic laws.[72]

In several of his judicial decisions, the *Sharī'ah* has approved the consideration of the local customs. For instance, the amount of maintenance a husband is required to provide his wife will be decided by tradition. The Qur'ānic injunction reads as: "The father of the child shall bear the cost of the mother's food and clothing on a reasonable basis (*ma'rūf*)."[73] The reasonable amount for this purpose would be decided according to the custom of that land. The Prophet (upon whom peace and greetings be upon him) preserved many of the Arab pre-Islamic traditions.

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[67] Muhammad b. 'Alī al-Haṣfakī, *Durr al-Mukhtār* (Bayrūt: Dār al-Fikr, 1412/1992), 1:78
[68] Kamali, *Principles of Islamic Jurisprudence*, 250
[69] Ibn 'Abidīn, *Radd al-Muḥtār*, 1: 38
[70] Nyazee, *Islamic Jurisprudence*, 257-259
[71] Ibid., 258-259
[72] Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, 137
[73] *Al-Baqarah* 2:233

For instance, the kinsmen's obligation to pay blood money (*ʻāqilah*), mortgages (*rahn*), advance sales (*bayʻ salam*), and equality in marriages (*kufw*). Islamic jurists uphold some issues because of custom. For instance, paying for a good in advance (*bayʻ istiṣnāʼ*), exchanging goods silently (*bayʻ al-taʻāṭī*), deciding whether to pay for dowry at the time of marriage (*muʻajjal*) or later (*muʼajjal*), charging a charge to teach the Qur'ān, etc.[74]

3.5. Jurisprudential Maxims (*al-Qawāʻid al-Fiqhiyyah*):

Al-Qawāʻid al-Fiqhiyyah is an important branch of Islamic legal philosophy. It refers to a set of rules or principles that are extracted from the *Sharīʻah* texts and give jurists guidance on how to resolve issues that are not explicitly addressed in the scriptures.[75] The term qawāʻid is the plural form of qāʻidah, which literally translates to foundation or basis of a house.[76] According to Muṣṭafā al-Zarqā, they are fundamental juristic concepts that have been condensed into simple language. They express broad legal and juristic values pertaining to the occurrences that fall under that issue.[77]

These rules serve as maxims to uphold and safeguard the objectives of Islamic law and were developed by Muslim jurists after much work. They spare the jurist from having to memorize a significant number of legal decisions by organizing disparate topics into a single unit. Their clear and concise phrases capture a complex topic of juristic importance. [78] Al-Qarafī (d. 684/1285) states that these maxims are of great benefit in jurisprudence. They unveil the magnificence of jurisprudence, elevate the

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[74] Kamali, Principles of *Islamic Jurisprudence*, 250-257

[75] Justice Dr. Munir Ahmed Mughal, *Islamic Legal Maxims: consisting of al-Kharkhi's Al-Usul* (Lahore, Paksitan: Hammad Law House, 1999), 2

[76] Lane, *Arabic-English Lexicon*, 7: 2547

[77] Al-Zarqā, *Al-Madkhal al-Fiqhī al-ʻĀmm*, 2:965

[78] Mughal, *Islamic Legal Maxims: consisting of al-Kharkhi's Al-Usul*, 2

stature of a jurist, and make the procedures of juristic decisions more understandable. [79]

There are two schools of thought about how they should be applied to the matters within their jurisdiction. According to certain scholars, including al-Ḥamawī (d. 626/1228), they are applicable to the majority of circumstances, but not all of them. Some, like al-Subkī (d. 771/1369), assert that these are all-inclusive regulations.[80] Sometimes the Qur'ān or the *Sunnah* are the source of their phraseology, but Muslim jurists generally improved and developed them throughout time to the point that there were finally more than 3,000 *qawā'id* and *ḍawābiṭ*.[81] However, they are not a source of law *per se* nor do they make up law, but they can be applied in newly emerging cases. They support the exercise of *ijtihād* in reaching legal judgments (*ḥukm*) and juristic opinions (*fatwā*). [82]

The majority of jurists agree on five universal maxims that encompass a wide range of legal concepts. Imām al-Suyūtī (d. 911/1505) notes that Qāḍī Ḥusayn al-Marrūdhī al-Shāfi'ī (d. 462/1069) condensed the Shāfi'ī school to four comprehensive maxims except al-umūr bi maqāṣidiha. Subsequently, the Shāfi'īs included this to equalize their number with the number of Islamic pillars.[83] Al-Subkī's (d. 771/1370) five universal maxims are the following: [84]

"الْأُمُورُ بِمَقَاصِدِهَا"

Actions are judged by their intentions.

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[79]Aḥmad b. Īdrīs al-Qarafī, *Anwār al-Burūq fī Anwā' al-Furūq* (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1998), 1:3

[80]Shahrul Hussain, *A Treasury of Sacred Maxims* (Leicestershire, UK: Kube Publishing, 2016), 2-4

[81]Buerhan Saiti and Adam Abdullah, "The Legal Maxims of Islamic Law (Excluding Five Leading Legal Maxims) and Their Applications in Islamic Finance", *JKAU: Islamic Econ.* 29, no.2 (July 2016),141

[82]Ibid., 26

[83] 'Abd al-Raḥmān b. Abī Bakr Jalāl al-Dīn Al-Suyūṭī, *Al-Ashbāh wa 'l-Naẓā'ir* (Bayrūt: Dār al-Kutub al-'Ilmiyyah,1411/1990), 8

[84]Tāj al-Dīn 'Abd al-Wahhāb Tāqī al-Dīn al-Subkī, *Al-Ashbāh wa 'l-Naẓā'ir* (Bayrūt: Dār al-Kutub al-'Ilmiyyah,1411/1990), 12

"الْيَقِينُ لَا يُزَالُ بِالشَّكِّ"

Certainty is not overruled by suspicion.

"الْمَشَقَّةُ تَجْلِبُ التَّيْسِيرَ"

Hardship brings ease.

"الضَّرَرُ يُزَالُ"

Harm shall be removed.

"الْعَادَةُ مُحَكَّمَةٌ"

Custom is a basis of judgement.

4. Codes of Islamic Medical Ethics:

In 1948, the World Medical Association adopted the "Geneva oath", which was formulated on the basis of Hippocratic Oath (c. 400 BC). The Islamic Medical Association of North America (IMANA) declared it unsatisfactory and formulated "*Oath of a Muslim Physician*" in 1977.

In 1981, the First International Conference on Islamic medicine held in Kuwait. They formulated "*Islamic Code of Medical Ethics*". It states that a doctor shall honour the dignity and privacy of patients (autonomy). He shall do every effort to safeguard human life in all of its phases and use his knowledge for the good of humanity rather than its detriment (beneficence and non-maleficence). He shall provide everyone with health care (justice). The Council for International Organization of Medical Science (CIOMS) was held in 1982 which formulated international ethical guidelines for biomedical research. These guidelines were also followed by the International Islamic Centre for Bioethics, Population Studies and Research, Al-Azhar University, in the first international conference on 'Bioethics in Human Reproduction Research in the Muslim World' held in 1991 in Cairo.

5. Conclusion:

The application of biotechnology to human life-related processes has led to ethical dilemmas that were unheard-of. As a result, Muslim jurists have been sceptical of the advances in contemporary biomedicine. They began examining the sources of *Sharī'ah* to determine the legal standing of biological issues. If primary sources are silent about an issue, then secondary sources are used. Among them, *istiḥsān*, *maṣāliḥ mursalah*

and *'urf* are quite helpful. *Istiḥsān* is a method of examining the effects of two legal rules and opting for the one that promotes ease and facility. *Maṣāliḥ mursalah* is used when there is no explicit precedent (*aṣl*) in the text for a given case. The jurist then has to decide the matter to ensure the preservation of the five objectives of *Sharī'ah* (religion, life, intellect, progeny and property). Last but not the least, *'urf* refers to a custom that is commonly accepted in a society and followed by morally upright individuals

In order to apply *maṣlaḥah*, a profound comprehension of *maqāṣid al-sharī'ah* is required. These objectives have been determined by analysing several passages of the text through an induction process, and as such, they are regarded as definite. Another useful tool to resolve biomedical issues is jurisprudential maxims (*al-qawā'id al-fiqhiyyah).* These are a set of rules or principles that are extracted from the *Sharī'ah* texts and condensed into clear language and express broad legal and juristic values. These rules serve to uphold and safeguard the objectives of Islamic law.