

The Principle of Considering *Ma'alat* in Islamic Rules: Do Ends Justify Means?

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ABSTRACT

Exploring Islamic sources, Islamic rules are revealed for the sake of maslaha (well-being) in human life. However, in particular situations, implementing some rules might not achieve maslaha, and might even militate against it. In this regard, considering ma'alat (consequences of action) was suggested by al-Shatibi as a principle for providing exceptions in Islamic rules, either to ban a permitted action or to tolerate a prohibited action for the sake of maslaha. However, this principle could equate to the concept of the ends justifying the means. Thus, this paper aims to analyse the words of al-Shatibi on his idea of considering ma'alat. The findings reveal that, since considering ma'alatis applied at the stage of the implementation of rules, and this process is carried out under the discipline of maqasid al-Shari'a (objective of Islamic law), this principle is not being used to justify the amendment of Islamic rules.

Keywords: ma'alat, maslaha, shari'a, al-Shatibi, usul al-fiqh

Exploring the Quran and the Hadith, there are many texts that indicate meanings and wisdoms beyond the rules: in general, or specifically. For examples: "We sent you not but as a mercy for all creatures" (107:21); "Allah does not wish to place you in difficulty, but to purify you, and to complete His favour to you" (6:5); and "I was sent to perfect good character (Malik 1985). In this regard, it has been unanimously agreed that rules in Islam are revealed with the specific purpose for human life: to bring *maslaha* (well-being) and to avoid *mafsada* (harm). In other words, what is permitted is good for their life, as well as what is prohibited is bad for them. Therefore, applying Islamic rules should not merely be emphasized with respect to technical aspects, but by far the most important is to ensure the elements of piety, justice, fairness, and kindness, can be achieved through their implementation.

In this regard, instead of being restricted to literal textual meaning, the verses pertaining to a rule in Islamic sources, namely the Quran and the Hadith, must be engaged implicitly and be understood in its context. This approach is vital to obtain a comprehensive meaning of the rule before implementing it in real situations. At the same time, human needs, customs, as well as the social, economic, and cultural background, should also be taken into account, because the current situation needs to be the subject of the rule, before the latter can be implemented into the former. In other words, the change of realities can affect the implementation of Islamic rules.

Therefore, the role of mujtahids (those who have the ability to deduce religious ruling from its sources) in Islam is not only restricted to issuing rules from Islamic sources, or to explaining them theoretically, but by far the most important thing is that they must study how to apply those rules to realities. While many rules bring *maslaha* when they come to be implemented, in a particular situation, there are circumstances where some rules might not attain their *maslaha*, or might even lead to *mafsada*; for example *siyam* (fasting) in the month of

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Ramadhan for sick people or travellers, where the rule's objective cannot be achieved and where their situation could be made even worse.

To ensure the outcomes of Islamic rules in line with their objectives, al-Shatibi has introduced what he called considering *ma`alat* (consequences of action). This concept has been developed as a vital principle to engage the situation where the consequences of Islamic rules diverged from their intended *maslaha*. Through this principle, al-Shatibi suggested providing for exceptions, by banning a permissible action, in particular situations that could lead to *mafsada*, or tolerating some aspects of a prohibited action that could lead to more *mafsada* were it totally banned. Both approaches are indispensable for ensuring the applicability of Islamic rules, regardless of any change in time and place.

On the one hand, the idea of considering *ma`alat* could make a rule in Islam more flexible in terms of its implementation. In other words, the effort should be focussed on how to achieve *maslaha* in reality, which is the substance of the rule rather than its technical aspects. On the one hand, this concept could be misunderstood as a way to justify amending a rule in the name of *maslaha*, particularly mandatory rules in Islam: for instance, allowing *riba* (interest) which is clearly prohibited in Islam, arguing its consequences could benefit some aspect of the economy; or banning the interfaith marriage between Muslim men and Christian or Jewish women, claiming this practice could harm Muslim society, even though its status is permissible in the Quran.

This leads to the question of how far Islamic rules can be tolerated due to their outcomes. In fact, without a proper understanding of the principle of considering *ma`alat*, its application could be similar to the concept of the ends justifying the means. This might eventually endanger the originality of the Islamic perspective. Therefore, this paper aims to critically analyse the concept of considering *ma`alat* from an al-Shatibi perspective. In this regard, it begins with the words of al-Shatibi in his book of *al-Muwafaqat*, and then two of his points of view are emphasized: the role of *mujtahids* in considering *ma`alat* and *maqasid al-Shari`a* as the parameters of considering *ma`alat*.

Considering Ma`alat: Al-Shatibi's Theory

It is undeniable that the significant contribution from al-Shatibi on *Maqasid al-Shari`a* (objectives of Islamic law) makes him well-known as the father of this subject, even though an earlier group of scholars, such as al-Juwayni, al-Ghazali, Izz `Abd al-Salam had already mentioned this concept in their works (Auda 2007). Through his well-known book of *al-Muwafaqat*, al-Shatibi reformed a few elements of *maqasid al-Shari`a*, chiefly by considering it as the foundation of rules, instead of spiritual wisdom, as written in previous literature (Auda 2007). Moreover, al-Shatibi presented *maslaha* as a practical concept, by establishing its principles, and clarifying its relationship with other topics in Islamic jurisprudence (al-Yubi 1998). One of them, which had never been mentioned by scholars before him, was to introduce the topic of considering *ma`alat*.

Under the chapter of *ijtihad* (an effort to deduce a religious ruling from its sources) in the book of *al-Muwafaqat*, al-Shatibi explained the idea of considering *ma`alatas* follows:

Examination of the *ma`alat* of actions is acknowledged and intended according to *Shari`a* (Islamic law), whether these actions are lawful or unlawful. Thus, the *mujtahid* (those who has the ability to conduct *ijtihad* process) will only judge an action carried out by individuals, either by action or omission, after examining the consequences of this action: it may be that it is initiated in order to bring about some *maslaha* or prevent some *mafsada* but it results in the opposite of what was intended, or it may not have been initiated in order to cause *mafsada* or prevent *maslaha*, but it has resulted in the opposite of this action" (al-Shatibi 2004).

Through his words, al-Shatibi developed a clear idea that implementing Islamic rules should be considered along with their actual consequences, because the latter will affect the former. It is understood that the key practice of this principle is to achieve *maslaha* and to avoid *mafsada*, which must be realized through implementation of Islamic rules. While al-Shatibi did not explain how the consequences of a rule may contradict its objective, al-Sanusi suggested that three factors might cause this situation: wrong intention to attain an unlawful objective through the permitted action; abuse in using the right; and implementing rules in the wrong context (al-Sanusi 2003).

In dealing with that unexpected situation where the outcome of Islamic rules is against their objectives, al-Shatibi suggested as follows:

“If in the first case (the result opposite the intended *maslaha*) it was declared to be permissible, the achievement of the *maslaha* therein might lead to *mafsada* equal to or greater than the *maslaha*, which would rule out declaration of its permissibility. Likewise, if in the second case it was declared to be impermissible, the prevention of the *mafsada* might lead to equal or greater *mafsada*, and it is therefore not valid to declare its impermissibility” (al-Shatibi 2004).

Al-Shatibi explained that in particular situations, a permissible practice originally intended to bring *maslaha* may instead lead to *mafsada*, whilst for a prohibited action which was originally believed to cause *mafsada*, banning it totally would bring similar or greater *mafsada*. As a result, both situations indicate that the rule should not be implemented as its original theory intended. In other words, its implementation should not be generalized in all circumstances.

Al-Shatibi claimed that the concept of considering *ma'alat* is recognized in Islam, and developed general and specific justifications. As for the general, he argued that obligations in Islam aim to bring *maslaha* for humans in this life and the hereafter. While in the hereafter it is to provide them blessing, practising obligations also aims to bring *maslaha* in this life, thus their outcomes need to be considered. Secondly, it is undeniable that the outcomes of any action could be in line with *Shari'a* or against it, and therefore should be further analysed. Otherwise, the actions could be exercised with the aims against their objectives (al-Shatibi 2004).

With regard to the specific justification, a few verses from the Quran are mentioned by al-Shatibi. This includes the order to worship God, because this action will lead to piety: “O mankind, worship your Lord, who created you and those before you, that you may become righteous” (2:21); the obligation of fasting which also leads to piety: “O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous” (2:183); even the positive impacts of *jihad* (holy war) require sacrifices: “*Jihad* is ordained for you though you dislike it, and it may be that you dislike a thing which is good for you and that you like a thing which is bad for you” (2:216); and the result of insulting non-Muslims: “And insult not those whom they (disbelievers) worship besides Allah, lest they insult Allah wrongfully without knowledge” (6:108) (al-Shatibi 2004).

In addition, al-Shatibi also identified several prophetic practices to support this concept. Firstly, in the case when the Prophet refused to take any action towards *munafiqin* (a hypocritical group) as he said: Let the people not say that Muhammad kills his companions. Secondly, it was reported that the Prophet changed his mind about re-establishing the shape of the *ka'bah* after he realized that newly converted Meccan people might have difficulty accepting this action. The last example was in the situation when the Prophet prohibited his companions from trying to stop a Bedouin who had urinated in the mosque. This would bring harm to him and disperse the urine widely (al-Shatibi 2004).

Meanwhile, al-Shatibi attempted to present that the concept of considering *ma'alatis* not a completely new method, and that its substance was already applied in various principles in Islamic jurisprudence. Such principles include *al-Dhara'i* (blocking the means) which is applied to blocking something because, ultimately, it leads to *mafsada*. Likewise, *hiyal* (stratagem) is

banned because of negative consequences due to wrong intentions, even though the outward action appears permissible. In contrast, *istihsan* (considering something better) provides an exception in respect to an unlawful matter in a particular situation, because of its positive outcomes. Meanwhile, *mura'ah al-Khilaf* (considering differences) leads a *mujtahid* to base his decision on a real situation to minimize negative consequences (al-Shatibi 2004).

It is interesting to note that through the concept of considering *ma'alat*, al-Shatibi attempts to reconcile between different views among scholars. *Al-Dhara'i* for example argued that this principle is established by its supporters according to *ma'alat*. However, he also argued that those who rejected this principle were acting due to their considering *ma'alat*. For example: consider the case of *bay' al-Muajjal* (buy and sell back); while Maliki banned it because of it can lead to *riba*, al-Shafi'i allowed it since each contract has its own *maslaha*. Thus, it is understood by al-Shatibi that both parties consider *ma'alat*, even though the result is different (al-Shatibi 2004).

While *maslaha* seems to be a general concept of promoting well-being based on God's revelation, applying this concept in the actual situation is not as easy as has been theoretically discussed. Because the main dilemma in implementing a rule is when its consequence does not achieve its *maslaha*, the concept of considering *ma'alat* offers a practical approach that *maslaha* should be considered from the consequences in practice (al-'Alam 1994). In other words, *maslaha* of any rule or practice is no longer relevant if it cannot be achieved in reality. At the same time, a specific *maslaha* in the application of a rule should be treated as having less priority if it affects general *maslaha*, which is a more important consideration. This concept makes implementing a rule in Islam become more flexible in order to sustain the *maslaha* in actual human life.

Nevertheless, neither prior to nor after al-Shatibi was the topic of *ma'alat* continually discussed in the classical works of Muslim scholars. In fact, the absence of this concept among their works is probably a factor in the approach of al-Shatibi in his book. According to al-Darraz, al-Shatibi attempted to bring a new reform, which opposed certain realities of that time (i.e. the period of so-called *jumud* (rigidity), when most of the intellectual efforts focussed on continuous explanations of the previous works based on each *madhab* (school of thought)). Moreover, al-Darraz also claimed that al-Shatibi's work was difficult to understand at that time, since he mixed various disciplines in one topic, with a lack of explanation (al-Shatibi 2004).

Meanwhile, al-Hussin identified two factors which explain why the idea of al-Shatibi on *ma'alat* did not receive much attention among scholars, particularly from a group of *usuliyyin* (experts in *usul al-Fiqh*). Firstly, the book of *usul al-Fiqh* (the methodologies of Islamic jurisprudence), which specifically discusses the methodologies in Islamic jurisprudence, did not mention details about *maqasid al-Shari'a*, including the concept of considering *ma'alat*. Secondly, even though classical scholars did not mention *ma'alat* in their works, they had already practised the substance of this principle through various methods, such as *maslaha*, *al-Dhara'i*, and *istihsan* without any need to merge them into a single principle (al-Hussin 2009). Thus, it can be concluded that the concept of considering *ma'alat* might be seen as the part of al-Shatibi's reform in reconsidering the application of Islamic rules, when many scholars, particularly the group of *usuliyyin*, preferred the traditional approach.

However, after *maqasid al-Shari'a* had been written about as an independent subject, the principle of considering *ma'alat* received attention among modern scholars. Al-Qaradawi points out that *ma'alat* is considered one of the *new fiqhs* that support the insurgency of Islam in the 20th century. It is argued that this principle, alongside *fiqh al-Maqasid* (understanding the objectives of Islamic law), *fiqh al-Muwazanat* (understanding equilibrium), *fiqh al-Awlawiyat* (understanding priority) and *fiqh al-Ikhtilaf* (understanding disagreement) ensure that Islamic practices are moderated (al-Qaradawi 2006). Meanwhile, in 2012, the European Fatwa Council and Research (EFCR), through its conference, issued a resolution about considering *ma'alat* as a vital approach to dealing with the issue of Muslim minorities (al-Shatibi 2004).

Role of *Mujtahids* in Considering *Ma'alat*

One of the important aspects of al-Shatibi's ideas that can be studied on *ma'alatis* where he wrote this concept in his book. Instead of writing it under the chapter of *maqasid al-Shari'a* where he introduced the idea of *maslaha*, he preferred to write about *ma'alat* in the chapter of *ijtihad*. This might indicate that the role of considering *ma'alatis* more significant in dealing with *maslaha* in real situations, since *ijtihad* is established to deal with current issues. Moreover, it can be understood that this could be part of al-Shatibi's approach, because he always linked the topic of *maslaha* with other topics, including that of *ijtihad*.

Through the idea of *ma'alat*, al-Shatibi has reconsidered the role of *mujtahid* in dealing with Islamic rules. In fact, Muslim scholars have outlined criteria for being a *mujtahid*, such as mastering the Arabic language, having a comprehensive knowledge of the Quran and the Hadith, and knowing the subject of *usul al-Fiqh* (al-Zaidan 1986). Additionally, al-Shatibi stressed that the role of *mujtahids* in Islam is not restricted to issuing a particular rule from Islamic sources or explaining it theoretically, but by far the most important is that they must study how to implement the rule in the current reality. This includes considering the outcomes of the rule before implementing it in the particular situation. Otherwise, they do not fulfil the real standard of *mujtahid* (al-Raysuni 1995).

At the same time, it should be understood that *ijtihad* consists of two stages: interpretation and application (Abd al-Razaq, 2003). While the former refers to the process of extracting the rules from Islamic primary sources, the Quran and the Hadith, the second stage of *ijtihad* refers to the implementation of those rules in the current reality. The first stage aims to find a specific rule from Islamic sources, while the second one connects the rule between its objective and the reality (Abd al-Razaq 2003). In this regard, the principle of considering *ma'alat* has a significant, if not a prevalent role in the second stage of *ijtihad*, since it deals with the real outcome of the implementation of rules. Through this principle, sometimes providing an exemption from some rules is needed in particular situations when those rules are unable to meet their objectives (al-Sanusi 2003).

In fact, *mujtahids* have no authority in respect of Islamic rules except to implement them in the right situation. Because they must work hard to understand Islamic sources, understanding the current reality too, including human needs, their customs, and new matters in their lives are part of the process of *ijtihad* (al-Najjar 1989). In fact, ignoring the second element might cause different outcomes of Islamic rules from their intended objective; even *mujtahids* have mastered the theory of Islamic rules from its sources (Ibn al-Qayyim 2006).

To illustrate how considering *ma'alatis* applied under the process of *ijtihad*, the issue of interfaith marriage by the caliph of `Umar is agreed to be a practical example. In general, Muslim men can marry Christian or Jewish women. This permission is stated clearly in the Qur'an:

“Today (all) good foods have been made lawful, and the food of those who were given the Book is lawful for you and your food is lawful for them. And (marriage is lawful with) chaste women from among the believers and chaste women from among those who were given the Book before you, when you have given them their due compensation, desiring chastity, not unlawful sexual intercourse or taking (secret) lovers. And whoever denies the faith - his work has become worthless, and he, in the Hereafter, will be among the losers” (5:5).

Nevertheless, during his time `Umar prevented this kind of marriage for Muslims. According to history, `Umar called upon both Talhah and Huzaifah to divorce their non-Muslim wives immediately (al-Bayhaqi, n.d.). It can be understood that the caliph's decision to ban this kind of marriage was taken because its negative consequences outweigh its positive ones. As `Umar observed in his time, this permissibility was exercised without control, and caused a

negative impact on Muslim women, because they could only choose Muslims as their spouse. As a result, there was a lack of candidate husbands for them. Additionally, `Umar also argued that the women from *ahl al-Kitab*, in that situation, did not fulfil the condition of chasteness which was underlined clearly in the Quran (al-Tabari 1997). However, it is important to mention that `Umar did not change the status of this marriage. This can be learnt from another narration; when he was asked about his decision on this issue, he clearly admitted that the status of this marriage is not prohibited in Islam (al-Tabari 1997).

In fact, this process is not as easy as its theory implies, with al-Shatibi noting: "this is the task for *mujtahid*, difficult way but wonderful and praiseworthy at the end" (al-Shatibi 2004). Not surprisingly, because considering ma`alatis difficult in practice, it has not been discussed widely among scholars in their fatwa or *ijtihad* (al-Qaradawi 2013). Since the reality is always changing and renewing, it is strongly recommended to consider *ma`alat* through collective *ijtihad* between Islamic jurists and the respective professionals.

Maqasid al-Shari`a as the Parameters of Considering Ma`alat

In fact, the most important part of al-Shatibi's idea on considering *ma`alatis* when he concluded that applying this concept must follow the discipline of *maqasid al-Shari`a*, as he said: "to be in line with *maqasid al-Shari`a*" (al-Shatibi 2004). Technically, this term can be understood as the wisdom that is emphasized by God in his rules (al-Yubi 1998). Through *maqasid al-Shari`a*, every rule that is revealed by God aims to bring *maslaha* and to avoid *mafsada* for humankind.

However, it should be noted that both elements must reflect God's intention for human beings, and not merely be based on the human perspective. In other words, justifying *maslaha* and *mafsada* on any issue must be supported by the text of Islamic primary sources, namely the Quran and the Hadith (al-Raysuni 1999). In this regard, *maslaha* can be identified in two categories: specific *maslaha* and general *maslaha*. As for the specific, it can be extracted from a specific verse pertaining to the rule, such as protecting life in *qisas* (law of retaliation) (2:179). As for the general *maslaha*, it can be identified from a general text, such as bringing mercy (21:107), ensuring justice among people (4:58), and easing difficulty (22:78). Through *maqasid al-Shari`a*, the purpose of a rule is understood through the context of Islamic primary sources, before considering *ma`alat*: whether its outcome during the practice is in line or against the objective of rule.

The classical issue of price fixing could be a clear example to illustrate this point. At the beginning, during the Prophetic period, it was prohibited. However, in the *tabi`in* period (generation after the prophet's companion), some scholars, such as al-Laith bin Sa`ad, Rabi`ah and Yahya bin Ma`in, spoke to allow this action (al-Duri 2011). Analysing the Prophet's words gives a clear picture of why this action was prohibited during his time. When people asked him to intervene in the market by fixing the price, due to the price-hike in some goods, the Prophet replied as follows: -

"Indeed, Allah is the creator, the holder, the open-handed, the provider, the pricer (who fixes prices); and I wish I will meet Allah and nobody demands (complains) of me any act I did against him, not in blood or property" (Ibn Majah 2000).

Thus, it can be understood that the Prophet disagreed with the proposal of price-fixing because of the negative consequences for sellers. At that time, the main factor in rising prices was the nature and limitation of resources, because it would have been unfair to force the sellers to limit their income. Thus, it was important, at that time, that *maslaha* of the sellers be taken into account more than *maslaha* of the society. However, a few years later, there was a change in market circumstances, because the price hike occurred due to market manipulation by traders. At that time, *maslaha* of the society was the issue of concern, because *maslaha* of the sellers was

no longer relevant. Therefore, not surprisingly, those scholars issued a *fatwa* to allow fixing of prices based on the change of consequences (al-Duri 2011).

To conclude this point, *maqasid al-Shari'a* represents an approach to discovering the comprehensive objectives of Islam, before applying its rules in reality, but not to amend them. Otherwise, it might devastate the religion gradually for the sake of *maslaha*. Moreover, it is unacceptable to claim that there is a clash between *maslaha* and Islamic rules, since the latter are revealed for the sake of human well-being (al-Qaradawi 2005). This is important to ensure harmonisation between revelation and real situations, to prevent the practices of Islam from being diverted in the name of human well-being, as well to avoid basing Islam on a literal textual approach. In this regard, the *ma'alatis* considered a tool to determine this process in reality, in terms of how far the outcomes of the rules achieve their objectives.

Therefore, this paper attempts to analyse the concept of considering *ma'alat*, specifically whether or not it is similar to the concept of the ends justifying the means. In this regard, an analysis of al-Shatibi's theory has been conducted because he was claimed as the pioneer of this concept. Through the book of *al-Mufawaqat*, al-Shatibi stressed that the role of *mujtahid* is not only restricted to showing the foundation of rule in Islamic sources, but to ensuring its consequences (when it comes to being implemented) do not deviate from its original objective. This concept is supported by a number of texts from Islamic sources, the Quran and the Hadith, as well as by several principles in Islamic jurisprudence: *al-Dhara'i*, *al-Istihsan*, *mura'ah al-Khilaf* and preventing *hiyal*.

The findings reveal that, since considering *ma'alatis* applied under the discipline of *maqasid al-Shari'a*, and its role in the stage of implementation, it is not being used to justify the amendment of Islamic rules. As agreed by the majority of Muslim scholars, that every rule is revealed for the sake of *maslaha* for human life, it is unacceptable to claim that there is a clash between *maslaha* and Islamic rules (al-Tabari 1997). In the case where some rules might be unable to be implemented, it does not mean that those rules are irrelevant, but that the environment needs to be improved first. Thus, it is clear that the aim of considering *ma'alatis* not to amend Islamic rules but to ensure that they are implemented in the right context. This approach is vital, particularly in dealing with modern issues which are more complicated and need special consideration.

Imposing late payment penalties by Islamic banks towards their customers could be a clear example. According to verse 3:130, it is prohibited to charge the borrowers because of the delay of repayment, since it is considered as *riba jahiliyya* (pre-Islamic *riba*) (Ibn Kathir 2000). However, from the perspective of *maslaha*, this penalty is prohibited to prevent rich lenders from exploiting the inability to pay among poor borrowers. In contrast, banking institutions do not represent sole lenders, because they are financial intermediaries between two sides, taking capital from one side, and offering financing to the other side, as well as the fact that their customers are capable borrowers (Briscoe & Fuller 2007). In this regard, abolishing late payment penalties could threaten the viability of Islamic banks because of deliberate defaulting by some customers. By considering *ma'alat*, that verse should be applied in the situation where customers face genuine difficulty and where their situation needs to be taken into account by Islamic banks.

As a conclusion, the topic of considering *ma'alat* should be developed in more detail as a principle, particularly by establishing its parameters. In fact, this concept comes up with a balanced approach between revelation and reality, as well as between Islamic jurisprudence and *maqasid al-Shari'a*. Through this principle, *maslaha* is considered from the perspective of real practice, not only from the text of Islamic sources. Therefore, it is fruitful to make suggestions for future research to apply this concept in various areas of Islamic jurisprudence such as Islamic finance, Islamic criminal law and Islamic family law.

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