# AN ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW *(MAQASID AL*-*SHARI’AH*) IN THE PRESERVATION OF THE FIVE ESSENTIAL VALUES (NECESSITIES)

***(MAQASID AL*-*SHARI’AH*)**

**BY**

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**A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, A.B.U. ZARIA, IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS DEGREE-LL.M.**

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**AUGUST 2011**

# DECLARATION

I hereby declare that the work in this thesis entitled: “AN ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW {MAQASID AL-SHARI’AH} IN THE

PRESERVATION OF THE FIVE ESSENTIAL VALUES” has been performed by me in the department of Islamic law under the supervision of Dr. M. B. Uthman and Prof. Ibrahim Ahmad Aliyu. The information derived from the literatures has been duly acknowledged in the text and a list of references provided. No part of this work has been presented for another degree or diploma at any institution.

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## CERTIFICATION

This thesis entitled: ASSESSMENT OF THE OBJECTIVES OF ISLAMIC LAW {MAQASID AL-SHARI’AH} IN THE PRESERVATION OF THE FIVE

ESSENTIAL VALUES by ABBAS TIJANI ABDUL-QADIR meets the regulations governing the award of the Degree of Master of laws of Ahmadu Bello University, Zaria; and is approved for its contribution to knowledge and literary presentation.

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## DEDICATION

This study is dedicated to my late father who strove earnestly to educate me and encouraged me to pursue this course assiduously to the end before he passed on in the same month of Ramadan that this thesis was completed; which corresponds to the first Friday of August, 2011. May his humble soul rest in perfect peace and may the Al- Mighty Allah, the Creator and Sustainer of the Universe, in His infinite mercy, reward him abundantly and admit him to Jannatu al-Firdaus, the abode of bliss and felicity in the life of eternity.

## AKNOWLEDGEMENTS

All praise is due to Allah who taught mankind the use of pen, endowed them with a marvelous intellect to learn and taught them to express their mind. May the Peace and blessings of the Benevolent God be upon the noble soul of the Prophet Muhammad, his household, his companions and those who follow his part until the day of resurrection.

My profound gratitude goes first to my dear parents who strove tirelessly to educate me. I must also thank my indefatigable supervisor, Dr. Muhammad Bello Uthman for his cooperation, supervision, scholarly and constructive suggestions till the thesis come to fruition. I also express my sincere gratitude to my second supervisor, Prof. Ibrahim Ahmad Aliyu, for his contribution to the thesis. I will not leave out in this regard Prof. Ibrahim Na’iya Sada and Prof. Muhammad Gurin for their scholastic role they played during my master’s degree course as well as Dr. {Mrs.} J. M. Audi.

I am also indebted to Mallam Ahmad, Mallam Usman and the entire staff of the Centre for Islamic Legal Studies {CILS} library for helping me with some necessary materials and the translated Islamic law textbooks.

My gratitude also goes to every individual, family and friends who have assisted me one way or the other during the course of my LL.M.

Finally, I am short of words to express my profound gratitude to my dear wife, who gave me moral and emotional support. May the Gracious God reward all those who have contributed to the success of this work immensely.

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## ABSTRACT

It is undisputable fact that nowadays, the Muslim world in particular has realized the dire need to write, translate and produce many books and articles on the topic of *maqasid* due to its importance in addressing and solving modern issues challenging the Muslim *Ummah*. It is in this regard that this topic entitled “Assessment of the Objectives of Islamic Law {*Maqasid Al-Shari’ah*} in the Preservation of the five Essential Values” was chosen. This research topic was made somehow comprehensive in assessing and analyzing the five essential values, the way they have been protected and preserved punitively and affirmatively in relation to Islamic law of *maqasid,* was dealt with after the introduction of this knowledge and its historical development*.* This work also revealed the wisdom behind many criminal penalties and other injunctions in Islamic law. The methodology of this research is mostly doctrinal. Some other issues related to the field of *maqasid* and *masalih* which are always raised by the Islamic jurists and scholars, like whether *maslaha,* as a tool of *maqasid al-Shari’ah,* should be accepted, rejected in totality or accepted with conditions; whether the doctrine of *maslaha* should be regarded as a source of Islamic law or not; whether *maslaha* can serve as a tool of dynamism and modernism in Islamic philosophy were extensively treated in the conclusion chapter of the research. The researcher finally went to explore the facts that a comprehensive and objective approach to modern Islamic issues should be adopted, and not an atomistic view and rigidity on literal meanings of the text; and that Islamic law is *maqasid*-oriented, flexible and workable in every community, epoch and in all ramifications of human endeavor. All these were critically surveyed, analyzed and given a finishing touch. Finally, some suggestions were offered and recommendations proffered that would go a long way to solving the already stated problems and challenges in the areas of *masalih* and *maqasid al-Shari’ah.*

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## ABBREVIATIONS

A.S Alaihis-Salam {May Peace be on him}

R.A Radiyallahu ‘Anhu, ‘Anha, ‘Anhum, ‘Anhuma {May Allah be pleased with him, her, them, both of them}

S.A.W. Sallallahu Allaihi wa Sallam {May the Blessings and Peace of Allah be upon Him}

e.g for example

etc and so forth

i.e. that is

viz namely

## GLOSSARY

**WORDS MEANING**

‘adl/qist justice

Adaat customs and social matters

Ahkam {sing. Hukm} rules and regulations

Ahl al-dhimma covenanted non-Muslim subjects living in an Islamic state

Ahl al-Ra’y the rationalists

Ahl-Hadith the traditionists

Al-‘ird the honour

Al-hiyal al-fiqhiyyah juridical tricks

Al-hudud the prescribed fixed penalties

Al-Istiqra induction

Al-Jizyah a tax collected by the Imam from the covenanted non-Muslims for security purposes

Al-Juzi’yyaat partial rulings

Al-Kulliyyaat the universals

Al-masalih al-‘aammah public interest

Al-mu’tabar accredited

Al-mukallaf competent matured Muslim or subject

Al-nasl the family lineage

Al-qadhf slanderous accusation

Al-wasf al-munasib the appropriate element

Amarah sign or indication

Aza’im strict laws of Shari’ah

Bay’ bil-wafa sales subject to redemption

Bay’ah oath of allegiance

Bayt al-mal public treasury

Dalalah al-haliyyah instantaneous indication

Dalalah al-makaniyyah local induced indication

Dalalah al-zamaniyyah temporal indication

Dalalatan qat’iyyah a definitive indication

Dalil authority or proof

Daman al-dark police assurance of safety

Dar’ al-Mafasid warding off evils

Daruriyyaat necessities

Dawawin statistical register and salary system of public officers and soldiers

Dilalat an-nass implication of the scripts

Din religion

Dini relating to religion or hereafter

Diyah blood money

Dunyawiy relating to this world

Faraa’id the fixed entitlement in

inheritance/obligations

Fatawa Islamic legal opinions

Fiqh jurisprudence

Fitnah anarchy/sedition

Gharar uncertainty

Ghasb unlawful arbitrariness/usurpation

Hajiyyaat needs, complementary, desirables

Halal lawful

Haqiqiyyah genuine

Haqq right

Haram unlawful

Hikma wisdom

Hikmatu al-Tashri’ wisdom behind the rules of Shari’ah

Hima protective zone

Hirz fortified place

I’tibar validity

Iddah waiting period of the wife

Ijma’ consensus

Ijtihad juridical reasoning

Ikhtilal disruption

Illatul-hukm reason for the rule of Shari’ah

‘Imran developing civilization on earth

Indibaat consistency or exactness

Indibat consistency

‘Ismatud-dam sanctity of blood

Istislah achieving benefits

Istisna’ contract of manufacture

Jahiliyyah period of ignorance {i.e.before Islam}

Jalb al-Masalih obtaining benefits

Janibul-‘adam negative defensive aspect

Janibul-wujud positive compelling aspect

Jinayaat criminal aspects of the law

Juz’iyyah particular

Kaffaraat expiation or penances

Kathir al-ghalib common preponderant

Khalaf successors

Khalq creation

Kulfah inconvenience

Kulliyy general or public

Kulliyyaat universals

Ma’al consequential upon the act

Ma’qulah rational

Madhahib schools of Islamic law

Mafhum an-nass indication of the text

Mafsadah harm, evil, or mischief

Mahjur interdicted

Mahzuraat forbidden things

Mal wealth

Maqasid {sing. Maqsid} purposes, intents

Maqasid al-Shari’ah the objectives of the Islamic law

Masalih {sing. Maslaha} benefits

Mu’allafatu qulubuhum those who are weak in faith and are inclined towards faith.

Mu’amalat human dealings or civil transactions

Mu’tabarah valid

Mufti a scholar who gives Islamic legal

opinions

Muhafazah preservation

Mujtahidun independent jurists

Mulgha invalid

Munasabah appropriateness

Munasabah propriety considerations

Munasabatu al-hukm the suitability of the law of Shari’ah

Muqaddaraat specific injunction of the Shari’ah

Muqaddima prerequisite

Musaqaat irrigation

Muzara’ah temporal sharecropping contract

Nafs life

Nahb looting

Nass sarih direct declaration

Nisab az-Zakat the minimum value which if stolen by the thief he or she will be amputated

Nusus {sing. nass} texts

Qalil al-nadir limited and rare

Qaraa’in indications/signs

Qasamah oath taking procedure to verify murder where strong circumstantial evidence is the only available proof

Qasd intended

Qat’iyyah certainty

Qiraad money lending/partnership

Qisas just retaliation

Qiyas sahih sound analogy

Quwwa effectiveness

Ra’y personal opinion

Rajm a capital punishment of stoning till death giving to a married person who commits adultery

Rukhas concessions

Sabab potential cause

Sadd al-dhari’ah blocking the means that lead to *haram*

Salaf predecessors

Salah goodness

Salam forward buying/sale

Shahadat az-Zur perjury

Shubha a great suspicion

Shura public consultation

Ta’addi proving tort

Ta’lil ratiocination

Ta’zir discretionary punishment by either the Imam or the Judge

Tahrif heresy

Tahsiniyyaat embellishments, luxuries

Takalif legal obligations

Takmiliyyaat supplementary

Tamathul parallel evaluation

Tashri’ legislation

Tazkiyah purification of the soul

Ummah nation

Umumul-balwa general necessity

Wadi’ah deposit

Wahmiyyah/tawahhum specious or conjecture

Waliy guardian

Zanni probable

Zanniyyah uncertainty

Zuhuur clarity

Zulm injustice