

Reassessment of Human Rights in the Context of the *Maqāṣid al-Sharī'ah* (High Objectives of Islamic Law).

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ABSTRACT

Given the fact that the high objectives of Islamic law, *maqāṣid al-sharī'ah* consists of five values in particular and seven values in general. These are the protection of religion, life, intellect, property, lineage, honour and state respectively. If one of them falls into danger, the protection of the fundamental rights of the person is also jeopardized. Therefore, simply the protection of these high objectives of Islamic law also means the protection of natural rights of human beings. The practical solution of human rights debates can only be achieved through a sound theoretical foundation. In other words, no concepts and theories that are not well founded cannot find practice in real life. For this reason, it is an inevitable reality that human rights should be evaluated within the context of *maqāṣid al-sharī'ah*. The objective of this paper is to highlight the fundamental human rights by shedding light on the context of the *maqāṣid al-sharī'ah*. A content analysis research method is used in this conceptual paper by collecting data from library and secondary resources. This paper, therefore, intended to contribute to the academic research related to the human rights and the concept of *maqāṣid al-sharī'ah* by identifying the seven essential values of Islamic law in terms of reassessing human rights in the modern world.

Keywords: Human Rights; *Maqāṣid al-Sharī'ah*; High Objectives; Seven Values; Islamic Law.

İnsan Haklarını *Makâsıd Şeriah* (İslam Hukukunun Ulvi Amaçları) Bağlamında Yeniden Değerlendirme.

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ÖZET

İslam Hukuku'nun ulvi amaçları olarak bilinen *makâsıd şeriah* (İslam hukukunun ulvi amaçları) özeldede beş genelde yedi değerden oluşur. Bunlar sırasıyla dinin, canın, aklın, malın, neslin, şerefın ve devletin korunmasıdır. Bunlardan birinin tehlikeye düşmesi halinde insanın temel haklarının korunması da tehlikeye düşer. Bu yüzden İslam Hukukunun bu ulvi amaçlarının korunması bir bakıma insanın doğal haklarının da korunması anlamına gelir. İnsan hakları anlayışının pratik anlamda çözüme kavuşturulması, öncelikle teorik anlamda sağlam temellere oturtulması ile mümkündür. Sağlam temellere oturtulmayan hiçbir kavram ve kuramlar pratikte uygulama sahası bulamazlar. Bu nedenle İnsan haklarının *makâsıd şeriah* bağlamında değerlendirilmesi kaçınılmazdır. Bu çalışmamızın temel amacı, *makâsıd şeriah* bağlamına ışık tutarak temel insan haklarını vurgulamaktır. Bu konu araştırmalı kavramsal yazıda içerik analiz araştırma yöntemi kullanılmış, kütüphane ve ikincil kaynaklardan veri toplanarak istifade edilmiştir. Bu yüzden bu makale, modern dünyada insan haklarının yeniden değerlendirilmesi açısından İslam hukukunun yedi temel değerlerini belirterek insan hakları ve *makâsıd şeriah* ile ilgili akademik araştırmaya katkı sağlamayı amaçlamıştır.

Anahtar Kelimeler: İnsan Hakları; *Makâsıd Şeriah*; Ulvi Amaçlar; Yedi Değer; İslam Hukuku.

Introduction:

In terms of human rights, human beings have gone through many stages to come to the stage in which it stands these days. If researchers and scholars make an unbiased and a dispassionate research they would reach to conclusion that the claim of westerners to be the champion of Human Rights must be rejected for its historical correctness because the concept of Human Rights was emphasized by the Muslim world in the East much earlier than the non-Muslims in the West. A person who was born as a posthumous child in 573 AD, and sent by the Almighty Allah as the seal of the Messengers with the attribute of “*And We have not sent you but as a mercy to the worlds*”¹ that he, first and foremost the messenger of Allah, the Prophet Muḥammad (ṣ) has declared 14 century ago as saying “*O mankind! An Arab is not superior to a non-Arab, nor vice versa. A white man has no superiority over a black man, nor vice versa. The rich has no superiority over the poor. All of you are Adam’s children and Adam was made of clay.*”²

Human beings have innate (*fīṭrī*) rights of birth, as they are created as a sublime being. The main purpose of legislation is to offer human beings a decent life, to prevent their being exploited, to ensure that they live in a fair life. For this reason, Islam aims to protect the natural rights of people because it is an innate religion. Moreover, it establishes a mechanism for the maintenance of the rights in the atmost right manner. That is why Islam aims to protect the values of human rights and to ensure that these rights would bring benefits (*maṣlahah*) and prevent evil (*mafsadah*) both in this world and the hereafter.

In the same manner, Islam has raised the universal values of human rights 14 centuries ago, whereas United Nations and its related institutions accepted them only seven centuries ago in 1948. If, however, the United States Declaration of Independence which includes some human rights is taken, the history of human rights began in 18th century, or if, *Magna Carta* which consisted of only a small part of human rights is taken as the basis of human rights, then it began in 13th century in the West.³ Despite of these partial human right attempts, Islam provided comprehensive rights to all humanity irrespective of their race, religion and nationalities. Islam considers the basic human rights seriously supporting religious and cultural pluralism which are open to all religions, cultures and civilizations for mutual understanding and cooperation in every field that may contribute to human welfare throughout the world.

There are acquired rights of man as he has innate rights by birth. Moreover, in contrast to secular thinking, there are rights of the Creator too in Islamic thought. Mostly, the right of the creator is ignored -Not even brought up on the agenda- while talking about the issue of human rights. Human rights will not be respected where the Creator's rights are not considered. Man was created as a sacred being and his Creator has unshakable sensitivity to the right and justice. For this reason, human rights can only be considered by giving emphasis on the rights of the Creator and their rights can be protected accordingly. Similarly, if the rights of parents are

¹ *Qur’ān* 21:107

² Farewell Sermon of the Prophet Muḥammad (ṣ), the day of Pilgrimage (*ḥajj*) in Mecca, 631 AD.

³ Hayreddin Karaman, “*İslam’da İnsan Hakları Din, Vicdan ve Düşünce Hürriyeti,*” (İstanbul: Bayrak Matbaacılık, 1996), p. 33.

ignored in a society, it is not possible to talk about the rights of children and even about future generations. Therefore, *Qur'ān* firstly mentions the right of Him to be believed and followed by the rights of parents which orders obedience to them and it does not allow them to utter disrespect words as the *Qur'ān* mentions these in this verse “*And your Lord has decreed that you worship none but Him, and that you be kind to parents. Whether one or both of them attain old age in your life, say not to them a word of contempt, nor repel them, but address them in terms of honour.*”⁴

Parents, in a way, are the creator of children. In other words, they are the mainspring for these children to be born. Yet, Allah is the creator of all things. Therefore, considering the rights of God, the Creator of man, should be the most important goal to be achieved by the human beings. It is necessary to shape the concept of human rights with a divine point of view that is based on the understanding of the Creature who created humans. Otherwise, if we want to define the concept of human rights according to the desires of humans, all the mean desires will appear as low human rights. Therefore, we must first reconsider our way of thinking. Likewise, we must depart from a secular mindset to a global view of Islamic thinking. After that, the concept of human rights in this context will be easily clarified.

For this reason, the concept of right should be redefined first. It is defined by scholars as “the special authority by which the law (*sharī'ah*) establishes power (over a thing) or legal obligation (to do an act).”⁵ Similarly it is defined as “an interest of an individual or society or of both established by the Lawgiver, the Wise.”⁶ In addition to these definitions, scholars have mainly divided the rights into two types: rights of Allah (*ḥuqūq Allah*) and rights of man (*ḥuqūq al-'abd*). The acts of *mukallaḥ*, therefore, may be either rights of Allah and rights of man or a combination of both.

The rights of Allah (*ḥuqūq Allah*) which are the rights which involve benefit to the community at large but not reserved exclusively for any particular individuals. These rights correspond to public rights and involve the benefits of the whole Muslim society and these are attributed to Allah (*swt*) not because they are of benefit to Him nor because they are His creation, in fact He is above all wants. It is certain that all rights are equal the creation of Allah (*swt*) who is the creator of everything. This type of rights consists of mainly obligatory devotional acts (*'ibādāt*) and prescribed punishment (*ḥudūd*). Fulfilling these rights are actually for the benefit to the whole society not for the benefit of Allah (*swt*) as He is above all wants and needs. The enforcement of these rights is a duty of the state under the *Siyāsah Sharī'ah*.⁷ Accordingly, the rights of Allah (*ḥuqūq Allah*) are defined as follows: “By the rights of Allah (*swt*) is meant that which comprehends a public benefit, not peculiar to any individual. It is referred to Allah (*swt*) because of greatness of its significance and generality of its benefit.”⁸

⁴ *Qur'ān* 17:23.

⁵ Al-Zarqā', Muṣṭafā Aḥmad, *al-Fiqh al-Islāmī fi Thawbihi al-Jadīd* (Damascus, Maṭba'ah al-Ḥayāt, 1363 AH), v.3, p. 11.

⁶ Muḥammad Yūsuf Mūsā, *Al-Fiqh al-Islāmī* (Cairo: Dār al-Kitāb al-'Arabī, 1958), p. 211.

⁷ Ahmad Hasan, *Principles*, p. 279

⁸ Al-Taftazānī, *al-Talwīḥ 'ala'l Tawḍīḥ*, v. 2, p. 151.

The rights of man (*ḥuqūq al-‘abd*) involve private rights which comprise matters related entirely to the rights of individuals such as the rights of protection of property, enforcement of contracts etc. The rights of man is, therefore, defined as follows: “By the right of man is meant that which involves a particular benefit such as the prohibition of appropriation of property of another person.”⁹

Herewith, we need to evaluate the concept of right with a divine perspective. Because the first thing that is necessary for mankind is to know who the creator is and then to live within the rules set by Him. The purpose behind sending 124 thousand prophets since Adam is to remind people of their Creators and to make sure them that they live according to His laws. The purpose of the creation of life and death is the determination of good and evil, as stated in the *Surah al-Mulk*: “*He Who created Death and Life, that He may try which of you is best in deed: and He is the Exalted in Might, Oft-Forgiving*”¹⁰ From this point of view, if we were created for a test, it is necessary to comply with the rules and the conditions of the examination to be able to pass the exam successfully. The Examiner declares that the last religion, which is valid for all mankind, will only be accepted as global religion: “*Surely the (true) religion with Allah is Islam,*”¹¹ So, this religion has a universal validity. In other words, this religion has not been sent to a particular group or society, it is meant for all humanity.

Just as there would be no more than one head of a state and more than one legislative authority, accepting an authority other than the laws of God, who created the universe and the people, is contrary to reason and logic. To human being, it is to ensure that the rules of the Supreme Creator and the Lawgiver are appropriately applied and made liveable according to the conditions of time. In this regard, the Lawgiver makes very serious threats “*whoever did not judge by what Allah revealed, those are they that are the unbelievers*”¹²; “*And (as to) those who disbelieve in and reject My verses (laws, signs, way of life etc), they are the inmates of the fire, in it they shall abide*”¹³; “*Those who reject our Signs, We shall soon cast into the Fire: as often as their skins are roasted through, We shall change them for fresh skins, that they may taste the penalty: for Allah is Exalted in Power, Wise.*”¹⁴

The Lawgiver has revealed His laws to mankind through prophets in order to guide them to the right path, lead them out of the depths of darkness into light. In view of its utmost importance as the last law of Allah, the *Sharī‘ah* has certain characteristics such as a perfected religion,¹⁵ eternal validity,¹⁶ universal,¹⁷ flexible nature which means problem solving oriented,

⁹ *Ibid.* see in Saim Kayadibi, *Principles of Islamic Law, The Methods of Interpretation of the Texts, Usul al-Fiqh*, Revised Edition, Kuala Lumpur: Islamic Book Trust, 2018), p. 134-135.

¹⁰ *Qur’ān* 67:2

¹¹ *Qur’ān* 3:19

¹² *Qur’ān* 5:44

¹³ *Qur’ān* 2:39

¹⁴ *Qur’ān* 4:56

¹⁵ See *Qur’ān* 5:3.

¹⁶ *Qur’ān* 15:9

¹⁷ *Qur’ān* 34:28

divine nature.¹⁸ It is necessary for all Muslims, who believe in Allah (swt) and the Messengers (s), must maintain and implement the laws of Allah (swt) as indicated in the *Qur'ān*: “It is not fitting for a Believer, man or woman, when a matter has been decided by Allah and His Messenger to have any option about their decision: if any one disobeys Allah and His Messenger, he is indeed on a clearly wrong Path.”¹⁹ Thus, this verse must be considered as the determining character of a faithful Mu'min which is emphasized by the following verse too: “The response of the believers, when they are invited to Allah and His Messenger that he may judge between them, is only to say: We hear and we obey; and these it is that are the successful.”²⁰ It is because another character of the *Sharī'ah* is unified character as Allah (swt) emphasised by saying “Do you then believe in a part of the Book and disbelieve in the other? What then is the reward of such among you as do this but disgrace in the life of this world, and on the day of resurrection they shall be sent back to the most grievous chastisement, and Allah is not at all heedless of what you do.”²¹ The *Sharī'ah* may be resembled to a human body that is one unit rather than being divided into parts, soul emotions and so on, so does the *Sharī'ah*.²² In connection with this 'Umar b. 'Abd al-'Azīz, emphasised on the issues of *aḥkām* saying “Execution of penalties is not any different from practising *'ibādāt* such as prayers and religious tax.”²³

Last but not the least, the fundamental human rights and the equality character of the *Sharī'ah* which in terms of creation, all humans are created equal and free, is one of the fundamentals of Islam that considers all peoples to be equal and free. Freedom is one of the natural (*fiṭrī*) rights of people and it cannot be transferred to anyone as 'Umar (ra) said, “How dare you enslave people while their mothers gave birth to them freely.”²⁴ The Prophet (s) united all people referring to Ādam (as) as saying “You are all from Adam.”²⁵

The equality character of the *Sharī'ah* provides *musāwāt* (equality) to people that all human beings are equal in terms of creation, as the *Qur'ān* indicates in this sense: “O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise (each other)). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you.”²⁶ This character is also emphasised by a *ḥadīth* of the Prophet (s) as saying “O mankind, your Lord is one and your father is one. There is no virtue of an Arab over a foreigner nor a foreigner over an Arab, and neither white skin over black skin nor black skin over white skin, except by righteousness (*taqwā*). Have I not delivered the message?”²⁷

¹⁸ *Qur'ān* 53:3-4

¹⁹ *Qur'ān* 33:36

²⁰ *Qur'ān* 24:51

²¹ *Qur'ān* 2:85 see also: 4:150-151

²² Qaradāwī, “*Khaṣā'is*,” 108.

²³ Ibn Sa'd, “*Al-Tabaqāt*,” v. 378.

²⁴ Ibn 'Ashūr “*Maqāsid*,” p. 107-108.

²⁵ *Khutbah al-Wadā* (last ceremony): see in Muḥammad Ḥamidullah, “*Islam Peygamberi*” (Istanbul: 1980).

²⁶ *Qur'ān* 49:13

²⁷ *Musnad Aḥmad*, *ḥadīth* no: 22978

Since all human beings are equal in front of the Creator, there is not any discrimination. No one is worthier than another in terms of basic human rights and their protection, simply because the rights and obligations enjoyed by human beings are granted by the Almighty Allah (swt).²⁸ The superiority of one man over another is only on the basis of righteousness (*taqwā*), purity of character and high morals, and not on the basis of colour, race, language or nationality. More importantly, this superiority of righteousness (*taqwā*) does not justify that such people should play lord or assume airs of superiority over other human beings.²⁹ Therefore, all mankind is equal before God and that the true human rights can be achieved through the *maqāṣid al-sharī'ah*.

Background of the study:

Allah (swt) provided omissions and commissions in His Book in order to protect the essential values of *maqāṣid al-sharī'ah*. For example, Allah (swt) Almighty commanded retaliation (*qiṣāṣ*) to protect life³⁰; prohibited consuming alcohol to protect the intellect³¹; adultery to preserve one's lineage³²; theft to protect one's property³³ and accusation to protect one's honour³⁴. In addition, *jihād* (struggling for the sake of Allah) was prescribed³⁵ to protect Islam and, accordingly, the honour of Muslims. Protecting one's honour becomes a vital element for the dignity of Muslims, who were created in the best manner and are Allah's (swt) representatives on Earth as caliph (*khalīfah*). *Jihād* indirectly protects the Muslims' life and honour, because without honour, life would be incomplete and thus have no value in terms of human dignity. A question may arise here: How can a humiliated or enslaved Muslim represent the law of Allah (swt) on Earth? The answer is that such a person cannot. Therefore, honour is just as essential as the other six values. For this reason, protecting the state becomes the most essential one in terms of protecting the other values. Especially the protection of these six fundamental values of Islamic law constituting contextual basis for human rights are the essential objectives of Islam. Violation of these fundamental rights is considered as a serious matter which can cause severe consequences.

Moreover, protection of intellect is a prerequisite for legal obligation and without it there will be no obligation as the Prophet (ṣ) said “*There is no responsibility upon three persons: a sleeping person before he wakes, a youth before puberty (i.e. the legal age of maturity in Islamic*

²⁸ Hayatullah Laluddin (et al), The Relationship Between Islamic Human Rights and the Maqasidic Approach, *The Social Sciences*, 7 (1): 111-116, 2012, *Medwell Journals*, p. 112.

²⁹ Abul A'la Maududi, Human Rights, the West and Islam, in “*Human Rights in Islamic Law*,” ed. By Tahir Mahmood (Delhi: Institute of Objective studies, 1993), p. 9.

³⁰ *Qur'ān* 2:178

³¹ *Qur'ān* 5:90

³² *Qur'ān* 17:32

³³ *Qur'ān* 5:38

³⁴ *Qur'ān* 24:4

³⁵ *Qur'ān* 2:216

law), and a lunatic before he recovers his senses.”³⁶ The intellect is an ability to differentiate between good and evil.

In addition to these values, Allah (*swt*) enjoins justice by saying “*And of those whom We have created are a people who guide with the truth and thereby they do justice*”³⁷ and advises the Muslim community (*ummah*) to conduct consultation (*shūrā*) by saying “*their affairs by mutual consultation.*”³⁸ All of these values are dealt with by the state’s authority, for its absence means that these values and obligations cannot be realized. Allah (*swt*) has decreed orders and prohibitions with regards to the values that make up the state. Since man was created as a thinking entity, Allah (*swt*) did not directly order him to establish the state so that he could use his intellect. The Prophet’s (*ṣ*) life is an excellent example in this and many other regards. The fact that the *Qur’ān* contains no such direct injunction does not mean that establishing and protecting the state is unnecessary. One can ask how the five senses become assets with a human concept. All of the values, including justice, consultation, *jihād* and so on are established and enacted by the state. Therefore, the Prophet’s (*ṣ*) life must become part of our agenda so we can comprehend life in its entirety. The first phase involved establishing Islam in the Muslims’ heart. The second phase began after they migrated to Medina: the Prophet (*ṣ*) immediately established a state via the well-known Medina constitution. After that, Allah (*swt*) imposed obligations and prohibitions that only the state could materialize.

Scholars have undertaken many serious studies of the *maqāṣid al-sharī‘ah*. For example, Imām Abū Mansūr al-Māturīdī (d.333/944), al-Juwaynī (d.478/1085), Fakhr al-Dīn al-Rāzī (d. 606/1209), Sayf al-Dīn al-Āmidī (d.631/1233), Ibn al-Ḥājjib (d.646/1249), ‘Izz b. ‘Abd al-Salām (d.660/1262), Shihāb al-Dīn al-Qarāfī (d.685/1286), Najm al-Dīn al-Tūfī (d.716/1316), Ibn Taymiyyah (d.728/1328), Ibn Qayyīm al-Jawzīyyah (d.751/1350), Ibrāhīm al-Shāṭibī (d.790/1388), Shāh Walīyyullah Dihlawī (d.1176/1762), Ṭāhīr bin ‘Āshūr (d.1293/1973), ‘Allāl Fāsī (d.1974), Aḥmad al-Raysūnī and so on.

Imām al-Shāṭibī’s magnificent work has to be emphasised when studying the *maqāṣid al-sharī‘ah*, as does Aḥmad al-Raysūnī’s *Imam al-Shāṭibī’s Theory of the Higher Objectives and Intents of Islamic Law*.³⁹ In his *al-Muwāfaqāt*, Shāṭibī made great efforts to ensure that the door was open for everyone to understand the wisdom and subtlety of Islamic law.⁴⁰ Muḥammad Fāḍil b. ‘Āshūr comments that “with this book, Shāṭibī actually constructed a pyramid erected to the sky in terms of Islamic culture. He succeeded in something that his ancestors simply did not bother to deal with, and thereby discovered evidence and methods that guaranteed the religion’s everlasting permanence and purity. Those who made an effort to uncover the religion’s subtlety became key personalities. The importance of Shāṭibī’s work has found more resonance during

³⁶ Tirmidhī, *al-Jāmi‘ al-Ṣaḥīḥ*, no: 1423, iv, 24; Nasāī, *Sunan*, no: 3432, iv, 146.

³⁷ *Qur’ān* 7:181

³⁸ *Qur’ān* 42:38

³⁹ See Aḥmad al-Raysūnī, “*Imām al-Shāṭibī’s Theory of the Higher Objectives and Intents of Islamic Law*” (Selangor: Islamic Book Trust, 2006).

⁴⁰ Raysūnī, *ibid.*, p. 351.

the reawakening of the Islamic world from its long sleep, when religious rulings contradicted the requirements of contemporary life, especially in current and previous centuries. In this context, Shāṭībī's *Muwāfaqāt* is a real savior."⁴¹ Therefore, he deserves to be called "the father" of the *maqāṣid*.

Role of State in fulfilling the human rights:

There have been many serious works produced on the *maqāṣid al-sharī'ah* and scholars have reached consensus that there are six essential values which are basic values of human rights. In addition to these six values, the author contends that the concept of "state", which has not been mentioned as one of them, is to be considered the missing point in this regard. Although our scholars have written books on its existence and protection, they never thought of it as an independent value of the *maqāṣid al-sharī'ah*.

Moreover, if one considers that the legislative, executive and judicial powers are realized under the state's umbrella, then clearly these six basic human rights values must also be considered as protected and preserved under the state's security. Just as eliminating evils require state power, so do disseminating goodness and establishing justice. We can see this clearly in the case of the very secular and anti-religion Republic of Turkey that arose after the collapse of the Ottoman Empire.

Until recently, the inability to educate children who wore a headscarf or other religious attire, the state also removed religious values from certain aspects of life, closed important religious institutions, turned mosques into barns and imprisoned innocent religious people because its authority was in the hands of the wrong people. Fortunately, since 2002, with the arrival of a new government, AK Party that has not turned its back on Islamic values, the people were able to sigh with relief and relax. Muslims in Turkey began to practice their religious values fearlessly, for religious freedom and basic human rights began to infuse every part of the life, including education, politics, the military and trade. Therefore, the state's authority plays an indispensable role in religious freedom and establishing the basic human rights which they then become a part of life. That is why the value of "state" has significant role to provide the basic human rights for all the citizens.

Significance of the study and its contribution:

This paper's objective is to help scholars, researchers realize the state's significance in realizing the higher objectives of the Lawgiver, who has created life and death to test who is doing better and has made certain tests in regards to achieving life's objectives in fulfilling the basic human rights. As it is mentioned earlier, Allah (*swt*) says "*He created death and life that*

⁴¹ Muḥammad F. Ibn 'Āshūr, "*Ā'lam al-Fiqr al-Islāmī' fī Tārīkh al-Maghrīb al-'Arabī*," p. 76 qf Raysūnī, *ibid.*, pp. 352-353.

*He may try you, which of you is best in deeds. He is the Mighty, the Forgiving.*⁴² A person's ability to pass these exams depends upon his/her sound understanding, implementation and sustainability of the Lawgiver's subordinate aims. The following verse clearly states that no person created as a perfect being can be created in vain and without purpose "What! Did you think that We created you in vain and that you shall not be returned to Us?"⁴³

Man was created as Allah's (*swt*) representative (caliph) on Earth and thus must not neglect this great task, for Allah (*swt*) did not leave politics aside. Rather, the *Qur'ān* teaches that worldly and religious affairs are to work together and simultaneously, for their separation is not acceptable and, in fact, is rejected completely. In the context of the Islamic state, Muslim scholars have considered three important dimensions: the *ummah*, the Islamic law (*sharī'ah*) and the leadership of the Muslim community (*khilāfah*). The last one is just as essential as the other two, since neglecting any one of them renders Islamic government meaningless. Without the establishment of the state, no human rights will be preserved.

Furthermore, Muslim leadership is an inescapable duty for the whole *ummah* in order to convey Allah's (*swt*) message and to make the human rights applicable. This leadership is only possible under a state. Al-Mawārdī (d. 450/1058) mentions the ten essential duties of a Muslim leader in his "*Kitāb al-Aḥkām al-Sulṭāniyyah*"⁴⁴, none of which has ever been achieved without establishing an Islamic state. This leader's first duty is to protect the religion of Allah (*swt*) in its original form, the second one is to establish justice, the third one is to protect the territory of Islam and so on.⁴⁵

It is important to re-emphasise that the existence of a state authority cannot be denied to make human rights functional. Lack of authority prevents the fair application of human rights. Hence, under the shadow of an authority, in other words, depending on an authority, the human rights can be preserved. In view of this reality, establishing and protecting the state can be inferred from the following verses: "*Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice. Surely Allah admonishes you with what is excellent. Surely Allah is Seeing, Hearing. O you who believe! Obey Allah, the Messenger and those in authority from among you. If you quarrel about anything, refer it to Allah and the Messenger, if you believe in Allah and the Last Day. This is better and very good in the end.*"⁴⁶ These verses indicate that establishing a just society and obeying Allah (*swt*), the Messenger and those Muslims placed in authority are natural duties, the outcome of the concept of *siyāsah sharī'ah*⁴⁷ that is part of *maqāṣid al-sharī'ah* through which the human rights will prevail.

⁴² *Qur'ān* 67: 2

⁴³ *Qur'ān* 23:115

⁴⁴ Abūl Ḥasan al-Mawārdī al Shāfi'ī (450/1058), "*Kitāb al-Aḥkām al-Sulṭāniyyah*," (Cairo: Dar al-Hadīth, 2006), pp. 40-41; Al-Mawārdī, "*The Ordinances of Government*," translated by Asadullah Yate, (London: Ta-Ha publishers, nd.), pp. 27-28.

⁴⁵ Al-Mawārdī, *Al-Aḥkām*, pp. 40-41; Al-Mawārdī, *The Ordinances*, pp. 27-28.

⁴⁶ *Qur'ān* 4:58-59

⁴⁷ Saim Kayadibi, (2015) *The Theory of Syarī'ah Oriented Public Policy. Ahkam*, XV (2). pp. 171-180.

Importance of Human rights in Islam:

As explored, the significance of human being is apparent when Allah (swt) created him in the best make; Islam gives emphasis on the rights of human being. The idea is indicated in the following verse: “*We have indeed created man in the best of moulds,*”⁴⁸ Not only that the Almighty Creator created other things for the sake of human beings “*It is He Who hath created for you all things that are on earth;*”⁴⁹ and to have suitable abode “*He has created the heavens and the earth in just proportions, and has given you shape, and made your shapes beautiful: and to Him is the final Goal*”⁵⁰ but also He made all of these subservient to human beings “*And He has made subservient to you whatsoever is in the heavens and whatsoever is in the earth, all, from Himself; most surely there are signs in this for a people who reflect.*”⁵¹

Fundamentally, as Maududi emphasized, the human rights have also been granted by Allah and they have not been granted by any legislative assembly or any kind of authorities such as kings and presidents. Moreover, the rights granted by the authorities and assemblies can be withdrawn in the same manner in which they are conferred. Similarly, it is the case with the rights accepted and recognized by dictators. They may openly violate the rights whenever they wish. However, the rights granted by Allah cannot be violated or changed or abrogated by any authorities or assemblies since these rights have been granted by Allah.⁵² In other words, these human rights are guaranteed by the ultimate Guarantor, no one dares to touch to misuse or withdraw them. The clear and unequivocal warning made by Allah for those who are violating or denying the rights that have been granted by Allah. The *Qur’ān* mentions this serious reality in the following verse “*and whoever did not judge by what Allah revealed, those are they that are the unbelievers; those are they that are the unjust (zālimūn); those are they that are the transgressors (fāsiqūn).*”⁵³

The Maqāsid al-Sharī‘ah and Human rights:

⁴⁸ *Qur’ān* 95:4

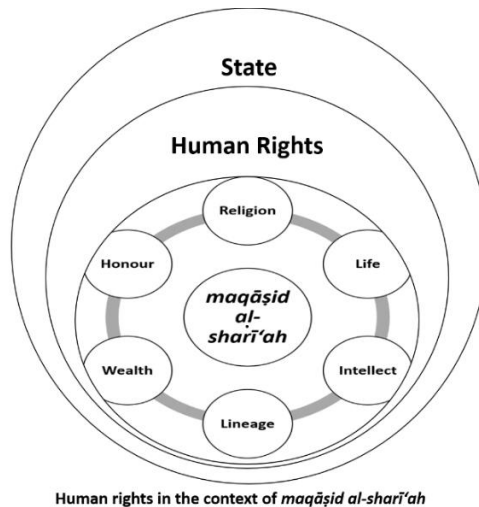
⁴⁹ *Qur’ān* 2:29

⁵⁰ *Qur’ān* 64:3

⁵¹ *Qur’ān* 45:13

⁵² Abul A‘la Maududi, Human Rights, the West and Islam, in “*Human Rights in Islamic Law,*” ed. By Tahir Mahmood (Delhi: Institute of Objective studies, 1993), p. 2

⁵³ *Qur’ān* 5:44,45,47



The religion's most important objectives is to ensure the protection of benefit (*maṣlahah*) and prevent evil (*mafsadah*) both in this world and the hereafter. The *maṣlahah* serves as a proper basis for legislation in the absence of an explicit ruling within the *Qur'an* and *Sunnah*, as well as within *ijmā'* and *qiyās*. If this is the case, then the *mujtahid* can resort to it to protect humanity's benefit and prevent corruption on Earth⁵⁴ for, as Shāṭibī (d.790/1388) indicated, "in the religious context, the aim of obtaining benefits (*jalb al-ṣalāḥ*) and avoiding evils (*daf' al-fasād*) is to provide the needs of this world for the sake of the hereafter, not for personal desires or avoiding personal hatreds. Religion prevents people from following their desires and guides them to be a servant of Allah (*swt*)."⁵⁵ It is, however, required that no *maṣlahah* contradicts the *Sharī'ah*'s spirit and general principles.⁵⁶

Clearly, the concept of *maṣlahah* has a very close relationship with the *maqāṣid al-sharī'ah*. Even more, this term is used interchangeably with *maqāṣid* and is briefly maximized as obtaining benefit and preventing evil. The first significant work in this regard was done by Ghazālī (d.505/1111) according to him, his master al-Juwaynī held that the direct relation between the two could be realized: "In a real sense the *maṣlahah* consists of obtaining *manfa'ah* (benefit) and preventing *maḍarrāt* (evils). However, we do not use that meaning ... by the term of *maṣlahah* we mean to protect the *sharī'ah*'s objectives (*maṣlahah al-sharī'ah*), which consist of five essential values, namely, religion, life, intellect, lineage and property."⁵⁷

As mentioned earlier, the *Sharī'ah* intends to protect certain basic human rights values in order to maintain the people's existence and the state's constituents in peace and security. These values, according to Imām al-Ghazzālī, are five in number.⁵⁸ According to Imām al-Qarāfī (d.685/1286) they are six,⁵⁹ and according to contemporary jurists they are seven.⁶⁰ Almost all

⁵⁴ Muḥammad Hāshim Kamali, "Principles of Islamic Jurisprudence," (Cambridge: Islamic Text Society, 1997), p. 268.

⁵⁵ Shāṭibī, "Al-Muwāfaqāt," v: 2, pp. 29-30.

⁵⁶ Saim Kayadibi, (2015) The Theory of Syarī'ah Oriented Public Policy. *Ahkam*, XV (2). pp. 171-180.

⁵⁷ Ghazālī, "al-Muṣtaṣfā," pp. 174-179.

⁵⁸ Ghazālī, "el-Muṣtaṣfā," p. 174-179.

⁵⁹ Ibn 'Ashūr, "Maqāṣid el-Sharī'ah al-Islāmīyyah," p. 123.

Muslim scholars agree on the duty to protect them, especially the first five, for doing so is essential in Islamic law.⁶¹ In addition to these five values, Qarāfī added the protection of honour (*sharaf*), which guarantees the other five because they will indirectly fall into danger if it is missing. It is highly desirable to mention the value of “state” as the seventh value, for it indirectly guarantees the others in the same way as does the value of honour. In this respect, preserving and sustaining the state’s existence is an indispensable task, for only it can fulfil these obligations of realizing the human rights at the social, individual and global levels. Since man is a social entity, he needs to live in a state structure in order to maintain his life with self-respect.

In view of its utmost importance, our glorious Muslim scholars have divided the *maqāṣid al-sharī‘ah* into three categories: *darūriyyāt* (the essentials), *ḥājīyyāt* (the complementaries) and *tahsīniyyāt* (the desirable or the embellishments). As stated, the *darūriyyāt* are now seven in number: religion, life, intellect, lineage, wealth, honour and state. They are considered essential because neglecting them would cause total social disruption and anarchy. Moreover, Ghazālī says that destroying even one of them is *ḥarām*.⁶² These values can be protected either by maintaining the essentials or removing the disruption.⁶³ In an affirmative sense, the *Sharī‘ah* encourages the protection of human life and offers alternatives to all prohibited acts: non-alcoholic drinks to alcohol, education to illiteracy, polygamy to adultery, work and trade to theft and so on. It does this because it seeks to protect and promote the aforementioned essentials in order to protect man in accordance with his nature.

The *ḥājīyyāt* are not completely independent within themselves, for while neglecting them might cause hardship to the community, it will not cause the community to collapse. However, the *Sharī‘ah* still seeks to protect and promote these essential values at the secondary stage. Shāṭibī defines *ḥājīyyāt* as that which is needed for *tawassī* (widening) and *raf‘ al-ḥaraj* (avoiding hardship). If they were ignored, people would face harm and difficulty, but not to the same extent that they would if the essentials were neglected.⁶⁴

In the context of *‘ibādāt*, the concessions (*rukhaṣ*) granted to the sick and travellers in terms of suspending the fast and shortening the obligatory daily prayers (*ṣalāt*) are designed to prevent hardships. This is the objective of all such concessions; however, they are not considered essential because the affected people could survive without them. In the area of criminal law, the prophetic *ḥadīth* of “suspend the prescribed penalties (*ḥudūd*) in all cases of doubt (*Adraū al-ḥudūd bi-shubuhāt*)” can be seen as providing a complementary *maṣlahah* because the burden of proof for crimes with prescribed penalties (*ḥudūd*) is very severe.⁶⁵ In the area of *mu‘āmalāt*, the

⁶⁰ The value of “state”, which *siyāsah al-sharī‘ah* considers one of the Shari‘ah’s ultimate objectives to be protected (i.e., life, religion, intellect, lineage, property, honour and state). The other six values will be in danger if the state is jeopardized. In addition, although some scholars opine that “eliminating corruption” enables rulers to use their discretionary powers to penalize evildoers is considered the seventh objective, we consider it a sub-element of the state, for carrying out this task is one of its responsibilities. Therefore it is not considered an important independent value or even essential for the government to achieve *falāḥ* (welfare) and prevent *fasād* (destruction).

⁶¹ Ṣāṭibī, *al-Muwāfaqāt*, II, s. 10; Zaydān, *Uṣūl*, p. 322-323.

⁶² Ghazālī, “*Al-Muṣtaṣfā*,” v. 1, p.288.

⁶³ Shāṭibī, “*Al-Muwāfaqāt*,” v. 2, p.8.

⁶⁴ *Ibid.*, 2/10-11.

⁶⁵ Muḥammad Hāshim Kamali, *Al-Maqāṣid*, p. 2

Sharī‘ah’s allowance of certain contracts (e.g., the sale of a *salām* contract [deferred delivery] and *ijārah* [lease and hire]) is not absolutely essential to maintain normal life. Thus, they are classified as *ḥājiyyāt* (complementary).

The *taḥsīniyyāt* or *kamāliyyāt* (embellishments) complete the first two by representing the *mukallaḥ*’s (subject) interests and awareness in all areas and at all levels. Shāṭibī indicated that these embellishments may be summarized as part of the moral constitution of *‘ibādāt* (e.g., eliminating that which is dirty and considering all types of cleanness), customary matters (e.g., good conduct in eating and avoiding wastefulness in consumption), transactions (e.g., preventing others from selling that which is impure) and *jināyāt* (i.e., criminal offences, among them killing women, children and religious people during *jihād*).⁶⁶ Therefore *sadd al-ḍarā‘i* (blocking the means) is considered as a type of *taḥsīniyyāt*. The *Sharī‘ah* encourages gentleness (*rifq*), good manners and conduct (*ḥusn al-khulq*) and fair dealing (*iḥsān*), as well as being a devoted person (*‘ābid*) in terms of performing the supererogatory prayers, voluntary fasting, generosity to the poor and those in need with regard to all kind of customary matters, interpersonal relations, family matters, religious duties and so on. The purpose behind performing all of these acts in the best possible manner is to improve one’s self and quality in all areas related to human behaviour. Therefore, this third type of *maqāṣid* is vital for gaining Allah’s (*swt*) blessings.

The seven human rights of *maqāṣid al-sharī‘ah*:

In the same manner, Islam’s main objective is to preserve the fundamental human rights. For this reason, Allah (*swt*) prescribed *qiṣāṣ* (retaliation) to preserve life; to protect the intellect, alcohol is forbidden; to preserve one’s lineage, adultery is prohibited; to protect one’s property, theft is prohibited. In fact, all threats to the social order are punishable offenses. Honour is vital for protecting the dignity of Muslims, who were created in the best manner and are Allah’s (*swt*) representatives on Earth. Therefore, *jihād* protects their life, for without honour, life would be incomplete and would surely even be worse. How can a humiliated or enslaved Muslim represents the law of Allah (*swt*) on Earth? Honour, therefore, is just as essential as the other five values. Likewise, the protection of state is vital, since without it these previous values will be destroyed easily.

The right of religion is the most important right of man that must be protected by the Muslims individually and collectively. Individually it may be achieved through the fulfilments of the various *‘ibādāt*, such as performing five prayers, fasting, paying *zakāt* and performing *ḥajj*. Performing all these *‘ibādāt* increase the faith of the subject and keeps him in the circle of religion since these acts protect him from committing sins. The *Qur’ān* indicates this fact “*surely prayer keeps (one) away from indecency and evil,*”⁶⁷

In a wider sense, the protection of the religion involves in defending the Muslim territories from the enemies of Islam when it is attacked. The protection can be achieved by

⁶⁶ Shāṭibī, “*al-Muwāfaqāt*,” v. 2, p. 327.

⁶⁷ *Qur’ān* 29:45

various ways such as in physical fighting, writings, speeches, intelligence services, technological advancements in defence industries, etc. Allah (*swt*) emphasises this matter in the *Qur'ān* “*and fight the polytheists all together as they fight you all together*”.⁶⁸ In order to protect the religion of Islam, it is necessary for all Muslims individually and collectively to revitalize the act of *jihād* for the sake of Allah (*swt*). It is an obligatory act for Muslims which is emphasised in the *Qur'ān* “*And fight in the way of Allah with those who fight with you, and do not exceed the limits...*”⁶⁹ The religion of Allah (*swt*) can be protected by preventing evil as mentioned in a *ḥadīth* of the Prophet (*ṣ*): “*If any one of you sees something objectionable (evil), he should change it with his hand if he can change it with his hand. But if he cannot (do so), he should do it with his tongue, and if he cannot (do so with) his tongue he should do it in his heart, that being the weakest form of faith.*”⁷⁰

The recent decision of the European Court of Human Rights (ECtHR) is highly appreciated in this sense because the ECtHR decided that defaming the Prophet Muḥammad (*ṣ*) exceeds the permissible limits of freedom of expression. Furthermore, the ECtHR also emphasised that it classified the ‘impugned’ statements as “an abusive attack on the Prophet of Islam, which was capable of stirring up prejudice and putting at risk religious peace.”⁷¹ Establishment of Human Rights institutions in Turkey and making them play substantial roles in the globe have much effect on this kind of decision. Especially collaboration of the Human Rights and Equality Institution of Turkey (HREIT) with other institutions in the world contributed to this decision. Turkey is recording significant progress in terms of awareness of human rights. In this sense, Erdogan’s AK Party (Justice and Development Party) has taken on serious roles to defend the values of Muslims in particular and human rights in general.

In the same manner, life is another right of man that is essential because Almighty Allah (*swt*) created man in the best manner, therefore, the life (*al-nafs*) must be protected. Especially the protection of the life of a Muslim, irrespective of his race, wealth, language, status, is equally important and obligatory to each and every individual, society and government level. In that respect the Lawgiver has ordained not killing anyone except for just reason to protect the life of individual which saves the society from chaos and enmity. The Lawgiver emphasised it in the *Qur'ān*: “*And do not kill any one whom Allah has forbidden, except for a just cause, and whoever is slain unjustly, We have indeed given to his heir authority, so let him not exceed the just limits in slaying; surely he is aided.*”⁷² The *ḥadīth* of the Prophet (*ṣ*) strengthen the protection of life as he said: “*When two Muslims are engaged in a combat against each other with their swords and one is killed, both are doomed to Hell.*” I said, “O Messenger of Allah! As to the one who kills, it is understandable, but why the slain one?” He (*ṣ*) replied: “*He was eager to kill his opponent*”.⁷³

⁶⁸ *Qur'ān* 9:36

⁶⁹ *Qur'ān* 2:190

⁷⁰ *Sunan Abū Dāwūd, ḥadīth ṣaḥīḥ*, no: 4340.

⁷¹ Daily Sabah Newspaper, *Insulting Prophet Muhammad not ‘free speech,’ ECtHR rules*, <https://www.dailysabah.com/europe/2018/10/25/insulting-prophet-muhammad-not-free-speech-ecthr-rules>, Published October 25, 2018 and retrieved October 30, 2018.

⁷² *Qur'ān* 17:33

⁷³ Al-Bukhārī and Muslim, *Book 1, ḥadīth* 9.

Furthermore, the Lawgiver has ordained the retaliation (*al-qīṣāṣ*) to protect the life of the individual. If a person kills an innocent person, the death penalty is applied to the killer. The enactment of the death penalty saves the society from chaos and enmity. The enmity is removed from the society through the application of the death penalty (*al-qīṣāṣ*) as the Lawgiver stresses in the *Qur'ān*: “*O you who believe! Retaliation is prescribed for you in the matter of the slain, the free for the free, and the slave for the slave, and the female for the female,*”⁷⁴ In this sense, it may seem to be that it is contradictory to the concept of protection of life, however the protection of life is actualized here through applying the death penalty in order to save the rest of the society, like making an operation in the body of a person to remove diseases to save the rest of the body. It is indicated in the following verse of the *Qur'ān*: “*And there is life for you in (the law of) retaliation, O men of understanding, that you may guard yourselves.*”⁷⁵

Likewise, Islam aims at preserving the nutritional care of life to satisfy the minimum requirements for good health. Therefore, it is not permitted for a person to have food and drink that are harmful to life as Allah (*swt*) mentioned in the *Qur'ān* “*O ye who believe! Eat of the good things that We have provided for you.*”⁷⁶

In the same manner, intellect (*al-'aql*) which is another right of man that is a great gift bestowed from Allah (*swt*) to human being to differentiate good from evil, to realize greatness of Allah (*swt*) as well as to understand his insignificance in front of Him. This is one of the human capacities that differentiates man from animal and makes him the subject of responsibility (*taklīf*), he is then addressed by the command of Allah (*swt*). The Prophet (*ṣ*) emphasised the role of intellect in *taklīf* as saying: “*There is no responsibility upon three persons: a sleeping person before he wakes, a youth before puberty (i.e. the legal age of maturity in Islamic law), and a lunatic before he recovers his senses.*”⁷⁷

The intellect is an essential gift granted by Allah (*swt*) to understand the command of the Lawgiver, therefore, it must be protected from anything that might harm the ability and functioning of the intellect. This includes any kind of consumption of intoxicated drinks or similar substances that may disable the functions of the intellect. The *Qur'ān* prohibits drinking alcohol with the following verse: “*O you who believe! Intoxicants and games of chance and (sacrificing to) stones set up and (dividing by) arrows are only an uncleanness, the Shaitān's work; shun it therefore that you may be successful.*”⁷⁸ Therefore, the Lawgiver prohibits the consumption of intoxicated drinks with this verse. Despite this verse specifies a specific drink, it can be extended to similar substances by virtue of the principle of analogy (*qiyās*) finding the same cause (*'illah*). Anything related to intellect such as the right of education, right of equality in reaching to knowledge and all sort of intellectual rights, is considered within this right and anything that harms this right such as alcohol, drugs, must be avoided.

In addition to that, the Protection of lineage (*al-'ird*) is also one of the essential rights of man, despite it is confused by many scholars with the concept of the protection of honour (*al-*

⁷⁴ *Qur'ān* 2:178

⁷⁵ *Qur'ān* 2:179

⁷⁶ *Qur'ān* 2:172

⁷⁷ Tirmidhī, *al-Jāmi' al-Ṣaḥīḥ*, no: 1423, iv, 24; Nasāī, *Sunan*, no: 3432, iv, 146.

⁷⁸ *Qur'ān* 5:90

sharaf) due to the usage of the terms in cultures differently. The similarities of the two values of lineage (*al-irāq*) and honour (*al-sharaf*) are in fact different. The former is a physical value, while the later is a spiritual value. Therefore, the lineage indicates generation, progeny, family relationship, origination, ancestry which means a lineal descent from an ancestor.

Islam is a comprehensive religion that contains everything related to human being both in this world and the hereafter. It also regulates the relationship between men and women in order to protect their lineage by not mixing their progeny unless by legal ways ordained by the *sharī'ah*. The relationship is regulated by binding the couples with a prenuptial agreement which protects them from evil acts. The *Qur'ān* strongly warns people from such evil acts as saying: “*And go not nigh to fornication; surely it is an indecency and an evil way.*”⁷⁹ The Prophet (ﷺ) is reported to have said in this matter: “*O young men, those among you who can support a wife should marry, for it restrains eyes (from casting evil glances) and preserves one from immorality; but he who cannot afford it should observe fast for it is a means of controlling the sexual desire.*”⁸⁰

In order to protect the society from illegal relationship, the Lawgiver imposed severe punishments as stoning to death for married people and hundreds stripes for unmarried people who commit adultery. The stoning to death is imposed by the *ḥadīth* of the Prophet (ﷺ): “*It is not permissible to spill the blood of a Muslim except in three [instances]: the married person who commits adultery, a life for a life, and the one who forsakes his religion and separates from the community,*”⁸¹ while applying the hundreds stripes is imposed by the *Qur'ān*: “*The woman and the man guilty of adultery or fornication, - flog each of them with a hundred stripes.*”⁸²

Alternatively Allah (swt) has permitted polygamy to prevent the people from committing adultery as the *Qur'ān* indicates this permissibility: “*then marry such women as seem good to you, two and three and four...*”⁸³

Also, attaining wealth or property (*al-māl*) is one of the essential human rights in this world. Therefore, it has to be protected. The *sharī'ah* has prohibited transgressing and attaining the property of others without legitimate reasons and proper agreement or contract. There are many ways of gaining the property of others illegally such as taking usury (*ribā*), cheating in transactions, stealing the property of others etc. The Lawgiver prohibits such illegal gaining which emphasised in the *Qur'ān*: “*And do not swallow up your property among yourselves by false means, neither seek to gain access thereby to the judges, so that you may swallow up a part of the property of men wrongfully while you know.*”⁸⁴ Similarly, the following verse emphasised on it as saying, “*And their taking usury though indeed they were forbidden it and their devouring the property of people falsely, and We have prepared for the unbelievers from among them a painful chastisement.*”⁸⁵ In order to protect the property of people, as the Lawgiver has warned people with a painful chastisement in the hereafter, it is imposed severe punishments in this

⁷⁹ *Qur'ān* 17:32

⁸⁰ Ṣaḥīḥ Muslim, 1400.

⁸¹ Al-Bukhārī and Muslim, 40 *ḥadīth* Nawawī, 14

⁸² *Qur'ān* 24:2

⁸³ *Qur'ān* 4:3

⁸⁴ *Qur'ān* 2:188

⁸⁵ *Qur'ān* 4:161

world for those who gain illegal property of others as the *Qur'ān* indicates it: “*And (as for) the man who steals and the woman who steals, cut off their hands as a punishment for what they have earned, an exemplary punishment from Allah; and Allah is Mighty, Wise.*”⁸⁶

Furthermore, as it was mentioned above the protection of honour (*al-sharaf*) is different than the rights of the protection of lineage (*al-'ird*). The rights of the protection of honour (*al-sharaf*) may include the rest of the previous values. If however, destruction of this value, such as physical or intellectual slavery, humiliation, etc. would cause total destruction to the rest of the values. The rest of the values will not be protected if the honour of men is humiliated or destructed. It is because Islam is very concerned about the honour of a person and highlights the importance of protecting the honour. The protection of honour (*al-sharaf*) includes protecting individual rights and privacy as well. The *Qur'ān* emphasises the importance of protecting the honour of a person in the following verse: “*And those who accuse free women then do not bring four witnesses, flog them, (giving) eighty stripes, and do not admit any evidence from them ever; and these it is that are the transgressors.*”⁸⁷

Moreover, providing four witnesses is almost impossible in one case and for a legal action each allegation must be substantiated by concrete evidences. Otherwise, a punishment will be imposed for accuser because of the false accusation (*al-qazf*), and the accuser will face three consequences, punished with eighty flogs, be considered *fāsiqūn* (transgressors, liars) and rejecting his testimony forever. It is therefore, concealing the sin is better than disclosing it even if the accusation is accurate. The Lawgiver made it impossible with requesting four witnesses to protect the honour of Muslim. After all, the *Qur'ān* indicates that Allah's (*swt*) curse is upon those who commit such accusation crimes. “*Surely those who accuse chaste believing women, unaware (of the evil), are cursed in this world and the hereafter, and they shall have a grievous chastisement.*”⁸⁸ Thus, protection of an honour of a person is very crucial matter in Islam. With this reason, not only physical violations, but also all kind of violations including discrediting one's honour with all type of means, backbiting, espionage and ill thinking are strictly prohibited.

In an affirmative sense, the *sharī'ah* encourages the protection of human life and offers alternatives to all prohibited acts for example, non-alcoholic drinks to alcohol, education to illiteracy, polygamy to adultery, work and trade to theft, and so on...

In addition to the above rights, a value which must be preserved is the maintenance of an Islamic state whose aim is to preserve these rights. As it's obviously known that the Prophet's (*s*) first self-assigned task after arriving in Medina was to set up a state in order to protect and maintain the essential values of *sharī'ah* which is commonly known as the fundamental rights of human being. For the above reason, the institution of state or government is a vital necessity for communities to protect and sustain the previous essential values as well as to regulate the peoples' affairs in terms of the social, economic, cultural, psychological and religious values that create unity against internal and external threats. In this context, Ibn Taymīyyah stresses the

⁸⁶ *Qur'ān* 5:38

⁸⁷ *Qur'ān* 24:4

⁸⁸ *Qur'ān* 24:23

state's indispensable nature: "It should be noted that regulating the people's affairs is one of the most important requirements (*wājibāt*) of the religion (*al-dīn*)."⁸⁹

The religion of Allah (*swt*) cannot be well established without a state. As history shows, its essential values (i.e., the *maqāṣid al-sharī'ah*), were destroyed whenever a Muslim state collapsed. We can see this in terms of the situation of Muslims in Iraq, Syria, Libya, East Turkistan (Xinjiang) and, most recently, Myanmar's Arakan state. But in addition to protecting these essential values, the state is also required to preserve the Muslims' economic and financial activities. To emphasize its importance, Ibn Taymīyyah says: "Sixty years of an unjust *imām* (ruler) are better than one night without a *sultān*."⁹⁰ Clearly, from the experience of many contemporary Muslims, any type of authority is better than anarchy and chaos. This opinion is supported by Al-Ghazālī and Ibn Jamā'ah, who opine that any effort to overthrow rulers, even a tyrannical *sultān*, is liable to create chaos and lawlessness.⁹¹ Therefore, removing an established but unjust ruler may cause serious disaster and chaos to society.

Conclusion:

This paper has been maintaining that the concept of human rights is one of the significant objectives of Islam and that its *maqāṣid* has an inseparable connection with it. The *Sharī'ah*'s most important objective is to ensure the protection of benefits (*maṣlaḥah*) and prevent evil (*mafsadah*) both in this world and the hereafter. As it can be observed, the reality of the human rights exemplified in the charter of United Nation declaration and related International agreements is mostly a revisit of the values of Islam and precisely the ultimate objectives of Islamic Law (*maqāṣid al-sharī'ah*).

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⁸⁹ Ibn Taymīyyah, *Al-Siyāsah al-Sharī'yyah* (Cairo: Dār al-Fikr, n.d.), pp. 150-151.

⁹⁰ Ibn Taymīyyah, *ibid.*, p. 185.

⁹¹ Erwin I. J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge: Cambridge University Press, 1962), p. 200, qf. Abdul Azim Islahi, *Economic Concepts of Ibn Taimīyah*, (Leicester: The Islamic Foundation, 1988), p. 174.

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