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## **FIQH AL-MA'ĀLĀT: AN ANALYSIS OF ITS ORIGIN, SUBSIDIARY AND APPLICATION**

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### **ABSTRACT**

This study seeks to employ the knowledge of principles of Islamic jurisprudence and, the objectives of Islamic law in order to benefit from juristic legacy for revitalising the outcome-based approach to Fiqh to revitalize the Ummah. Accordingly, the problem statement of the study is attempting to search for the role of the Muslim nation that is absent from the contemporary civilised scene and answering some questions, such as: where is our nation in the modern ranking civilisation? Why is it turned late? Is there anything in our heritage that prevents us from looking ahead the future and anticipating what is coming? In conducting this study, the researcher employed deductive, analytical, and inductive methods. While the deductive method is used to study the Islamic texts delineating the consideration of the outcome, the analytical method is used to analyse those texts to extract rules that suit incidents from them. According to the study's findings, firstly, Islam prepares the human for foreseeing and anticipating the future and frees him from the obstacles of superstition, pessimism, and astrology. So, the human being should not give up and succumb. Rather, he shall face and strive with truth and for the truth. Second, the fundamentals of anticipation have to do with being aware of Islamic laws pertaining to an honest tomorrow. Third, the glorious Qur'ān consider *al-sunan al-kawniyah* (universal ways of life) and those related to society as hints of the future and means of understanding it. The study concluded that the Holy Qur'ān also addresses time in all of its facets, including the past, present, and future (*ma'ālāt*), in order to help Muslims be conscious of their movements, homes, activities and outcomes. Therefore, the study has contributed to the field of research by clarifying the interest of scholars in the jurisprudence of *ma'alat* (forecasting), its fundamental rules, and its applications in various fields of Islamic jurisprudence. The study suggests that contemporary scholars should always consider *ma'alat* (forecasting) when issuing fatwas related to contemporary issues.

**Keywords:** *Al-ma'ālāt (consideration of outcomes), Maqāsid (Objectives), Maslaha (public interest), juristic preference equity.*

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## Introduction

Foreseeing the outcomes is difficult in the beginning and good in the ends as espoused by the principles of the *Sharī'ah*. From here, the implementation of principles of *al-ma'ālāt* (outcomes or predicted results) in all specialisations of the Islamic *fiqh* (law) is important in clarifying the practical side as it links principle of jurisprudence with its branches through mentioning *fiqh* rulings which come under the principles of considering the outcomes, especially those related to new matters. Accordingly, in this paper we present an analysis of *fiqh al-ma'ālāt* in terms of both theoretical and applied dimensions.

## Literature Review

There is no doubt that the principle of considering outcomes has been studied and there are studies and research about it. That is because of the importance of this principle and its position. Imam al-Shātibī (Al-Shātibī, 2011) is considered as the first theorist who specified the principle by its name in his book *al-Muwāfaqāt*. This is the first brick in mentioning the *fiqh* of anticipation. Then, some contemporary writers followed Imam al-Shātibī (2011). Some pertinent works on *fiqh of al-ma'ālāt* include the following:

A book titled “Considering Outcomes of the Actions and its Fiqh Effect,” authored by Walīd Ali al-Hucein (Walīd, 2009), discusses the link of considering the outcomes by the science of *al-maqāṣid al-sharī'ah* (the Sharī'ah objectives), types of predictable actions, and the wisdom behind considering them. Moreover, the author also mentions conditions of considering anticipation and, the hindrance of considering, the causes of considering anticipated actions in *ijtihād* (independent judgement), *fatwa* (legal verdict), *al-muftī* (expounder of Islamic law) and *al-mustaftī* (a person asking about an Islamic ruling).

Another work on *fiqh of al-ma'ālāt* is a book under the title “Considering the Outcomes and Observing the Results of Actions”, written by Abd al-Rahman bin Ma'mar al-Sunūsī (Al-Sunūsī, 1424H), he mentions levels of the predicted outcome, situations of vanishing invalid anticipation, conditions of *ijtihād* (legal verdict) in anticipated matters, methods of knowing the predicted outcome. However, the author does not mention a *fiqh* practical issue.

Furthermore, there are some theses written about *fiqh of al-ma'ālāt*, e.g. A master dissertation titled “The Outcomes of Actions and Their Effect in Changing the Rulings”, al-Hucein bin Salem al-Dhahabi (Al-Hucein, 1410H), discusses both theoretical and practical aspects of outcomes of actions. He mentions the effect of the outcome of actions on intention of *al-mukalafīn* (adults whom the Sharī'ah speaks to) and on the change of rulings.

A PhD thesis under the title “Considering the outcomes in the Sharī'ah for Judging the Actions”, written by Dr. Alī Mustapha Ramadān (Alī Mustapha, 1396H), discusses the causes of rulings and some jurisprudential principles related to anticipation. Though the thesis was written long time ago, it was short, and the researcher did not touch upon a lot of issues related to *fiqh* of anticipation. It is considered as a brief short study.

This study is different from previous studies in that it concentrates on the principles of anticipation and widens practical *fiqh*.

## Rooting the Principles of *Fiqh Al-Ma'ālāt* in the Traditional Jurisprudence

There are several texts and bases in the traditional principles of Islamic jurisprudence that can assist predictions and *fiqh* of anticipation, particularly in the work of those who were concerned with theoretical objectives. We found that the theory of *al-ma'ālāt* and its applications are the best theory that establishes this type of *fiqh*. In addition to those who are concerned with Islamic legal maxims as

they represent regulated rulings in looking to facts. The detail of that will be mentioned in the following branches.

### ***Al-Ma'ālāt and their Relationship with Other Equivalent Terms***

The word of *al-ma'ālāt* in the Arabic language is the plural of *ma'al* (the effect or outcome of something). The word of *al-ma'āl* means come back and become. Come back to thing return to it. The word *al-ma'ālāt* also means safekeeping; covenanting the man's family, his followers and guardians (Ibn Manghur, 1405H). Fiqh of the future, on the other hand can be defined as *fiqh* that must be related to future juristic issues based on fatwa change and its parameters. For example, illicit privacy between members of the opposite sexes is not permissible Islamic ally because it constitutes a means to adultery and fornication. However, *al-ma'ālāt* involves elements including:

#### **a) Consideration of the *al-ma'ālāt***

Consideration of *al-ma'ālāt* means the judgment of the first part of actions in view of their outcomes. This means that the jurist or *mujtahid* does not judge the action whether it is an oral or physical activity until he considers its outcome and results and predicts what will follow the implementation of the action. Then, he employs these predicted results in creating the effect of the cause of the judgment and its description. After that, he pronounces the ruling which can be permissibility or non-permissibility. Meaning to say doing the action or abstaining from its doing based on the predicted outcome. The rule of that is the extent of the outcome in achieving legal objectives. If the outcome serves the legal objectives, the rule will be permissible otherwise it will be forbidden. For instance, the prophet prohibited the execution of *munāfiqūn* or hypocrites. It was thought that murdering these individuals would act as an instrument of evil, spreading the rumour that “Muhammad kills his own Companions” (Al-Sunūsī, 1424H).

#### **b) Levels of Predicting *Al-Ma'ālāt***

1. **The Definite Outcome:** That is the outcome that the *mujtahid* is sure about its occurrence. This happens when the action is achieving a definite result that will surely cause an advantage or becomes means of corruption. There is no disagreement in considering this type of outcome. For example, prohibiting a creditor from taking a gift from his debtor lest it became a means to usury (*riba*) and the gift a substitute to usury.
2. **The Probable Outcome:** The thinkable outcome is the one that usually leads to forbidden outcome or corruption and in seldom occasions may not give that harmful result. The example of this is the weapons selling in the case of fighting or selling grapes for producer of wine. This is attached to the first one in considering it.
3. **The Illusionary Outcome:** This category of the outcome is the one that seldom leads to the outcome. This does not hinder or affect the judgment because something abnormal and little has no consideration. For example, consuming a nutrient that is safe for most people may be harmful to a small number of others. Another example is banning or prohibiting the sale of grapes out of concern that they would be used to make alcohol. All of this has no consideration (Mawlūd Jahaish, 1424H).

#### **c) Evidence of Considering *Fiqh al-Ma'ālāt***

Consideration of looking at outcomes as an important practical principle in the legal verdict as an original case in the analogical deduction is supported by induction of original and subordinated legal rulings. It is also supported by the *ijtihad* from the time of the Prophet peace be upon Him, His companions may Allah be pleased with them, and the well-known imams who follow them. This

constitution is an epistemological or legislative means that supports taking outcomes blocking pretences or opening them, invalidating tricks, and taking juristic preference into account. The following are some evidences of that:

1. Allah the Almighty says, {Revile not you those whom they call upon besides Allah, lest they out of spite revile Allah in their ignorance} (Surah al-An'ām: 108).
2. The Messenger of Allah (p.b.u.h) said, "One of the major sins is to curse one's parents". It was submitted: "O Messenger of Allah! How can a man curse his own parents?" He (p.b.u.h) said, "When someone curses the parents of another man who in return abuses the former's father; and when someone abuses the mother of another man who in return abuses his mother" (Al-Bukhari, 1987).
3. His saying to 'A'isha (may Allah be please with her), "' A'isha, if your people had not been recently polytheists (and new converts to Islam), I would have demolished the Ka'ba, and would have brought it to the level of the ground and would have constructed two doors, one facing the east and the other one to the west, ..." (Al- Bukhari, 1987). The attitude of the Prophet (p.b.u.h) mentioned in the Hadith is a result of His fear that this would lead to a greater corruption and the Arabs' estrangement from Him (p.b.u.h) because they believed that he is destroying the sanctities and changing their features.
4. In addition to that, the Hadith of the desert Arab who urinated in the Mosque and people tried to interrupt him and then the Prophet (p.b.u.h) said to them "do not interrupt him; leave him alone." and the desert Arab understood (al- Bukhari, 1987). In addition to that the Prophet (p.b.u.h) also did not kill hypocrites in spite of knowing them. In addition to the texts that support consideration of *al-ma'ālāt*, another thing such as the announcement of the doer before doing the activity that his activity will lead to an advantage or becomes the means of corruption affecting the ruling can also be added here.

Moreover, changing suspicions, such as the most likely or predominant suspicion, clues, circumstances, experiments, and scientific research in research centres that conduct survey studies and research, in addition to the text, confirm prediction or anticipation of the future and looking to the negative or positive outcome of an action and its effect in the legal ruling for by permissibility or impermissibility. Imam al-Shātibī (2011) advances the view that "looking for the outcome of actions is considered and wanted by the Sharia whether they agree or disagree (with the Sharia... and this is a field for the *mujtahid*; it is difficult in the beginning, but it is sweet taste, good in the end. It agrees with the purposes or objectives of Sharī'ah." (Al-Shātibī, 2011).

From the evidences above, we can infer that Islamic law specifically takes into account *fiqh al-ma'ālāt*, (forecasting). As a result, the evidence of '*sadd al-dharāi'*' which develops into a jurisprudential principle and a process for determining juridical rulings, can still be taken into account alongside the evidence of *fiqh al-ma'ālāt*. This is due to Islamic law prohibiting Muslims from disparaging people who worship idols. It is a forecasting term.

### **The Principle of Blocking Pretences**

The phrase of '*sadd al-dharāi'*' (blocking pretences) is composed of two words: '*sadd*' (blocking) and '*al-dharāi'*' (pretences). If blocking pretences leading to corruption in the end is well-known amongst the scholars of jurisprudence, opening pretences that lead to advantages in the end is also known to the aforementioned.

The word of '*al-sadd*' in the Arabic language means mountain and barrier between two things. The Quran says:

Translation: Shall we then render you tribute in order that you might erect a barrier between us and them?

(Surah Al-Kahf: 94)

The word ‘*al-dharāi*’ is the plural of ‘*dhari’ah*’ (presence) in the Arabic language. It is derived from the word of ‘*dharāi*’ (an etymological sign of stretching and moving forward) and everything derived from this etymology is returned to it. ‘*Al-tadharru’ fi al-shai*’ means moving arms. The term ‘*istadhrah bihi*’ means making it a means of a covering (Al-Fayyūmi, n.d.; Al-Fayruz ‘Abadi, n.d).

*Al-dhari’ah*’ (pretence) is the means, and it can be defined as the means through which something can be reached, whether it is tangible or intangible, useful or harmful. Terminologically speaking, blocking pretences (*sadd al-dharāi*’) is preventing permissible actions that lead to prohibited things from Sharia perspective. It is also defined as restraining the means of corruption to remove it. This is the specific meaning after combining the word pretence with blocking. The word pretence in its wider meaning includes blocking the pretences and opening the means. This indicates allowing the means that lead to necessary and good deeds while blocking the means that leads to bad and harmful deeds. This meaning mentioned by Imam al-Qarāfi (1998) in his book *al-Furūq*, when he states that: “You may be aware that both blocking and opening the pretence is obligatory. Its opening could be reprehensible, recommended, or permitted.

The pretences (*al-dharāi*’) are the means, so the means of prohibition is prohibited, and the means of obligation is obligatory, such as the attendance of Friday prayer and performing *al-Hajj* (a pilgrimage). In this regard, the objective rulings can be two objectives: which include *al-masālih* (interests) and *al-mafāsīd* (corruption) in its nature, and the means and ways that lead to these objectives and its rulings follow its outcomes in terms of permissibility or prohibition. But the means are lower than the objectives in their rulings. The mean of the useful objectives is the best means, the means of the harmful objectives is the worst one and the means of the medium is medium. Evidence of the goodness of the good means is the statement of Allah the Exalted:

Translation: because nothing could they suffer or do, but was reckoned to their credit as a deed of righteousness-whether they suffered thirst, or fatigue, or hunger, in the Cause of Allah, or trod paths to raise the ire of the Unbelievers, or receive any injury whatever from an enemy: for Allah suffers not the reward to be lost of those who do good

(Surah al-Tawbah: 120)

So, Allah (s.w.t) rewarded them for their thirst and fatigue, even if they were not their deeds, because they suffered them during the preparation for jihad, which is a mean to strengthen the religion and protect Muslims. Therefore, preparation is a means of a mean”. (Al-Qarāfi, 1998).

Imam al-Shātībī (2011) makes a distinction between *al-dharāi*’ (pretences) and *al-wasā’il* (the means) in terms of terminology, as he opined that *al-wasā’il* (the means) lead to *al-Masālih* (benefits) while *al-dharāi*’ (pretences) lead to *al-mafāsīd* (corruption). He said: “Its reality is to use what is *maslahah* (benefit, interest) as a means to *mafsadah* (harm, corruption). The view of jurists and jurisprudent scholars confirms the link between *al-dharāi*’ and the future and its *fiqh*. Some of them consider it as a fundamental principle of *Uṣūl al-fiqh* (Principles of jurisprudence), such as Mālik and Ahmad, as Mālik used them in most topics of *fiqh*. Imam Ibn al-Qayyim also considered them as one-quarter of *al-taklīf* (commanding). Imam Abū Hanīfa (Ibn al-Qayyim, 1987) applied them and Imam al-Shāfi‘ī sometimes applied them and rejected them in other times due to (availability of) jurisprudential alternatives principles. This confirms that the blocking and opening *al-dharāi*’ are always going with *fiqh*. Further, it also confirms the link of *al-dharāi*’ with *fiqh* of the future as long as *fiqh* interacts with life and its events and developments.

***The relationship between sadd Al-dharāi' (blocking the means) and Fiqh of the Future***

To distinguish between the two, Abū Zahra (n.d.) says: "the basis for considering the means is to look at the outcomes of the actions. Then the act is evaluated in terms of what it leads to, whether he intended to do the act or not." Therefore, the meaning of blocking the means is to block the permissible acts that lead to an evil, preventing the ways leading to it and repelling it before it occurs. It is because Sharia is based on precaution and provision, so blocking the means is one of the main fundamentalist rules related to *fiqh* in the future. Because of its strong connection to future outcomes, the term "outcomes" becomes associated with it, as some researchers regard the term "Fiqh of the future" as synonymous with the term "*sadd Al-dharāi'*." (Naji Al-Suwayd, n.d.).

*Al-hiyāl* is plural of *hilah* (trick): the tick and trickiness are the good reflection and the ability to behave accurately; and most usage of the trick is associated with the malice. In the language and usage, trick means cunningness, deceit and maliciousness. It appeared mostly in loathsome doing but may also be used in doing good and this is what the Almighty Allah had said referring to those who absented from Immigration (the Hijra) due to a legal excuse:

Translation: Except those who are (really) weak and oppressed –men, women and children who have no means in their power, nor (a guidepost) to direct their way.

(Surah al-Nisā': 98)

However, in jurist views, tricks are mostly used in their reprehensible meaning. Imam Shatibi (Al-Shāṭibī, 2011) says "...in its essence of famous meaning, tricks are representing a work that appears permissible to invalidate a legal ruling and converting it to be appeared as another legal ruling and therefore, the trick outcome damages the principles of (the Sharī'ah in reality)".

The one who carefully studies statements of the scholars of jurisprudence will observe that the use of *al-hiyāl* or *al-hilah* in one's work will lead him soon the near future to a forbidden deed. The action is forbidden in the beginning because of its unlawful outcome. Therefore, there is a difference between the pretence and the trick, in that the pretence is a means used to reach (the result), but the trick is forbidden by itself because its aim is to turn around a Shariah principle and its rulings. But the pretence may not be wanted for itself. It is more general than the trick which is usually used in contracts. From here, they said: "the thing that is concerned in contracts is intention and meanings and not the wording and structure." This is re-coined from an Islamic Legal maxim "*al-'Ibrah fi al-'Uqūd bi al-Maqāsid wa al-Ma'āni Lā bi al-'Alfādh wa al-Mabānī*," as agreed upon to the Hanafites and Malikites school of thought, as opposed to Shafi'ites and Hanbalites' view that gives a different opinion, depending on the matter arise. At times, effects are assigned to the meaning, at other times they are assigned to the word (Al-Ramlī, 1984; Ibn Nujaym, n.d.).

For instance, if someone is asked by the judge to give an oath in litigation involving a third party, then the statements made by the person taking the oath will be considered as understood by the judge and by the other party involved. (luqman, 2009). However, I prefer to believe that when using this Islamic legal principle, one issue should be distinguished from another because from diverse issues might take many different shapes.

**b) The Principle of Juristic Preference Equity**

The Juristic preference or *Istihṣān* in the Arabic language is derived from goodness, the opposite of ugly and it is referred to thing that is attractive to the soul. It is said *istahsana al-shaia* considers something as attractive (Ibn Manzūr, 1405H; Saddī, 1998). Terminologically, juristic preference equity means to not give an issue the rule given to issues like it because of specific evidence from the Quran and *Sunnah*. It is also said that juristic preference is applying the strongest one of two Shariah proofs. The Hanafi' school considers juristic preference equity as applying the rule of *ijtihād* and majority

opinions in measuring issues given to our opinions (by the Sharī'ah) such as *al-Mut'ah* (a gift given to the divorced woman) which is mentioned in the Qur'ān as follows:

Translation: ...but bestow on them (a suitable gift), the wealthy according to his means, and the poor according to his means- a gift of a reasonable amount is due from those who wish to do the right thing.

(Surah al-Baqarah: 236)

As for al-Malikiyyah, the juristic preference equity is a combination between the opposite evidence. Shāfi'ī School considers it as permissible whether compulsory, recommended, or permissible. The Hanbalī defined the juristic preference equity as to not give an issue the rule given to issues like it because of specific evidence related to it (Al-Sarakhsi, n.d). It is known that the Hanafī School considers the juristic preference and applying it till said "...no one is like Abū Hanīfa in (applying) the juristic preference. The Hanafī calls the juristic preference the hidden analogy. But it is more general than the hidden analogy, as every hidden analogy is juristic preference, but not every juristic preference is a hidden analogy. Anyone who comes across the nature of the juristic preference that is applied by Imams Mālik and Abū Hanīfa will realise that they do not mean something other than the Sharī'ah or outside the legal texts. Indeed, it is applying the Sharī'ah analogy such the *al-qiyas* (analogical deduction), interest or recognised principle such as removing embarrassment and hardship, or a considerable custom, or *al-Ijmā'* (consensus of opinion) which can also be relied on. From here, the juristic preference is not pleasure or words of desire, emotional leaning, and absolute rational [saying]. Accordingly, Imam al-Shātibī said: "if this is the meaning of the juristic preference in the view of Mālik and Abū Hanīfa, it is surely not outside [the boundary] of [legal] evidence as the evidence restricts each other and specifies each other, as in the evidence of the Sunnah with the Quran, and the Imam al-Shāfi'ī does not refute such at all." (Al-Shātibī, 2011).

The types of juristic preference that are mentioned by the jurisprudence scholars include juristic preference of the text (Qur'ān and Sunnah); consensus of opinion; analogy; interest; custom and necessity. All of these are built on the observation of the jurist who recognised a new thing that leads him to leave the apparent ruling to new one that appears to him. This is where the Juristic Preference meets the *fiqh* of future and institutes it in terms of considering an interest, adopting what is best for people, seeking ample means and tolerance. That is one of the features of this Sharī'ah where Allah does not put objection and difficulty on its followers and release them from heavy burdens and yokes that are upon the previous nations. For example, it has been suggested that the ruling of 'Umar b. al-Khattāb (may Allah be pleased with him), not to enforce the penalty of theft during a famine is an instance of *Istihsān* or Juristic Preference Equity (Abdullah Rabi', 2007).

This confirms that the Sharī'ah is going along with what happens in life of people in their present and future from events, and new issues that can be described by applying the juristic preference unless such application permits forbidden thing or forbids permissible one. Accordingly, Imam Mālik (May Allah have mercy on him and the Muslim scholars) considers the juristic preference as nine tenths of *'ilm* (knowledge) (Ziyad Hmīdān, 2004). Hence, foreseeing the outcomes of actions is considered by the Sharī'ah and that is confirmed and supported by the juristic preference which aims to search for interest in the course of executing the ruling.

### c) Applications of the Principles of *Fiqh Al-Ma'ālāt*

When the drinking of wine became widespread among the people in the era of Umar al-Farūq (may Allah be pleased with him), he gathered companions (May Allah be pleased with them) and consulted them about the issue. Alī bin Abi Tālib (may Allah be pleased with him) was among them and he said: "If a person drinks, he becomes intoxicated, and when he becomes intoxicated, he talks confusedly, and when he talks confusedly, he lies, thus, we think you flog him with eighty lashes as it is the same amount as for slandering". In fact, this opinion was an anticipation of the close future and the foundation of future issues in jurisprudence and dealing with them before they occur, as his opinion would ward off

the expected spread of quarrels and grievances among the people. Al-Khatīb al-Baghdādi has mentioned in his book “the History of Baghdād” that Imam Abū Hanīfa when he met Qatāda al-Sedussi in al-Kufa, he asked him about a critical issue, and Qatāda said: Oh did this issue occur?!, Imam Abū Hanīfa answered: No!, he said: So why did you ask me about something that has not occurred yet?!, Imam Abū Hanīfa said: We are preparing for affliction before it descends, so if it occurs, we know how to deal with it (Al-Khatīb al-Baghdādi, 2001). It has been said that in “al-Mudawwanah” there are about six thousand questions answered by Imam Mālik and some of his students, recorded by Sahnūn from Ibn al-Qāsim, all of them in matters that did not happen. According to the Shāfi‘ī school, the pilgrim should not stand in the air of Arafāt, but rather stand on its land, because its air does not have the same rule of its land, and that was before the era of planes and helicopters (Al-Nawawi, n.d).

Undoubtedly, *fiqh* branches that indicate the jurists’ consideration of what happens in the foreseeable future act and its impact on establishing the rule of permissibility or prohibition in our heritage *fiqh* is more than that can be counted. If we have established for *fiqh* of *al-Ma’ālāt* from the Sunnah by the actions undertaken by the Prophet (p.b.u.h) where his future vision was included in the ruling, such as not building the Ka’aba on the foundations of Abraham, and his refraining from killing the hypocrites and not disrupting of the Bedouins from urinating in the mosque and his other actions and sayings, indicate that they are prophetic actions guided by the Qur’anic commands with the preciseness. Therefore, the discussion in this section will be limited to what was reported from the companions’ implementation and from the righteous predecessors of the prominent imams and their schools (*Madhābib*), with an emphasis on a large instance of implementation of the future *fiqh* that represents a clear picture of implementations of *al-Siyasah al-Shar’iyya* (Islamic legal policy) that aims at a better future for the *Ummah* (nation) in this world and the hereafter.

However, reflect on in the purified Sunnah, the prohibition of reasons leading to adultery - looking at the fiancée – taking dinner before prayer - ordering the worshiper to sleep if he is overcome by sleep - prohibiting prolonged congregational prayer - prohibiting intercourse between two people and a third person - depriving the killer of the inheritance - prohibition of ghouls, (defrauding, they are all examples of prophetic applications that emphasise the importance of the forward-looking vision and its impact on the outcomes of judgments.

## Implementations from the Fiqh of the Companions

### *Collection of the Quran*

Al-Bukhārī narrated from his chain of narrators to Zaid bin Thābit (R.A) that he said “Abū Bakr As-Siddiq sent to me when the people of *Yamāma* had been killed, I came to him and found 'Umar bin Al-Khattab sitting with him. Abu Bakr then said (to me), “Umar has come to me and said: “Casualties were heavy among the *Qurrā'* (expert reciters) of the Qur’ān on the day of the Battle of *Yamāma*, and I am afraid that more heavy casualties may take place among the *Qurra'* in other battlefields, whereby a large part of the Qur'an may be lost. Therefore, I suggest, you (Abū Bakr) to order that the Qur’ān be collected.” I said to 'Umar, “How can you do something which Allah's Apostle did not do?” “Umar said, "By Allah, that is a good project. “Umar (R.A) kept on urging me to accept his proposal till Allah opened my chest for it and I began to realize the good in the idea which 'Umar had realized." Then Abū Bakr said (to me). “You are a wise young man and we do not have any suspicion about you, and you used to write the Divine Inspiration for Allah's Apostle. So, you should search for (the fragmentary scripts of) the Qur’ān and collect it in one book).” “By Allah if they had ordered me to shift one of the mountains, it would not have been heavier for me than this ordering me to collect the Qur’ān. Then I said to Abū Bakr, “How will you do something which Allah's Apostle did not do?” Abū Bakr replied, “By Allah, it is a good project.” Abū Bakr kept on urging me to accept his idea until Allah opened my chest for what He had opened the chests of Abū Bakr and 'Umar.” (Al- Bukhari, 1987). Reflect on the fear of Umar?, and how he was prudent that he provided suggestions to the Calipha Abū Bakr (R.A) urging him to collect the Holy Qur’ān due to the possibility that it would be lost with the death of the reciters. This was done twice, the first during the era of Calipha Abū Bakr (R.A), and the other during the era of the third Caliph Uthmān Ibn Affān (R.A).



### ***Killing A Group by One Whom They Killed***

Imam Mālik narrated with his chain of narrators that Umar Ibn al-Khattāb (may Allah be pleased with him) implemented *Qisās* (death penalty) on a group of people for one man whom they had killed secretly by trickery. Umar said, “Had all the people of Sana joined forces against him, I would have killed them all.” (Malik, n.d.). Imam al-Bayhaqi in *Al-Sunan al-Kubra* narrated that the original of the story is what narrated by al-Mughira ibn Hakim al-San’ani from his father is that a husband of a woman in San’a left her and left his young son named Asil from other woman with her. After his absent, the woman got a paramour and told him “this boy discredits us and so kill him”. The paramour man rejected that and she did not let him to sleep with her and he agreed to kill the boy. The boy killed by the paramour man, another man, the woman and her servant. They all killed him, then cut off his organs and placed him in a suitcase and put him in a heap on the side of the village that had no water. He mentioned the story which said that the paramour was prosecuted and he confessed and the rest also admitted committing the crime. Then Ya’la- the Amir wrote to Umar about the issue and Umar wrote that they all be killed saying: “by Allah, had all the people of Sana joined forces against him, I would have killed them all” (Al-Bayhaqi, n.d.).

Imam ibn al-Rushd said: (all of those jurists who killed a group of people by one were relying on the rule of achieving the common benefits of the whole nation that the *Qisās* punishment has been authorised to prevent the killing as mentioned in the holy Qur’ān:

Translation: ...in the Law of Equality there is (saving of) life to you, O you men of understanding; that you may restrain yourselves

(Surah al-Baqarah: 179)

Therefore, if the group who committed the crime of killing have not been killed, people would have made excuses for killing if only one of were to be punished) (Ibn Rusyd, (n.d.). This was based on blocking of pretences of aggression against people that have been implemented by al-Fārūq Umar in that case.

### **Implementations from Fiqh of the Imams and Their *Madhābib* (School of thoughts)**

Among the implementations of the jurists and imams to the principles of foresight and fiqh of anticipation are the following:

#### ***If the Guardian Refuses to Marry His Custodian to her Detriment***

It is stated in al-Mudawwana in the *fiqh* of al-Malikiyah (Malik, 1994) that: (I said: Do you see the virgin if she was betrothed from her father, and the father refrained from marrying her first, and the maidservant - who was an adult - said: Let me get married, for I love the man, and she raised her case to the Sultan (Ruler). Is the rejection of the first suitor a disservice to her? Do you think that the Sultan should give her the permission to marry if her father refuses? He said: I have not heard anything from Mālik about it. However, I think that if her father prevents her from marrying the appropriate person, and its harmful effects on her and the prevention was without taking her situation into consideration, I think that the Sultan has the right to give her the permission to get married if she consulted him, especially, if he knows that her father is only harmful in his response, and he is not taking her situation into consideration. This is because the Prophet (p.b.u.h) said: “Harm shall neither be inflicted nor reciprocated”.

However, it is to note that if the father intends due to excessive ignorance, hardness of heart, rudeness of character, or such things, to harm his daughter with his guardianship over her, then this guardianship is removed from him in order to ward off harm to his daughter and to obstruct his corrupt intent, and

someone else undertakes to marry her, whether it is a brother, a Sultan, or others who have legal guardianship over her. This is the Mālik's *Madhab*.

### ***Divorce due to insolvency, Causing Damages or absence***

The absent husband and all similar cases in the matter of the judiciary needs - as the Malikiyah opines - to be considered and explored and make an effort to explore its causes and the significance of its causes, so the person who swears not to have intercourse with his wife for a good reason such as fear for his infant son or pregnancy, the ruler did not have the right to divorce [instead of him], but if the valid reason is denied for this abstaining and knowing that his intent to harm her, the divorce is called in order to ward off his arbitrariness and to prevent harm to her (Ibn Farhun, 1986) Al-Mardāwi in al-Insāf said: "Ibn Aqeel said in *al-Mufradāt*: It was said that annulment and divorce by the ruler may be permissible because of the husband's absence if it was intended to harm based on whether he left intercourse with his wife without an oath for more than four months" (Al- Mardawi, n.d). The Hanbalis opines that if the husband intends by his absence from his wife to harm her and deprive her of the right to enjoy herself, then the ruler has the right to annul and divorce her in order to take into consideration the harm that would be inflicted on her in the future because of this bad intent.

### ***Contemplation of the Hereafter Through the Events of This Life***

Imam al-Maqqari mentioned under the principle of remembrance the affairs of the hereafter through what indicates to it from the events of this life, said: Allah s.w.t alerted us in the Qur'ān:

Translation: And to our Lord, surely, must we turn back.

(Surah al-Zukhruf: 14)

That we should contemplate of the danger during the riding journey and remember the hereafter events through the events of this life. For example, a person should remember riding the coffin and the hell during the riding on cattle and ships. Also, he should remember the pleasure of bliss in the hereafter during the enjoyment of sexual intercourse (Al- Maqqari, n.d.).

### ***Types of Usury and their Renewal in the Future***

The majority of jurists are of the view that everything that the Prophet (PBUH) stipulated to be forbidden can be differentiate by measure; it is always measurable [by the same measure], even if people leave the measure in it, as in wheat, dates and salt stipulated in the Hadith, also, everything that stipulates the prohibition of differentiate in it by weight, it is weighted forever, even if people leave weight in it such as gold and silver. However, Abu Yusuf, the companion of Abū Hanīfa, sees the consideration of custom as contrary to what is stipulated in Hadith. This is because the text sets stipulation for the custom at that time and it has changed, thus, the judgment must be established according to the new custom (Ibn al- Hammam, n.d.). In fact, it is a doctrine that is more successful and appropriate for all ages, so that scholars of the present era accepted it, regardless of their juristic schools of thought (Muhammad Abu al-Laith, 2004).

### ***Applying Juristic Preference and Leaving Analogy to secure Common Benefits***

Imam Abū Hanīfa considers the permissibility of performing a supererogatory prayer in sitting position without an excuse as it is favourable. He sees that sitting in a supererogatory prayer without an excuse is like sitting in an obligatory prayer with an excuse (Al-Sarkhassi, 1993). This also includes what is related to the generality of the affliction, as Imam Abū Hanīfa believes that the insects of the house, such as mice, snakes, do not impure water, even though their flesh is forbidden for the generality of

affliction. His view is based on juristic preference not analogy as the analogy does not make a similarity between cats as mice and snakes. He said: (Immaculate but disliked because the affliction that was referred to in the kitten is here, it inhabits the houses and it is not possible to preserve the pots from it) (Al-Sarkhassi, 1993). Therefore, things that pervaded the affliction can be permissible for people to be relieved from it, even if the analogy favourably prevents it. In fact, it is known that all things which pervaded the affliction are discoverable with the course of days and accidents.

## Conclusion

From the above analysis of the scholars' statements about the principles of foresight and their relationship to *fiqh al-mā'alāt*, the study has concluded that, Islam has prepared man to look and anticipate the future and freed him from the obstacles of superstition, pessimism, speculation, and astrology, thus, he should not surrender and submit but face the truth and strive for the truth. However, the rules of foresight and the *fiqh of al-mā'alāt* are concerned with knowing the Sharia rulings related to the predicted tomorrow and what may happen from the actions of the adults based on the past, understanding the present, and foreseeing the future as much as possible.

The author remarked that: "The traditional *fiqh*, *Usūl*, and *Maqāsid* abounded with the vision and *fiqh* of the future." Thus, the jurists and the scholars of jurisprudence considered the theory of *al-mā'alāt* (outcomes or results), the principles of blocking pretences, the invalidation of tricks, juristic preference equity, deflection, exposure, and so on. This affirms the authenticity of the future vision and that it is the product of this *Ummah*, in terms of theory and in practice, in the old and the modern, a wise Sharī'ah political policy aimed at the good of man and his righteousness in his current livelihood and in the hereafter.

Finally, the prophetic *sunnah* was concerned with the forward-looking vision of the adults. As a result, it has permitted the concessionary law and taken into account time and place as axes for human actions, so that the adult cannot be separated from them and their characteristics. It is interested in the resources of goodness and the causes of discord and evil. As a result, it directs people in the right direction and shows them what they should avoid: those who perished due to disbelief would perish upon evidence, while those who lived in faith would live upon evidence.

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