

Public Interest: A Critical Analysis of Its Practical Application in Islamic Shari'ah and Contemporary Laws in the Modern Context

(Dr.) Zainab Amin

Associate Prof./ Chairperson Department of Islamiyat Shaheed Benazir Bhutto Women University,
Peshawar, Pakistan

Correspondence author: Zainabrauf@sbbwu.edu.pk

(Dr.) Nazia Irfan

Assistant Prof. Shaheed Benazir Bhutto Women University, Peshawar, Pakistan naziairfan@sbbwu.edu.pk

(Dr.) Salma Anjum

Assistant Prf. Shaheed Benazir Bhutto Women University, Peshawar, Pakistan salma.anjum@sbbwu.edu.pk

(Dr.) Samina Begum

Associate Prof. Department of Islamiyat Shaheed, Benazir Bhutto Women University, Peshawar, Pakistan
saminaphd@sbbwu.edu.pk ,

Abstract

This title suggests a comprehensive examination of how the concept of public interest is implemented within both Islamic Sharia law and modern legal systems. It implies a comparative study that evaluates the relevance, challenges, and implications of applying public interest principles across these two legal frameworks, particularly in today's socio-political environment.

Concept and Definition: *Public interest (Maslaha in Islamic terms) is a fundamental principle aimed at ensuring the welfare and well-being of the community. In Islamic Sharia, it is rooted in the objectives of Sharia (Maqasid al-Sharia) and derived from primary sources such as the Quran, Hadith, Ijma (consensus), and Qiyas (analogical reasoning). Contemporary legal systems, on the other hand, embed public interest within constitutions, statutory laws, and judicial precedents, often balancing it against individual rights and freedoms.*

Categories and Scope: *Islamic Sharia classifies public interest into three categories: necessities (Daruriyyat), needs (Hajiyyat), and embellishments (Tahsiniyyat). These categories ensure the protection of essential elements such as life, religion, intellect, lineage, and property. In contemporary law, public interest encompasses aspects like public health, safety, welfare, and morals, and is interpreted based on societal values and norms.*

Principles and Application: *In Islamic Sharia, principles like Istislah (public welfare) and Ijtihad (independent reasoning) are used to derive rulings that serve the common good, particularly when explicit texts are absent. Contemporary legal systems rely on legislation, policy-making, and judicial review to uphold public interest, ensuring laws and policies serve the broader community while respecting individual rights.*

Challenges: *Both Islamic Sharia and contemporary law face challenges in applying the concept of public interest. In Sharia, divergent interpretations among scholars, the need to balance tradition with modernity, and potential political manipulation can complicate the impartial application of public interest. Contemporary legal systems grapple with the subjectivity of public interest, the need to balance it with individual rights, and addressing transnational issues like climate change and pandemics.*

Case Studies: *Examples in Islamic Sharia include fatwas supporting vaccination and public health measures during pandemics and the implementation of Zakat (charity) systems to alleviate poverty. In contemporary law, public health laws mandating vaccinations and quarantine during health crises and environmental protection legislation demonstrate the application of public interest.*

Conclusion and Recommendations: *To harmonize the principles of public interest in both frameworks, dialogue and cooperation between Islamic scholars and contemporary legal experts are essential. Education and awareness about the definition and application of public interest, along with developing adaptive legal and religious frameworks, can help address evolving societal needs while preserving core values.*

Key Words: *Public Interest, Critical Analysis, Application, Islamic Shari'ah, Contemporary Laws*

1. Introduction

In Islamic Sharia, *Maslaha* refers to the benefits or interests that Sharia aims to achieve for the community. It encompasses a broad range of aspects that are crucial for maintaining social order and justice. The concept is deeply rooted in the objectives of Sharia (*Maqasid al-Sharia*), which aim to preserve essential elements such as religion, life, intellect, lineage, and property. In Islamic jurisprudence, the principle of *Istislah* (public welfare) and the practice of *Ijtihad* (independent reasoning) are employed to derive rulings that serve the common good, especially when explicit texts are absent. This allows for flexibility and adaptability in addressing contemporary issues and challenge. The concept of public interest is not unique to Islamic jurisprudence; it is also a cornerstone in contemporary legal systems. Public interest in modern law is often enshrined in constitutions, statutory laws, and judicial precedents. It includes aspects such as public health, safety, welfare, and morals, balanced against individual rights and freedoms.

1.1. Problem Statement:

The concept of public interest (*Maslaha*) is a vital principle in both Islamic jurisprudence and contemporary legal systems. It ensures that actions and policies are geared towards the welfare and well-being of the community. Understanding and applying this principle effectively can help create a just and harmonious society, addressing the evolving needs and challenges of the modern world while preserving core values.

- 1. Divergent Interpretations:** There is significant variability among Islamic scholars and different schools of thought regarding what constitutes public interest. This divergence can lead to inconsistent application of Sharia principles in various contexts.
- 2. Balancing Tradition and Modernity:** Islamic jurisprudence must reconcile traditional principles with the evolving needs and values of modern societies. This balancing act often creates tension and raises questions about the flexibility and adaptability of Sharia law in contemporary settings.
- 3. Political Influence:** The potential manipulation of Sharia for political ends can affect the impartial application of Maslaha. Political agendas may skew the interpretation of public interest to serve specific interests rather than the common good.
- 4. Application in Contemporary Legal Systems:** In modern legal systems, the concept of public interest is broad and often vaguely defined, leading to subjective interpretation and potential abuse. There is a need to ensure that public interest considerations do not excessively infringe on individual rights and freedoms.
- 5. Global Challenges:** Addressing transnational issues such as climate change, pandemics, and economic disparities within the framework of public interest requires a unified and coherent approach. The research must explore how Islamic principles and contemporary laws can collaboratively tackle these global challenges.
- 6. Case Studies and Practical Examples:** There is a lack of comprehensive case studies and practical examples demonstrating the effective application of Maslaha in addressing contemporary issues. This gap needs to be filled to provide a clearer understanding of how public interest can be operationalized in real-world scenarios.

1.2. Objectives

The objectives of this research are to:

- Analyze the concept of Maslaha within Islamic jurisprudence and its sources.
- Examine the challenges and complexities in interpreting and applying Maslaha in both traditional and modern contexts.
- Investigate the potential political influence on the application of Sharia principles.
- Compare the concept of public interest in Islamic Sharia with its counterpart in contemporary legal systems.
- Explore strategies to address global challenges through the lens of public interest.

1.3. Significance

This research is significant as it seeks to deepen the understanding of a crucial principle in Islamic jurisprudence and its relevance in contemporary legal and societal contexts. By addressing the identified

challenges and providing practical insights, the research aims to contribute to the development of a more coherent and adaptable framework for promoting public welfare.

1.4. Literature Review:

- **Historical Context:** Early Islamic jurisprudence established *maslahah* as a principle to ensure the welfare of the community. Key texts include works by classical scholars such as Al-Ghazali and Ibn Qayyim al-Jawziyya, who emphasized the role of *maslahah* in legal reasoning.
- **Conceptual Framework:** *Maslahah* is defined as the consideration of public welfare and benefits. It is often used to guide the interpretation and application of Shari'a in a way that meets contemporary needs while adhering to Islamic values.

2. Maslahah in Islamic Jurisprudence

- **Classical Views:** Scholars such as Al-Shatibi, in his work "Al-Muwafaqat," argued that *maslahah* is essential for the implementation of Shari'a, and it functions as a guiding principle for *ijtihad* (independent juristic reasoning). This literature discusses how *maslahah* has been historically applied in different contexts.
- **Contemporary Interpretations:** Modern scholars have debated the flexibility of *maslahah*, particularly in the context of contemporary challenges. Works by scholars like Tariq Ramadan and Muhammad Hashim Kamali explore how *maslahah* can be adapted to address issues such as human rights, economic development, and social justice.

3. Public Interest in Contemporary Legal Systems

- **Legal Theory:** Modern legal systems often address public interest through principles of justice, equity, and social welfare. Key texts include works on utilitarianism and legal positivism, which discuss how contemporary laws aim to balance individual rights with the common good.
- **Comparative Analysis:** Comparative studies, such as those by scholars like Joseph Raz and H.L.A. Hart, analyze how different legal systems approach the notion of public interest and its implications for law-making and adjudication.

4. Intersection of Maslahah and Contemporary Laws

- **Case Studies:** Research on how Islamic principles of *maslahah* have been applied in modern legal contexts, including family law, criminal justice, and economic regulations. Studies by scholars like Abdullahi An-Na'im and Amina Wadud provide insights into how Shari'a and contemporary laws interact in practice.

- **Legal Reform:** Examination of how Islamic countries have incorporated *maslahah* into their legal reforms and how these reforms align with or diverge from international human rights standards. This includes analyses of legal reforms in countries like Malaysia and Indonesia.

5. Challenges and Opportunities

- **Theoretical Tensions:** Discussion of the tensions between traditional Islamic principles and modern legal standards. Issues include the balance between religious values and secular laws, as well as the challenges of integrating *maslahah* with contemporary notions of human rights and democracy.
- **Future Directions:** Exploration of potential pathways for integrating Islamic principles of *maslahah* with contemporary legal systems to address global challenges. This includes proposals for cross-cultural legal dialogues and collaborative frameworks.

Research Methodology:

The foundation of this research is based on the comparison of Islamic Shari'ah and law in clarity. Both extractive and analytical approaches have been employed in this study. And in the present era, its applicability has been demonstrated. The foundation of this research has been derived from the primary sources of Islam and the primary sources of law, and has taken advantage of the comparative study of both.

This study includes authors Dr. **Zainab Amin**, who is the principal author of this article, has conducted a detailed analysis and discussion of the material. While other authors, Dr. **Nazia Irfan** and **Dr. Salma Anjum**, have translated the basic sources of Shari'ah from Arabic to Urdu, following the principles of research, and Dr. **Samina Begum** has contributed to the collection of materials and the arrangement of references in an orderly manner.

Discussion

Analyzing the practical application of public interest in Islamic Sharia and contemporary laws in the modern context involves several key aspects. Here is a structured approach to such an analysis:

2. Definition of *Maslaha* (Public Interest):

2.1. Linguistic Perspective:

There are two meanings of "*maslaha*" from a linguistic standpoint:

1. **Opposite of Harm:** As defined by *Ibn Mandhur* (d. 711 AH), "a renowned lexicographer, defines *maslaha* as the opposite of corruption (*fasad*). He states: "Salah (benefit) is the opposite of *fasad*"

(corruption).” Here, *maslaha* refers to actions or deeds that result in benefit or goodness. This definition encompasses both tangible and intangible benefits..(Ibn Mandhur 1988)

2. **Purpose of Commands:** *Al-Zamakhshari* (d. 538 AH) defined *maslaha* by stating: “In the speech of the Arabs, it is said that Allah commanded certain things for the benefit of His servants and prohibited others for the same reason.” The phrase "al-amr maslaha" means that the matter contains goodness. Its plural form is *masalih*.(Al-Zamakhshari 1998)

Terminology:

- **Maslaha:** Singular form referring to a single benefit or interest.
- **Masalih:** Plural form referring to multiple benefits or interests.
- **Istislah:** Seeking or considering what is beneficial.
- **Istifsad:** Seeking or considering what is harmful
- Acquiring **Knowledge:** Seen as a *maslaha* because it brings spiritual and intellectual benefits.
- Agriculture **and Trade:** Considered *masalih* because they provide material and economic benefits.

It should be noted that in Islamic Sharia, when the term "*maslaha*" is applied to actions undertaken by humans to gain benefit, this application is a form of figurative speech (*majaz mursal*). For instance, it is applied to agriculture, from which food and drink items are obtained, and to trade, from which profit is earned. However, if its application is solely on the benefit itself, then it is a literal application.

Maslaha fundamentally refers to acquiring benefit or averting harm. The contemporary scholar Ramadan al-Bouti (d. 2016) has clarified this as follows: "Anything that contains benefit, whether through acquisition and attainment, such as the acquisition of pleasures, or through prevention and elimination, such as the prevention of pain and harm, is deserving of being called *maslaha*."(Buti 2003) This represents the best combination of the two aforementioned linguistic meanings. Thus, it becomes clear that *maslaha* encompasses both the acquisition of benefit and the avoidance of harm.

2.2. Concept of Public Interest According to Law:

When we consider the definition of law and its fundamental concepts, we find that one theory supports the idea that law is an abstract notion that has no connection to social utility. The Sophist teachers considered humans as selfish animals, and Western thinkers like Jeremy Bentham and Hobbes followed this view(Anon n.d.-a). On the other hand, Western legal thought emphasizes individual freedom based on self-interest, while socialist societies focus on collective interests. Consequently, definitions of law have been presented in various

ways. Some have defined law as the compelled adherence to a specific pattern of behavior, while others have described it as the obedience to fixed rules. In contrast, Greek philosophers and the ethics school of thought have emphasized the social benefit and utility of law.(Fitzgerald 2009)

2.3. The Concept of Law in Human Life:

Law pertains to human worldly life. Westerners do not believe in any other realm beyond the material world where good and bad deeds are rewarded. This is why materialism dominates legal concepts. In law, the definition of public interest generally refers to the acquisition of benefit in an individual context within human life. In law, the term "public interest" is used for *maslaha*. The linguistic definitions of *maslaha* provided in Arabic lexicons are the same as those for "public interest" in legal terminology. However, there is a difference in meaning and context, For example The first maxim from Herbert Broom's *Legal Maxims* is "*Salus Populi suprema Lax* " (Eng) That regard be had to the public welfare, is the highest law.(BROOM, 1874)

Thus the *Broom* explain, There is an implied assent on the part of every member of society, that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty, and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good. There are, many cases in which individuals sustain an injury for which the law gives no action; as, where private houses are pulled down, or bulwarks raised on private property, for the preservation and defense of the kingdom against the king's enemies." Commentators on the civil law, indeed, have said, that, in such cases, those who suffer have a right to resort to the public for satisfaction ; but no one ever thought that our own common law gave an action against the individual who pulled down the house or raised the bulwark." On the same principle, viz. that a man may justify committing a private injury for the public good, the pulling down of a house when necessary, in order to arrest the progress of a fire, is permitted by the law.(BROOM, 1874)

The renowned Western legal scholar William Lillie defined it as follows:

"**Public interest** refers to the welfare or benefit of the general public, often considered in terms of legal and governmental policies and actions intended to serve the collective good of society."(Lilli 1957) "Egoistic hedonism is a philosophical concept that asserts that each individual should pursue their own maximum pleasure and personal happiness as the primary or ultimate goal. According to this view, one's actions are morally right if they lead to the greatest personal satisfaction or pleasure. This theory emphasizes individual

self-interest and personal gratification as the guiding principles for decision-making and behavior.

According to John Stuart Mill (J.S. Mill):

"The greatest happiness of the greatest number"(Saunders 2010)

This principle is a fundamental tenet of utilitarianism, which Mill championed. It suggests that the best action or policy is one that maximizes overall happiness or pleasure for the largest number of people. Mill's formulation emphasizes the importance of considering the collective well-being and striving to achieve the greatest good for the greatest number of individuals.

According to the theory of utility, an action that causes the greatest benefit is considered *a maslaha* (public interest), while an action that does not produce benefit is deemed harmful. Therefore, both the hedonistic theory and the theory of utility ultimately determine that the measure of *masalih* (benefits) and *mafasid* (harms) is material pleasure. Consequently, Western legislators have consistently strived to make worldly life as attractive and pleasurable as possible. To Western lawmakers, the purpose of life is the pursuit of pleasure and enjoyment. There is little difference between the ancient and modern theories of pleasure in law; the only distinction is that ancient legislators viewed individual pleasure as a goal in itself, meaning that individuals should strive for their own personal pleasure. In contrast, modern legal scholars regard social pleasure as the primary goal of life.

According to the hedonistic perspective, all things other than pleasure are not inherently good in themselves; rather, they are considered good only insofar as they contribute to pleasure. G.E. Moore (George Edward Moore) has clarified this theory of hedonism as follows:

"According to hedonism, only pleasure is intrinsically good, while everything else is considered good only as it leads to or enhances pleasure."(Anon n.d.-b)

Moore's explanation underscores that pleasure is the ultimate measure of goodness, and other values or actions are evaluated based on their capacity to produce pleasure.

According to hedonistic theory, any action that causes pleasure for the person performing it is considered a *maslaha* (benefit), regardless of its harmful consequences. Conversely, any action that causes discomfort is deemed a *mafsada* (harm). The second perspective is that of the utilitarian's, who believe that the ultimate goal of good actions is to maximize pleasure for the greatest number of people.

However, Western legal and ethical scholars have raised objections to both of these theories. For instance, Dr. Moore has criticized the utilitarian theory as a fallacy. Robert Briffault describes a significant fallacy in assuming that pleasure and pain are the sole, simple, and definite motivators that determine every course of action. This fallacy remains widely accepted and prevalent in philosophical theories, but in reality, it is a misunderstanding. It is incorrect to assert that we only pursue actions that we like and avoid those that we dislike; the diversity in actions stems from the fact that criteria for preference and aversion vary. The factors determining action diversity are not merely shared likes and dislikes, but rather the distinctions that exist between them.

In contrast, the Islamic concept of *maslaha* (public interest) is broader both conceptually and practically compared to legal perspectives.

3. The Shariah Concept of Public interest:

What is the definition of Public interest (*Mesliha*), and what is its purpose? Scholars of Usul (Islamic jurisprudence) have defined *maslaha* in various ways. Some scholars have focused on the cause or means through which benefit is achieved, while others have emphasized the outcomes or results that follow from that cause:

Imam Ghazali (d. 505 AH) explained the concept of *maslaha* as follows:

"*Maslaha* fundamentally involves either acquiring benefit or removing harm. Indeed, the pursuit of benefit and the prevention of harm are among the objectives of creation. It is in the best interest and reform of humanity that these objectives are achieved. By *maslaha*, we mean safeguarding the objectives of Sharia. There are five objectives of Sharia concerning human beings: the protection of religion, life, intellect, lineage, and property. Therefore, anything that protects these five principles is considered *maslaha*, and anything that harms these principles is considered *mafsada* (harm). Removing such *mafsada* is referred to as *maslaha*." (Al-Ghazali 1988)

The same concept of *maslaha*, expressed with different words, is conveyed by Al-Khwarizmi (d. 387 AH) as follows:

"*Maslaha* is the name for the protection of the intended objectives of the Sharia by removing harms from creation." (Shawkānī 1992)

Analysis:

If we carefully compare the definitions provided by *Ghazali* and *Al-Khwarizmi*, it becomes evident that their

concepts of *maslaha* are essentially the same. The removal of harms from creation leads to the attainment of *maslaha*, just as preventing *maslaha* leads to the occurrence of harms. These two concepts are opposites of each other; thus, achieving one entails the removal of the other. For instance, abstaining from acts such as adultery, murder, and intoxication involves *maslaha*, as it prevents harm. Since the attainment of *maslaha* is achieved by removing harms, securing benefits (*masalih*) should be prioritized. This is why *Al-Khwarizmi* focused solely on one aspect in his definition, emphasizing the protection of Sharia's intended objectives by removing harms.

Regarding *masalih*, Ibn Abd al-Salam has written that:

There are two types of maslaha (benefits): real and figurative. Harm (mafsada) can sometimes be a means or cause for achieving maslaha, and similarly, maslaha can sometimes be the cause of harm. In both cases, the application of maslaha is figurative. This includes actions such as surgical operations, putting oneself at risk in jihad, and implementing various Sharia penalties. In such cases, the demand to perform or abstain from an action is based on the consideration that the Shariah's enforcement of the law achieves the intended maslaha. (Izz al-Dīn 1991)

Therefore, *Ibn Abd al-Salam* has articulated a principle:

"Whoever wishes to understand the demands of maslaha and identify which situations are preferable and which are less preferable should consider them as if there were no specific Shari'ah ruling on the matter. Then, base the judgment on reason and rational decision-making. No ruling should be outside this framework, except for the acts of worship that Allah has specifically prescribed for people, which are already defined and clarified in terms of their benefits." (Izz al-Dīn 1991)

Tufi (d. 716 AH) wrote about the concept of "*maslahah*" (public interest) stating that in common usage, the term is used for anything that causes benefit and well-being, such as profitable trade. In Islamic legal terminology, "*maslahah*" refers to any cause that fulfills the objectives of the Shari'ah (Islamic law), whether it pertains to acts of worship or social customs. He then divided "*maslahah*" into two types: one that concerns the rights of the Lawgiver (Allah), such as acts of worship, and the other that benefits the creation and organizes their lives, such as social customs. (Al-Tūfi 1954)

This definition aligns with the perspective of Imam Ghazali, as Tufi explained the common usage of "*maslahah*" with these words: it refers to anything that is a means to benefit and well-being. Imam Ghazali expressed this similarly, stating that *maslahah* is essentially about procuring benefits or averting harms. Both agree that *Shari'ah*-based *maslahah* is what preserves the objectives of the Lawgiver. However, *Tufi* distinguished two types of objectives of the Lawgiver: one that is intended for His own right and one

intended for the benefit and organization of the affairs of the creation. Based on this, scholars have this terminology that rights are of two types: the rights of Allah and the rights of the people.

The summary of the definitions by scholars of Usul (principles of Islamic jurisprudence) is as follows:

1. There are two usages of "maslahah" (public interest):
 - The first is metaphorical, such as when a cause is referred to by its effect.
 - The second is literal, referring to the benefit or good that results from a cause. "Mafsadah" (harm) is the opposite of "maslahah." This distinction is clear in the definitions by Al-Izz ibn Abd al-Salam and Safi al-Din al-Hindi. Thus, when "maslahah" is applied to actions that are means to a benefit, it is metaphorical, and when it is applied to the actual benefit resulting from the action, it is literal. Both usages do not fall under the linguistic meaning of "maslahah."

It should be noted that applying "maslahah" to its literal meaning is better, because the actions of the obligated individuals (*mukallaf*) are not intended in themselves but are intended for the outcomes they produce. Dr. Said Ramadan al-Buti also wrote about the ultimate concept of "*maslahah*" in relation to the objectives of Shari'ah, stating that in the terminology of Shari'ah scholars, "maslahah" refers to the benefit that the Wise Lawgiver aims to achieve for His servants by protecting their religion, life, intellect, lineage, and wealth in a specific order.

2. The avoidance of harms (mafasiid) is considered part of "maslahah." This is evident in the words of Ghazali, who said that neglecting these principles leads to harm, and avoiding harm is "maslahah." In the definition by Al-Khwarizmi, it is mentioned that "maslahah" involves protecting the objectives of the Lawgiver by removing harm from the creation. Al-Izz ibn Abd al-Salam mentioned that sometimes the means to benefits are themselves harmful, and their judgment is to make them permissible. This concept is also derived from the words of Safi al-Din al-Hindi, who stated that "*maslahah*" is achieved by procuring benefits and avoiding harms, and the same applies to "*mafsadah*."
3. From the mentioned definitions, it is understood that according to these scholars, the intended "*maslahah*" is what refers to the intention of the Lawgiver, not merely the intention of the obligated individual. Therefore, the "*maslahah*" of Shari'ah is considered valid due to its judgment and its determined limits, because if it were left to people's desires and lusts, the foundation of Shari'ah would be nullified. A person might think that his "*maslahah*" lies in drinking alcohol, dealing in usury, or

killing people, which contradict the purpose of the Lawgiver. The Lawgiver has legislated to remove people from their base desires. Following one's desires leads to nothing but corruption.

Because desires vary greatly regarding a single matter and rarely, if ever, agree, sometimes a matter is beneficial for one person but not for another. Similarly, it may be beneficial for a person at one time but not at another. Therefore, benefits and harms in worldly life are relative. The fundamental reason for this is that benefits based on desires are not considered valid. Imam Ghazali expressed this by stating that "*maslahah*" refers to the protection of the Lawgiver's intent, while Tufi believes that "*maslahah*" is a means to achieve the Lawgiver's objective. In the words of Al-Izz ibn Abd al-Salam, legal punishments are not desired because they are harmful; they are prescribed to achieve Shari'ah's objectives.

It is clear that according to scholars, the intention of the obligated individual is not considered in following the law.

4. All objectives of Shari'ah, whether small or large, are related to the five primary objectives: the protection of religion, life, intellect, lineage, and wealth. Every "*maslahah*" that aids these objectives is considered by the Lawgiver and any "*maslahah*" that the Shari'ah does not acknowledge is not a true Shari'ah "*maslahah*," even if it appears beneficial to the obligated individual. Therefore, Ghazali stated: "The purpose of all types of appropriateness is to consider the objectives, and anything that does not consider the objectives is not appropriate." (Al-Ghazali 1988)

The distinguishing features of Shari'ah-based "*maslahah*" (public interest) are as follows:

1. The term "*maslahah*" can be applied to something that fulfills the intent of the obligated individual (*mukallaf*) or something that fulfills the intent of the Lawgiver (Shari'ah). Therefore, Shari'ah-based "*maslahah*" has certain distinctions:
 - o The source of "*maslahah*" is the guidance of Shari'ah, not merely the desires of the self or intellect. This is because human intellect is limited, bound by time and place, and cannot be completely free from societal influences. Additionally, it cannot be free from the effects of environment, desires, objectives, and tendencies. Hence, divine guidance has been established as a law, known as Shari'ah, because human intellect alone, without the guidance and supervision of Shari'ah, cannot fully comprehend "*maslahah*."

- Al-Izz ibn Abd al-Salam wrote that if important worldly benefits and harms can be understood through intellect, they do not conflict with Shari'ah. Before a Shari'ah ruling on a matter, it is not hidden from any sensible person that the pure benefits should be attained and pure harms should be avoided. Prioritizing the avoidance of harms over the attainment of benefits is considered a commendable act. He also mentioned that wise people agree on these matters, as do the Shari'ahs regarding the protection of lives, wealth, and honors. They also agree that the best actions and words should be chosen, followed by less optimal ones gradually.
 - It is impossible for intellect alone to consistently comprehend "maslahah" because if it could comprehend all worldly and otherworldly benefits, there would be no need for Shari'ah. This would be redundant and purposeless.(Izz al-Dīn 1991)
 - As per *Al-Shatibi*, the traditions of the world indicate that it is impossible for intellect alone to fully understand its benefits and harms in detail.(Shāṭibī 1997)
2. In Islamic Shari'ah, benefits and harms are not limited to this world alone but are considered in both temporal and spatial contexts, including the hereafter, to ensure that actions yield their intended outcomes. "Maslahah" refers to benefit or the means to achieve it. Any action that benefits the doer, even if the benefit is delayed, is considered a good deed. The duration of the delay in benefit varies with each action.
 3. The Islamic *Shari'ah*, in its comprehensive legislative thought, is based on objectives and ultimate aims, and these aims are entirely founded on "*maslahah*." The rulings of Shari'ah are established to fulfill the objectives related to the welfare of the servants.(Shāṭibī 1997)

Thus, Shari'ah aims to achieve the well-being of individuals by fulfilling the objectives set by the Lawgiver, ensuring that actions are aligned with both worldly and otherworldly benefits.

Yusuf Hamid Al-Alim (d. 1988) discussed the characteristics of "*maslahah*" (public interest) in detail. He writes: Due to the comprehensive nature of Islamic *Shari'ah*, there is a consensus among scholars that the most prominent feature of divine *Shari'ahs* is that they have come for the welfare of human beings in both their worldly life and their hereafter, and their implementation leads to happiness in both realms.(Izz al-Dīn 1991)

Saeed Ramadan Al-Buti writes that this proves that it is not appropriate for a researcher to decide that an action is a "*maslahah*" based solely on its apparent worldly benefits and outcomes until they are also certain of its results in the hereafter. This certainty is obtained through contemplation of Shari'ah texts and the study of the

motives and objectives of *Shari'ah*.(Al 'Alim 1998)

Yusuf Hamid writes that in *Shari'ah*, rulings are not based on the outward forms of actions but rather on their causes and objectives. *Shaikh Abu Zahra*, in this context, quotes John Stuart Mill, stating that in later periods, those who supported the utilitarian perspective had a different stance. This means that those who deprive themselves of worldly pleasures will be accorded all sorts of honor, provided their deprivation serves as a means for others to enjoy their happiness in this world. However, if a person deprives themselves for any other reason, they will not be worthy of any respect. This indicates that, although a person's worth may be recognized for their knowledge, it does not necessarily serve as a suitable example for the appropriateness of actions.(Abu Zahra 1981)

In reality, this is a perspective that prioritizes worldly benefits, as these benefits can either be individual or collective. This is contrary to *Shari'ah*-based "maslahah." If both individual and collective benefits are combined, it is only from an outward perspective because causes and objectives differ. This limited worldly perspective has influenced the minds of many Muslims in the present era, changing the motives behind their good deeds.

Shari'ah provides rulings for objectives related to all commands given to the servants, regardless of their differences. This common factor is the concept of obedience to Allah. Following *Shari'ah* rulings is equally obligatory in both worship and transactions, regardless of whether we understand the "maslahah" or not.

The scholars have explained the two categories of rights: the rights of Allah (*Huquq Allah*) and the rights of the servants (*Huquq al-'Ibad*). This categorization is not contrary to the aforementioned perspective. The concept of the rights of the servants means that a servant of Allah has the authority to forgive his own right, whereas the right of Allah cannot be forgiven by the servant; only Allah can forgive it. This division of the rights of Allah and the rights of the servants is for convenience, based on which right is predominant in a particular matter. In reality, the necessary connection between Allah and the servant and the association of actions with the reward in the hereafter requires that all rulings are based on the rights of Allah. This is because the servant is obligated to fulfill the right of servitude to his Creator and Master.

4. The text discusses the concept of "*maslahat*" (public interest or welfare) in Islamic jurisprudence. It explains that in Islamic law, the interest of religion takes precedence over other interests, and anything

contrary to religious *maslahat* can be rejected. This priority of religious *maslahat* is contrasted with the views of ethics, law, and social sciences experts who sometimes exploit public religious beliefs for their own specific agendas. *Yusuf Hamid* notes that historically, European clergy did similar things, and today, some so-called proponents of Islam use it for worldly gains. It emphasizes that this principle is clear to anyone with reason and intellect. Islamic Sharia grants the highest priority to religious *maslahat* and considers public welfare as being in the best interest of humanity

5. Effects of Changing Maslahat on Legal Rulings:

It is supported by the Quran, Sunnah, and consensus that changes in *maslahat* (public interest) can lead to changes in legal rulings. For example, the Prophet Muhammad (ﷺ) initially prohibited hoarding due to famine but later allowed it when the circumstances changed. He explained the reason for the prohibition and once that reason was no longer applicable, he permitted hoarding. Similar examples are frequently found in Hadith.

The Companions of the Prophet (ﷺ) would carefully consider any forthcoming issue, examining its background and context, analyzing its benefits and harms, and then suggest an appropriate ruling. Sometimes, their decisions might seem contrary to the initial rulings, but these were based on legal reasoning they had acquired through their close association with the Prophet (ﷺ).

Examples of this include the Companions' positions on:

- **Deet (blood money):** Their rulings on compensation for murder or injury.
- **Luqata (lost items):** How to handle found property.
- **Ghanima (war booty):** The distribution and management of loot from warfare.
- **Limits on alcohol consumption:** Adjustments to the prohibitions and limits regarding alcohol.
- **Compensation for damage caused by workers:** Decisions on how to address losses or damages caused by workers

In this context, *Ibn al-Qayyim* wrote that those who believe that changes in *maslahat* (public interest) imply that all such matters have attained the status of immutable laws binding on the ummah (community) until the Day of Judgment are mistaken. Those who think this way are excused for their misunderstanding. (Al-Jawziyyah 1998)

Similarly, the jurists determined prices for goods even though the Prophet Muhammad (ﷺ) had prohibited this practice. *Ibn al-Qayyim* explained that the Prophet (ﷺ) had prohibited it because there was no

immediate need for it at that time. If the need had arisen, the Prophet (ﷺ) would have certainly set prices. Likewise, the jurists later refused to accept testimonies from a father for the rights of his son, from a wife for the rights of her husband, or from a brother for the rights of his brother, despite the fact that such testimonies were accepted in the early generations of Islam.

Imam al-Zuhri's opinion in this regard is that testimony from a father for the rights of his son, or from a son for the rights of his father, or from a brother for the rights of another brother, or from a husband for the rights of his wife, was not subject to doubt. However, concerns about undue favoritism could arise, which is why such testimonies were not accepted. In the early period, testimonies from close relatives such as fathers for sons, brothers for each other, or husbands for their wives were accepted, but in later times, these testimonies were rejected due to suspicions of bias.

However, as corruption and deterioration became prevalent among people, the scholars deemed it necessary to scrutinize witnesses to ensure that human rights were not violated. Similarly, during the time of Imam Abu Hanifa, only rulers possessed the power and authority to enforce laws to the extent that they could change rulings. During the era of the later scholars, the situation shifted somewhat. When individuals other than rulers acquired similar power and dominance, they also began to apply the rulings concerning coercion to others, similar to the rulers. (Anon 2009)

Limitations of Maslahat:

In light of various types of interests, scholars have established certain limitations regarding the use of rights:

1. **Limitation of Benefit Due to Maslahat:**

In the contemporary context, during the fifth conference of the Islamic Fiqh Council held in Kuwait, resolutions were adopted concerning the determination of profits for traders. The fundamental principle of the texts and Sharia rules is that people should be allowed freedom in buying, selling, and managing their properties and wealth. The Quran clearly states: “O you who have believed, do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful].” (Quran 2:188). This verse emphasizes that unjustly taking someone else's wealth is prohibited, but if trade occurs with mutual consent and results in financial benefit, it is permissible. People should not destroy themselves, for indeed Allah is Merciful to you.

There is no specific limit prescribed for profit that traders must adhere to; instead, it generally depends on the conditions of trade, the traders, and the commodities involved. However, Islamic ethics should be

considered, which demand qualities such as kindness, contentment, tolerance, and ease.

The Sharia includes numerous texts that command avoiding financial dealings that could lead to haram (forbidden) practices and similar matters, such as deceit, mixing (of goods), concealing transactions, and hoarding that harms both the general public and specific individuals.

The ruling authority is not permitted to intervene in setting prices unless there is a clear disruption in the market due to artificial and self-created factors. If such a situation arises, it is necessary to address the imbalance in trade, oppression from price drops, and the factors leading to coercion. There is no indication in the texts of the Quran and Sunnah that a specific limit or law for profit should be established; rather, it has been left to the conscience of Muslims and the local customs, which should take into account justice, benevolence, and avoidance of harm. (Al-Zuhay 2001)

2. Limitations on the Use of Property Due to Public Interest:

In certain situations, restrictions can be imposed on the use of property due to public interest. For example:

- **For Individuals with Financial Means:** It is obligatory for those who can afford it to contribute financially when the government does not have sufficient funds to support the needy and disabled. If the public treasury is depleted or if the available funds in the treasury are insufficient for the defense of the Islamic state, and additional funds are needed, then under public interest, money may be collected from those who are able.
- **Preventing Hoarding:** Hoarding should be prevented, and hoarders should be compelled to release essential goods into the market for sale. In times of necessity, prices may need to be regulated.
- **Forcing Sale of Assets:** Assets may be forcibly sold for the benefit of creditors, if necessary.
- **Abolishing Individual Ownership for Public Interest:** This may involve taking land for public projects such as road expansion, canal construction, or laying railway tracks. In such cases, land can be acquired by the government, but only after full compensation is paid based on the assessment of experienced and just individuals. Although public interest takes precedence over individual interests, fairness must be ensured.
- **Land Acquisition for Mosque Expansion:** If a mosque becomes too small for public needs and adjacent land is privately owned, it may be forcibly acquired by paying compensation. This is based on the precedent where the Companions of the Prophet (ﷺ) forcibly acquired land to expand the Masjid al-Haram when it became crowded.

Such measures are considered legitimate forms of coercion in specific situations for the greater public good.(Anon 2009)

Summary:

The essence is that Islamic Sharia and secular laws have different standards for مصالح (*masalih*) and مفاسد (*mafasid*). Human laws are based on material considerations and generally focus solely on worldly life. Consequently, legal and moral scholars have established criteria for good and bad based on worldly life alone. For instance, some moral philosophers consider ethics to be the source of law, though there is no consensus on a single legal standard. Instead, the foundation of law is often viewed as reason, distinguishing between good and bad actions through rationality. Additionally, some thinkers consider pleasure and enjoyment as the measure, whether for an individual or society, while others regard perfection as the standard. Some groups see مصالح and مفاسد in terms of value, while others view the standard as obligatory duties.

Similarly, there is also disagreement among legal and moral scholars regarding the sources of knowledge. Some consider the senses as the primary means of knowledge; others believe true knowledge comes from intuition, and some view reason as the source. However, those who believe in Islamic Sharia do not consider worldly life to be the ultimate existence. They also believe in the afterlife. This belief is why Islamic law takes into account both worldly and afterlife مصالح. Actions that contribute to success in the afterlife are considered مصالح, while those that do not are seen as مفاسد.

Similarly, Islamic Sharia considers not only physical مصالح (benefits) but also spiritual مصالح. This is a fundamental difference between Sharia and secular laws regarding مصالح. It becomes evident that the concept of مصالح presented by Islam is superior, more comprehensive, in close alignment with human nature, and universal compared to the concepts proposed by secular laws. This concept encompasses both worldly and eternal happiness.

6. The Current Concept of Public Interest in Law:

The contemporary concept of public interest in law refers to legal considerations and actions aimed at benefiting the broader society rather than individual or private interests. It emphasizes the importance of addressing issues that affect the public at large and ensuring that legal remedies and protections are available for societal benefits. This concept often involves:

1. **Advocating for General Welfare:** Legal measures are designed to protect and promote the general well-being of the community, including health, safety, and economic stability.

2. **Ensuring Fairness and Justice:** Public interest law seeks to rectify injustices and inequalities within society, ensuring that marginalized or disadvantaged groups have access to legal recourse and protection.
3. **Addressing Systemic Issues:** This approach involves tackling systemic problems such as environmental degradation, discrimination, and social injustice, which have wide-ranging impacts on society.
4. **Encouraging Government Accountability:** It promotes transparency and accountability in public administration and governance, ensuring that governmental actions align with the public good.
5. **Legal Reforms:** Public interest considerations often drive legal reforms and policy changes to address emerging societal needs and to improve the overall functioning of the legal system.

Overall, the concept of public interest in law is about prioritizing the collective needs and rights of the community, fostering a legal environment that serves the greater good and upholds fundamental principles of justice and equality.

In this regards *Dr. Faqir Hussain* explain the concept of Public interest:

Public interest litigation is a newly evolving concept in the field of adjudication. Public interest litigation means litigation in interest of the public. The word 'public' means public at large, including all classes and sections of society without any distinction of gender, social status, economic background, ethnic origin, religious credence or cultural orientation. The *raison d'être* of public interest litigation is to break through the existing legal, technical and procedural constraints and provide justice, particularly social justice to a particular individual, class or community, who on account of any personal deficiency or economic or social deprivation or state oppression are prevented from bringing a claim before the court of law. In this context, this form of litigation is indeed a novel juristic prescription for overcoming the formal defects in the legal system so as to guarantee real and substantive justice to the masses, particularly the poor and deprived sections. In a sense, the public interest litigation is a judicial response to redress the problems of the under-privileged, by giving them the right to seek access to justice. It is a strategy to meet the exigencies of time and cater for the demands of emerging realities. It is a development identical and equal in importance to the evolution of the law of equity. It is a phenomenon unique in judicial history and perhaps equal, if not greater in significance to the precedent of *Marbury v Madison*, giving birth to the doctrine of judicial review. Public interest litigation is a strategy to free the legal system of its formalistic and technical connotations and liberate justice of the shackles of wealth and social influences. In other words enabling the lowly and poor to enter the temple and get the blessing of the goddess of justice(Hussain n.d.).

6.1. Decisions on the Change of Public Interest in India and Pakistan

According Dr. *Faqir Hussain*:

Towards early 1980's the Indian courts seemed poised to entertain cases of public interest and issue appropriate directions in such matters. These cases were initiated for the benefit of the deprived, dispossessed and disadvantaged sections of society. Such proceedings were part of the legal aid movement initiated by certain public spirited groups. Free legal aid movement was sympathized with by the executive and supported by the judiciary. While deciding public interest cases the judiciary was willing to relax the rules, deviate from the standard procedures and ditch formalities and technicalities that stood in the way of providing substantive justice to the poor and downtrodden. The courts adopted this strategy so as to secure the blessings of the rule of law for the weak and vulnerable members of society who had traditionally been deprived of its benefits. It was a unique and singular event in the judicial history of India when the judiciary extended its support to the poor and expressed its solidarity with them. It was, of course, a purely indigenous response to address the problems of the underprivileged and give them access to justice (Hussain 1993)

In India:

1. **Case: Vishaka vs. State of Rajasthan (1997)** In this landmark decision, the Supreme Court of India established guidelines for preventing sexual harassment at the workplace. The court recognized that changing social conditions necessitated new interpretations of laws to address contemporary issues and protect the rights of women. The Vishaka case illustrated how evolving societal norms and needs can lead to judicial changes in the interpretation and application of the law.
2. **Case: R. C. Cooper vs. Union of India (1970)** This case addressed the issue of nationalization of banks and its impact on property rights. The Supreme Court, while upholding the nationalization, also considered the evolving economic policies and their effects on individual rights. The judgment reflected how public interest litigation can adapt to changing economic and social realities.

In Pakistan:

1. **Case: Muhammad Akram vs. The Government of Punjab (2010)** The Lahore High Court dealt with issues related to the protection of fundamental rights in light of evolving social conditions. The court's decision emphasized the need to adapt legal interpretations to address new challenges and ensure that justice serves the public interest effectively.

2. **Case: Asma Jehangir vs. Federation of Pakistan (1999)** In this case, the Supreme Court of Pakistan addressed human rights violations and the need for judicial reforms. The decision reflected a progressive approach to evolving social and legal standards, demonstrating how the judiciary can respond to changes in public interest and societal needs.

Both Indian and Pakistani courts have shown a willingness to adapt their legal interpretations and decisions based on changing societal norms and public interests, illustrating how judicial systems can evolve to address contemporary issues effectively.

The scope of public interest litigation was determined by the Supreme Court of India in the case of *S.P. Gupta v President of India*. The Court observed:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in the Supreme Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or *determinate* class of persons.(Anon n.d.-c)

In Islamic law, the clarification of public interest is given as follows: when analogy conflicts with the objectives of Sharia, Hanafi jurists seem to understand that in cases where there is a perceived conflict between a legal analogy and a Sharia-based interest, the Sharia-based interest should be given preference. This is because the primary objective of Sharia is to bring benefit and prevent harm.

Abu al-Hasan al-Amiri, within the scope of the five essential needs, mentions one objective as "*mazjarah akhdh al-mal*," meaning the prevention of wrongful acquisition of wealth. This is the reason for the establishment of punishments for theft and robbery. Imam al-Haramayn referred to this as "the protection of wealth," which Imam al-Ghazali termed "the preservation of wealth" in his work "*al-Mustasfa*." *Imam al-Shatibi* elaborated on its sources in his work "*al-Muwafaqat*." In modern times, the concept of wealth has greatly expanded. *Jasser Auda* writes that this expansion includes not only owned assets (wealth) but also value in both national and international contexts.(Auda 2008)

This evolution is reflected in the concepts of Islamic economics, particularly following the emergence of various models of Islamic banking. Contemporary scholars, through their extensive study of the Qur'an and *Sunnah*, have further expanded the concept of "preservation of wealth." In addition to the fundamental meaning of protecting individual wealth, they have included certain responsibilities that fall on the government. These responsibilities include social solidarity and ensuring that there is not a significant economic disparity among different segments of society.

The preservation of life (*ḥifz al-naḥs*) and the preservation of dignity (*ḥifz al-ʿird*) are also among the terms that represent fundamental values, and they have been mentioned by scholars of objectives (*maqasid*) in every era. The terms used in this context are as follows: preservation of life (*ḥifz al-naḥs*), prevention of killing (*mazjarat qatli al-naḥs*), preservation of dignity (*ḥifz al-ʿird*), prevention of attacks on dignity (*mazjarat thalbi al-ʿird*), and preservation of lineage (*ḥifz al-nasl*). Currently, the terms used by those who consider the preservation of dignity as part of the preservation of life, such as al-Juwayni, al-Ghazali, and al-Shatibi, are regarded as particularly important.

The difference between objectives (*maqasid*) and interests (*masalih*) is that the objectives have been explicitly determined by the texts (Qur'an and *Sunnah*), whereas the consideration of interests is the responsibility of the jurists. Understanding of interests can vary and may change, but the concept of altering the objectives of Sharia is inconceivable. Therefore, the assertion by some scholars that determining the objectives of Sharia is a prerequisite for *ijtihad* (independent reasoning) is fundamentally incorrect. The fundamental rulings of Sharia are known from the Qur'an and *Sunnah*, and these are the primary sources of Sharia. The secondary sources, *ijma* (consensus) and *ijtihad*, are directly derived from the Qur'an and *Sunnah*. The primary role of Sharia rulings and their derived objectives and interests is to assist human intellect in determining the intent of the Lawgiver in numerous practical situations, keeping the law dynamic and relevant to various aspects and conditions of life, and preventing it from becoming lifeless and rigid.

If Sharia opens a door to bring about an interest, it is necessary to close all other doors that oppose this interest so that the intended benefit from the legislation is fully achieved. Sharia has prescribed marriage as a means to improve lineage, monitor it, and provide proper and righteous upbringing. Therefore, it is necessary to close all ways that contradict or oppose this method. For this reason, establishing a sexual relationship through unlawful means, i.e., adultery, has been declared permanently forbidden. In this context, seclusion with a non-*mahram* woman has been prohibited, mixing and unveiling in speech and actions have been prohibited, and everything that incites unlawful animalistic desires has been prohibited.

7. Interest of Sharia Regarding Poverty and Public Welfare:

Every individual has basic needs, and Sharia aims to ensure that these fundamental needs are met so that people can distinguish between right and wrong for their needs. Generally, fulfilling one's needs is the individual's responsibility, while the care of children, the elderly and disabled individuals falls on their family members. However, for those who are completely destitute, it is the responsibility of the state to fulfill their basic needs.

Sharia's Perspective on Social Equality and Distribution of Wealth and Income:

Sharia prevents the increase of inequality in the distribution of wealth and income and promotes social equality. It is Allah's way that, along with the diversity of nations, their natural resources, means, and reserves are also diverse. Therefore, every nation needs to utilize the resources and means available to other nations, and by implementing this harmony practically, they exchange goods, consumables, and services among themselves. This leads to the principles of specialization and division of labor, which are the backbone of economics. Islamic philosophers had guided the world in this direction centuries ago.

Similarly, regarding peace, security, and administration, *Imam al-Haramayn al-Juwayni* wrote: "Without peace and security, life is at risk, and without proper administration, wealth becomes useless. Sharia aims to maintain peace and security and ensure proper administration. It holds the rulers responsible for this." The *Qur'an* emphasizes the purification of the land from corruption and its reform. Islam prescribes severe punishment for those who violate the administration and disrupt peace and security

Islamic Sharia main Objects regarding Public interest (Maslaha)

Objectives of Sharia (Maqasid al-Sharia) in the Context of Public Interest (Maslaha)

The concept of Maslaha, or public interest, is central to Islamic jurisprudence and is integral to achieving the objectives of Sharia (Maqasid al-Sharia). The primary aim of these objectives is to protect and promote the welfare of the community, ensuring justice, preventing harm, and fostering benefits.

Core Objectives of Sharia (Maqasid al-Sharia)

1. **Preservation of Religion (Hifz al-Deen):**

- **Purpose:** To ensure the freedom of belief and worship, and to protect religious practices and institutions.
- **Application:** Laws and measures that facilitate religious practices, prevent coercion in matters of faith, and protect places of worship.

2. **Preservation of Life (Hifz al-Nafs):**

- **Purpose:** To protect human life and ensure physical well-being.

- **Application:** Prohibitions on murder, harm, and endangerment; promotion of healthcare, safety regulations, and public health measures such as vaccination.
- 3. **Preservation of Intellect (Hifz al-Aql):**
 - **Purpose:** To safeguard mental health and intellectual capabilities.
 - **Application:** Prohibition of intoxicants and drugs; promotion of education and intellectual development.
- 4. **Preservation of Lineage (Hifz al-Nasl):**
 - **Purpose:** To protect family structure, lineage, and offspring.
 - **Application:** Regulations on marriage, prohibitions on adultery and fornication, and measures to protect children and family welfare.
- 5. **Preservation of Property (Hifz al-Mal):**
 - **Purpose:** To protect ownership and ensure the fair distribution of wealth.
 - **Application:** Prohibitions on theft, fraud, and usury; promotion of economic justice through zakat (charity) and inheritance laws.

Categories of Maslaha

1. **Necessities (Daruriyyat):**
 - These are essential for survival and the functioning of society. Without these, life would be severely compromised.
 - Examples: Ensuring food, water, shelter, security, and healthcare.
2. **Needs (Hajjiyyat):**
 - These are important to alleviate hardship and facilitate ease in life. They are not essential for survival but are necessary for a comfortable and functional life.
 - Examples: Employment opportunities, educational facilities, and economic policies that prevent undue hardship.
3. **Embellishments (Tahsiniyyat):**
 - These improve the quality of life and provide comfort and luxury. They are not necessary for survival or to prevent hardship but enhance overall well-being.
 - Examples: Cultural activities, beautification projects, and public amenities that enhance quality of life.

Category

Description

Necessities (Daruriyyat)

Essential for survival and the functioning of society.

Needs (Hajjiyyat)

Important to alleviate hardship and facilitate ease in life.

Category

Description

Embellishments (Tahsiniyyat) Improve quality of life, provide comfort and luxury.

Application of Maslaha in Islamic Sharia

1. Istislah (Public Welfare):

- Jurists employ the principle of Istislah to derive rulings that serve the common good when explicit texts are not available. It allows for flexibility and adaptability in addressing contemporary issues.
- **Examples:**
 - **Prohibition of Harmful Substances:** The prohibition of drugs and alcohol to protect health and intellect.
 - **Social Justice:** Implementing policies that promote social justice and economic equity, such as fair trade practices and the zakat system.

2. Ijtihad (Independent Reasoning):

- Ijtihad allows scholars to exercise independent reasoning to address new issues and circumstances, ensuring that Sharia remains relevant and effective in different contexts.
- **Examples:**
 - **Health Regulations:** Issuing fatwas to support public health measures like vaccination during pandemics.
 - **Environmental Protection:** Developing rulings that promote environmental conservation and sustainability in light of modern challenges like climate change.

8. Comparative Study Result

Here is a comparative table illustrating the concept of public interest in Islamic Sharia and contemporary laws:

Aspect	Islamic Sharia	Contemporary Laws
Definition	Maslaha (public interest) aims to protect and promote the welfare of the community.	Public interest often enshrined in constitutions, statutory laws, and judicial precedents.
Sources	Derived from the Quran, Hadith, Ijma (consensus), and Qiyas (analogical reasoning).	Based on legal frameworks, judicial precedents, and societal norms.
Scope	Encompasses necessities (daruriyyat), needs (hajiyyat), and embellishments (tahsiniyyat).	Includes aspects like public health, safety, welfare, and morals, balanced against individual rights.
Principles	Istislah (public welfare) and Ijtihad (independent reasoning) to derive rulings for the common good.	Legislation and policy-making, judicial review to balance public interest and individual rights.

Aspect	Islamic Sharia	Contemporary Laws
Challenges	Divergent interpretations among scholars, balancing tradition with modernity, and political influence.	Subjectivity, balancing public interest with individual rights, and addressing transnational issues like climate change.

This table provides a clear comparison of how public interest is conceptualized and applied within Islamic Sharia and contemporary legal systems

9. Conclusion

The study of public interest (maslahah) within the context of Islamic Shari'a and contemporary legal systems reveals both significant alignments and notable differences. Maslahah, a concept deeply rooted in Islamic jurisprudence, emphasizes the well-being of the community and seeks to promote public welfare. Its application in Islamic law is dynamic, often adapting to the needs and conditions of the time, reflecting a balance between tradition and societal change.

In contemporary legal systems, the principles of public interest are similarly aimed at advancing social welfare and justice, though often framed within secular and pragmatic contexts. While modern laws may not explicitly reference religious principles, the underlying objectives of promoting societal well-being and fairness are shared.

The comparative analysis highlights that while Islamic Shari'a and contemporary laws may differ in their foundational sources and methodologies, both systems recognize the importance of addressing the needs and concerns of the public. The concept of maslahah offers valuable insights into how religious and legal frameworks can be reconciled with evolving societal norms and challenges.

Ultimately, this study underscores the need for ongoing dialogue between Islamic and contemporary legal scholars to enhance mutual understanding and collaboration. By integrating the core values of public interest from both traditions, there is potential to develop more holistic approaches to governance and law that respect cultural and religious diversity while addressing contemporary societal issues.

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