

# An Analysis of al-Ṭūfī's Views on al-Maṣlaḥa

إعداد

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## Abstract

al-Ṭūfī, a prominent twelfth-century Islamic scholar, has a unique theory about the question of al-Maṣlaḥa (interest). The majority of the classical Islamic scholars see that al-Maṣlaḥa should always be read with reference to the Qur'an and Sunnah perspective, and should never be prioritized above them in case of a conflict. However, al-Ṭūfī sees quite the opposite; he posits that the Texts should follow the Maṣlaḥa since Fiqh (Islamic jurisprudence) as a whole depends on it. Therefore, this research examines al-Ṭūfī's opinions on al-Maṣlaḥa, compares them with the views of classical Islamic scholars, and criticizes them objectively to prove how right or wrong they were. Moreover, this research will demonstrate how far some contemporaries favor al-Ṭūfī's method when they claim to embrace his ideas but in reality, distort the Sharia in the name of interest. Finally, this research will also contribute to revealing the importance and reliability of al-Maṣlaḥa as a source of Fiqh and how it is a significant asset for Islam to face contemporary issues.

**Keywords:** The Islamic law, al-Maṣlaḥa., Najm al-Dīn al-Tūfī.



## Introduction

Fiqh (Islamic jurisprudence) has a particularity that makes it valuable for all circumstances, which is its centrality to al-Maṣlaḥa to generate its judgments (Aḥkām). For instance, if we look at the five judgments of Sharia, namely obligatory, recommended, permitted, forbidden, and disapproved, we see that they all have a beneficial side to them. Accordingly, Islamic scholars agreed that God's purpose in setting the Sharia is for the benefit of humans and to keep people away from all forms of damage; starting from these values thereby producing al-Maṣlaḥa al-Mursala as a source of aḥkām.

Al-Maṣlaḥa al-Mursala (unrestricted interest) means those interests that have not been judged by the Qur'an or Sunnah. The scholars have argued whether it should be permissible and applied given that al-Maṣlaḥa is the basis of Islamic ruling, or it should be neglected because it can open a door for people to use the Sharia according to their desire. Consequently, al-Maṣlaḥa al-Mursala has been considered among the disputed sources of Fiqh, and it has been a hot topic upon which an intense debate and many books have been written throughout the last eleven centuries. This research is going to study and criticize the concept of al-Maṣlaḥa and its position in Sharia according to Najm al-Dīn al-Tūfī (d.1316/ 716), which was detailed in his book al-Ta'yīn fī Sharḥi al-'arba'īn.<sup>(1)</sup> The research will shed light on the author's life, affiliations, and opinions about al-Maṣlaḥa. The study aims to investigate how close or far al-Ṭūfī's views are from the mainstream thought and why the majority of



scholars, who came after al-Ṭūfī, attacked him severely on this point in their books. In addition, in criticizing the traditional Fiqh, some modernists like Fahmi Huwaidi and Mohammed Abed al-Jabri relied on al-Ṭūfī's theory as a foundation for some of their modernist views. For instance, when the former advocates for permitting some usurious transactions in consideration of al-Maṣlaḥa <sup>(2)</sup>, the latter sees the application of the theft penalty as conflicting with it <sup>(3)</sup>. They both assert, just like al-Ṭūfī, that whenever the text contradicts the interest, the interest should take precedence. However, this article will discuss how they misread al-Ṭūfī's views to argue for an interpretive leeway toward established Islamic conventions.

1- Najm Al-Dīn Al-Ṭūfī, Al-Ta'yīn Fī Sharḥi Al-'arba'īn (Beirut: Al-Rayyān Foundation, 1998).

2- Fahmi Huwaidi, al-Tadāyyun al-Manquus, (Cairo: Dar al-Shuruq, 176-175 (1994).

3- Al-Jabiri, Mohammed Abed Al-Jabri, al-dīn wa al-dawla wa tatbiq al-sharia, (Beirut: Centre for Arab Unity Studies, the fourth edition 176-174 (2012).



## The Research Problem:

Understanding the controversies and divergences surrounding al-Ṭūfī's views on al-Maṣlaḥa (the principle of public interest) and investigating why subsequent scholars vehemently criticized him for these perspectives.

## The Research Questions:

- 1 What were the key elements of al-Ṭūfī's views on al-Maṣlaḥa, and how did they deviate from mainstream Islamic thought?
- 2 What were the specific criticisms leveled against al-Ṭūfī by later scholars regarding his interpretation of al-Maṣlaḥa, and how did this dissent shape subsequent discourse?
- 3 In what ways did the modernists' interpretations of al-Ṭūfī's views differ from or misrepresent his original ideas, especially in advocating for reinterpretation of established Islamic norms based on al-Maṣlaḥa?

## The Importance of the Research:

The research holds significance due to several key aspects:

- 1 **Historical Context:** Understanding al-Ṭūfī's views and subsequent reactions provides insights into historical Islamic thought evolution. It sheds light on how interpretations of fundamental principles like al-Maṣlaḥa have evolved and their impact on Islamic jurisprudence.



- 2 Scholarly Discourse: Exploring the criticisms directed at al-Ṭūfī's views and their repercussions offers a lens into scholarly disagreements within Islamic studies. It contributes to the ongoing scholarly discourse by examining differing interpretations and their implications.
- 3 Interpretive Clarity: Clarifying potential misinterpretations or misreadings of al-Ṭūfī's views is crucial for a nuanced understanding of his original ideas. This clarification contributes to accurate scholarly discourse and prevents misrepresentation in contemporary debates.

### Methodology:

The research methodology involves a qualitative analysis of some parts of al-Ṭūfī's book, al-Ta'yīn fī Sharḥi al-'arba'īn, employing historical research to understand al-Ṭūfī's views on al-Maṣlaḥa. It includes a comparative examination of mainstream Islamic thought, critiques by subsequent scholars, and a critical analysis of modernist interpretations, aiming to clarify potential misreadings.



## 1. An Overview of al-Ṭūfī and his beliefs:

### 1.1. al-Ṭūfī's life:

al-Ṭūfī <sup>(1)</sup> was one of the most prominent Islamic Scholars in the 14th century. He was a Ḥanbalī jurist, theologian, and exegete. His real name is Sulayman Ibn ‘Abd al-Qawiyy Ibn ‘Abd al-Karīm Ibn Sa‘id al-Ṭūfī al-Ṣarṣarī al-Ḥanbalī. There is a disagreement about his birth year <sup>(2)</sup>, but surely, it was around 2-1271/670, in the village of Ṭūfa in Baghdad, and he died in Hebron in 1316/716 <sup>(3)</sup>. Minor information that can be known about al-Ṭūfī's life has been researched and published by Mustafa Abu Zayd. It seems that the most remarkable thing about him is his ability to free himself, to an extraordinary level, from the influence of traditional schools of law, especially from their criticism and hatred of critical reason and neglect of the universal principles of the Qur'an, such as considering the principle of al-Maṣlaḥa <sup>(4)</sup>.

### 1.2. al-Ṭūfī's beliefs:

There is an agreement between all scholars that al-Ṭūfī was a Ḥanbalī. Therefore, the nickname (al-Ḥanbalī) is permanently attached to his name in all books where he has been mentioned. However, al-Būṭī indicates that he was not committed to the

1- Some of the main sources of al-Ṭūfī's biography are: Khayru al-Dīn ibn Maḥmūd Al-zarkalī, al-'Alām (Beirut: Dār al-'Alam Lil Malāyīn, 127, 3, (2022); Shihāb al-Dīn Abū al-Falāh Abd al-Hayy Ibn al-'Imād al-Ḥanbalī al-Dimashqī, Shazarāt al-Zahāb fī Akhbārī man Zahāb, Ed. Maḥmūd Arna'ūt- 'Abd al-Qādir Arna'ūt. (Beirut: Dār Ibn Kathīr, 71/8 (1986); Ṣalaḥ al-Dīn al-Ṣafādī, 'al-Wāfī bi al-Wafayāt', Ed. Aḥmad al-Arna'ūt and Turkī Muṣṭaphā (Beirut: Dār Iḥyā' al-Turāth, 43/19 (2000); Lejla Demiri, "TŪFĪ", Türkiye Diyanet Vakfı İslām Ansiklopedisi (Access 10 April 2023).

2- Mustapha Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī (Cairo: University of Cairo, Institute of Dār Al-'ulūm, Ph.D. Dissertation, (1954 45.

3- Andrew Rippin. «Muslim Exegesis of the Bible in Medieval Cairo: Najm al-Dīn al-Ṭūfī's Commentary on the Christian Scriptures, (A Critical Edition and Annotated Translation with an Introduction) by Lejla Demiri». Ilahiyat Studies 1 / 5 (January 125-122 : (2015 . <https://doi.org/13091719.2014.51.101/10.12730>.

4- Munadi and Budi Iswanto, "The Concept Maslahah of Najmuddin al-Tufi and Its Relevance of Sharia Business", IQTISHODUNA: Jurnal Ekonomi Islam, Vol 153 ,(2020) ,9.

rules of the Ḥanbalī Madhhab, which means he would frequently go against the Madhhab in some cases, like his views on al-Maṣlaḥa <sup>(1)</sup>. On the contrary, Abū Zayd contests al-Būṭī's claim by saying that al-Ṭūfī was fully respected and considered by many Scholars. They always praised him for being knowledgeable, ascetic, and pious Ḥanbalī. Some also described him as a Ḥanbalī jurist, well-versed in the branches of his school of thought <sup>(2)</sup>. However, the controversy about al-Ṭūfī has never been as much about his Madhhab as it is about his beliefs.

According to the majority of scholars, al-Ṭūfī was a Sunni at first, following the Ash'arī Doctrine. However, he was not fully committed to it until he eventually converted to Shiism <sup>(3)</sup>. Furthermore, it is known that this accusation was the reason for his banishment from Egypt. However, some modern researchers believe that his enemies intended this accusation to show that he did not recognize their religious justifications for the legitimacy of the ruling regime and did not accept the validity of the sources on which the rationale was taken, namely the Sunnah of the Prophet <sup>(4)</sup>.

Abu Zayd also vehemently denies this accusation in his dissertation and claims that this accusation resulted from what he decided before that al-Ṭūfī was free-minded with bold opinion; thus, his enemies planned to insult him and exile him from Egypt <sup>(5)</sup>. Then he goes on bringing evidence proving that al-Ṭūfī was a Sunnī, and he did not consider himself a Rāfiḍī ( Shī'ī Imāmī), neither did they consider him one of them. However, his professor Muhammad Abu Zuhra, who discussed and introduced Abu Zayd's PhD dissertation, disagreed with





him and clarified in his introduction that Abu Zayd's argument to discharge al-ṭūfī from this accusation could be used against him simultaneously <sup>(6)</sup>. However, it is worth mentioning that some scholars who accused al-ṭūfī of Shiism stated that he repented before his death <sup>(7)</sup>. So, after this short overview of al-ṭūfī, intended to shed light on his affiliations, we will illustrate the concept of Maslaha as understood by most Muslim scholars.

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- 1- Mohammed Sa'id Ramadan Al-Būṭī, Ḍawābiṭ al-Maṣlaḥa Fī Al-sharī'a Al-Islamiyya (Cairo: Al-Azhar University, Institute of Sharia and Law, Ph.D. Dissertation, 202, (1965).
  - 2- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 48-47.
  - 3- Al-Samarrai, The Theory of Interest for Imam Najm Al-Din Al-Toufi, 3; Al-Būṭī, Ḍawābiṭ al-Maṣlaḥa, 202.
  - 4- Munadi, The Concept Maslahah of Najamuddin al-Tufi, 154.
  - 5- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 49.
  - 6- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 11.
  - 7- Al-Būṭī, Ḍawābiṭ al-Maṣlaḥa, 204

## 2.al-Maşlaḥa, according to the majority of Islamic scholars

### 2.1. The definition of al-Maşlaḥa:

Some scholars may use the word (Istiṣlāḥ), which means (Seeking Maşlaḥa) instead of The word (al-Maşlaḥa), and they both are rooted in the Arabic word ( Ṣaluḥa) which means (to be good). Thus, al-Maşlaḥa means (something good or beneficial), which is the opposite of evil or damage <sup>(1)</sup> . When it comes to its technical meaning, according to Al Ghazali (d.505A.H): “al-Maşlaḥa is trying to achieve and realize the benefits or reject the harm” <sup>(2)</sup> . In other words, it is agreed that Sharia law is about preserving the five objectives of the Islamic religion, namely, religion, life, intellect, progeny, and property. Therefore, According to Al Ghazali, any action or measure taken to secure these five values and any action taken to prevent evil is considered Maşlaḥa <sup>(3)</sup> .

### 2.2. Types of al-Maşlaḥa:

al-Maşlaḥa based on the view of Islamic Law can be divided into three types:

**A-al-Maşlaḥa al-Mu'tabara:** If the Shāri' (the lawgiver/Allah) mentions in the texts the law of an event and mentions the value of the benefit which it contains, then it is called Maşlaḥa Mu'tabara. This Maşlaḥa includes all the benefits described and mentioned by the texts, such as maintaining religion, soul, lineage, and property <sup>(4)</sup> .



**B-al-Maṣlaḥa al-Mulghāt:** it is the type of Maṣlaḥa that is remarked on and appreciated logically by humans but at the same time is not considered by the Shāri‘; either due to its contradictory with the Texts or simply for some hidden reasons that are only known by The God. The ruling of this Maṣlaḥa, according to the majority, is unapproved (Bāṭil) <sup>(5)</sup> .

**C-al-Maṣlaḥa Al-Mursala:** it is the Maṣlaḥa that is neither acknowledged nor rejected by the Law Giver. It is called (Mursala) which is absolute or free from any restriction because it is not qualified or based on a specific Text <sup>(6)</sup> .

The scholars disagree on its liability as a source of Islamic law, and those who accept it confirm that al-Maṣlaḥa al-Mursala can only be applied in matters that have to do with (Mu`āmalāt and Customs) because these are the only areas in which Ijtihad is allowed. Therefore it cannot be used or applied in matters that have to do with Ibadāt <sup>(7)</sup> . In the following lines, we will discuss the authority of al-Maṣlaḥa al-Mursala in more detail, given its importance in Islamic law.

### 2.3. The Authority of al-Maṣlaḥa al-Mursala:

As we have already mentioned, al-Maṣlaḥa al-Mursala is one of the disputed sources of Fiqh. It anciently was a debatable subject among Islamic scholars; At the same time, some looked at it as an essential principle that is a significant asset for Islam

1- Muh. Idris et al, The Using of Maṣlaḥa Mursala Method as Hujjah, (Al-'Adl, Vol 14, No 187 (2021 ,2.

2- Abu Ḥāmid al-Ghazālī, al-Mustaṣfā, (Beirut: Dār al-Kutub al-'Ilmiyya, 174 (1993.

3- Al Ghazali, al-Mustaṣfā, 174.

4- Muh. Idris, The Using of Maṣlaḥa, 191.

5- Ibrahim Ibn Musa al-Shāṭibī, al-'Itisām, (Saoudit Arabia: Dār ibn 'Affān, 609/2 (1992.

6- Abdul Wahhab Al Khallaf, Maṣādir al-Tashrī' al-Islami, (Kuwait: Dār al-Qalam, Sixth Edition, 88 (1993.

7- Bashir Sale, Appraising Al-Maslahah Al- Mursalah as A Source of Islamic Law In Judicial Proceedings Under the Maliki Law (Zaria: Ahmadu Bello University, Department of Islamic Law, Master Thesis, 18 ,(2018.

to face contemporary issues; others treated it as an unreliable tool that does not match the norm of Islamic law. Consequently, it has been known in Islamic law literature that al-Maṣlaḥa al-Mursala, as a source of Islamic law, is only recognized and applied by the Maliki School of Law among the four Madhabs. However, according to Maliki scholars, Imam Malik (d. 795/179) is not the only Imam to accept al-Maṣlaḥa; the other three Imams also recognize it under different names <sup>(1)</sup>.

For example, Imam Abu Hanifa (d.150/767) identifies (Istiḥsān) as a source of Islamic law, which is nothing but prioritizing the Maṣlaḥa over the Qiyās when there are no Texts. Imam Shafii (d.820/204), known as the most prominent opponent of al-Maṣlaḥa, also applied it in some cases with some conditions. And we can say the same thing about Imam Ahmad (d.855/241), as he considered al-Maṣlaḥa a part of his extensive understanding of Qiyās <sup>(2)</sup>.

So, even though the scholars have different opinions about whether or not it is permissible to be a Ḥujja, there is a common ground; it means that the group that rejects a-Maṣlaḥa al-Mursala means the Maṣlaḥa that is only based on lust and desires, but as for the Maṣlaḥa required by the Shārīʿ to be maintained, they still accept it as the second group <sup>(3)</sup>.

## 2.4. Conditions for the application of al-Maṣlaḥa al-Mursala:

To this point, we can say that al-Maṣlaḥa al-Mursala is somehow an agreed-upon source of Fiqh that all Fiqh Schools adopt, and the famous disagreement on it is verbal. Then the scholars set

1- Muhammad Abu Zuhra, Usūl al-Fiqh, (Cairo: Dar al-Fikr al-Arabī, 284 (1958).

2- Muhammad Mukhtar Almamy, al-Madhab al-Maliki, (Al Ain: Zayed Center for Heritage and History, 420-417 (2001).

3- Muh. Idris, The Using of Maṣlaḥa, 196.



a few conditions to be applied for the Ḥujjiyya of al-Maṣlaḥa al-Mursala, and they are as follows:

- 1 The Maṣlaḥa must not contradict a specific Naṣṣ, Ijmāʿ, or Qiyas. For instance, when the scholar Yahya bin Yahya al-Laithee gave a fatwa to King Abdulrahman bin al-Hakam- when he had sexual intercourse with his jāriya (an enslaved woman) during the daytime in Ramadan- that he must fast sixty days as Kaffāra instead of freeing an enslaved person in line with the renowned hadith. He stated the reason for his fatwā that the kaffāra is stipulated to serve as a deterrent; if a king is compelled to free Raqaba (an enslaved person) as kaffāra, it would be easier for him to repeat what he did. Here Yahya bin Yahya al-Laithee thought that a Maṣlaḥa existed in that fatwā. However, this Maslahah contradicts a specific text that shows the stages of kaffāra based on the ability of the person observing it. Firstly freeing a Raqaba; if he cannot do that, he should fast for Sixty days; if it is not possible for him, he should feed Sixty Miskīn (poor people)<sup>(1)</sup>.
- 2 The Maṣlaḥa should be general, to benefit all Muslims, not an individual or particular ethnic group or class of people<sup>(2)</sup>.
- 3 The benefit Should be under the objectives of the Sharia.
- 4 The benefit should be logical and compatible with reason.
- 5 The benefit should maintain emergency problems, such as preserving religion, life, property, lineage, and reason.
- 6 al-Maṣlaḥa al-Mursala should be the benefits agreed upon by the Muslims about its existence and proven to be practiced in their lives<sup>(3)</sup>.

1- Bashir Sale, Appraising al-Maṣlaḥa al- Mursala, 19.

2- Bashir Sale, Appraising al-Maṣlaḥa al- Mursala, 20.

3- Muh. Idris, The Using of Maṣlaḥa, 188; Al Khallaf, Maṣādir al-Tashrīf al-Islami, 99.

From the requirements of al-Maṣlaḥa al-Mursala that have been stated above, although there are differences among Usūl al-Fiqh experts, it can be concluded that what is essential is that al-Maṣlaḥa al-Mursala must be in line with the objectives of Sharia, needed by humans, and their interests can be protected

(1) .

However, The importance of al-Maṣlaḥa al-Mursala is an agreed-upon fact by contemporary Islamic scholars; because if it is not acknowledged, the realm of Islamic law becomes severely limited as new issues and events arise almost daily in our ever-evolving world. Some of these matters are not explicitly addressed in established texts and require judicial interpretation or religious rulings known as Fatwā. In such cases, the principle of al-Maṣlaḥa al-Mursala is utilized to provide guidance and clarification. Neglecting this principle would impose unnecessary hardships on the Muslim community, contrary to the benevolent nature of our religion as ordained by Allah. The refusal to apply al-Maslahah al-Mursalah to adapt to the present circumstances contradicts the Islamic legal maxim that emphasizes the compatibility of Islam with every time and place (2) .

But, this high importance of al-Maṣlaḥa led one of the Islamic Scholars to give it an unprecedented position among Fiqh's sources to the point of putting it above the Texts when contrasting. Thus, in The next chapter, we illustrate al-Ṭūfī's unique views on al-Maṣlaḥa.

1- Muh. Idris, The Using of Maṣlaḥa,188.

2- Bashir Sale, Appraising al-Maṣlaḥa al- Mursala, 21.

## 3.al-Maṣlaḥa According to al-Ṭūfī

### 3.1. An Overview of the Theory:

al-Ṭūfī defines al-Maṣlaḥa based on two things, namely al-ʿUrf (Costum) and al-Sharʿ: In al-ʿUrf al-Maṣlaḥa is the factor that brings benefits to the people, like trading that brings us profit. While in al-Sharʿ al-Maṣlaḥa means the causative factors that lead to achieving the intention of the Shāriʿ from the worship and customs. Accordingly, al-Maṣlaḥa can be divided into two types: the one that Allah describes for his own sake, like the worshipping actions, and the one that Allah puts for the benefit of His creatures <sup>(1)</sup>.

al-Ṭūfī explained his theory of al-Maṣlaḥa in his book (al-Taʿyīn Fī Sharḥi al-'arbaʿīn) while interpreting the prophetic hadith (lā ḍarara wa lā ḍirār) which means: do not cause harm to others and do not reciprocate a loss with other losses. Al-Tufi uses this hadith as textual evidence (argument) for prioritizing al-Maṣlaḥa in Islam <sup>(2)</sup>.

Then he mentions the 19 sources of Islamic law- according to him- and explains how each is based on al-Maṣlaḥa. After that, he stated that " the strongest amongst these 19 sources are al-Naṣṣ (the Texts) and al-Ijmāʿ (Consensus), but these two sources whenever they don't harmonize al-Maṣlaḥa then we should prioritize al-Maṣlaḥa over them, by considering that this Naṣṣ or Ijmāʿ is still valid but is particularized by the Maṣlaḥa as the Qur'an sometimes is particularized by the Sunnah". Consequently, he- unprecedentedly- claims that al-Maṣlaḥa is the

1- al-Ṭūfī, Al-Taʿyīn, 239.

2- Munadi, The Concept of Maṣlaḥa, 159.

most vital source of Islamic law since it is stronger than the stronger ones ( Naṣṣ and Ijmā' )<sup>(1)</sup> .

However, it is clear that this theory of al-Maṣlaḥa, as stated by al-Ṭūfī, is broader than it is in the Maliki Madhhab; as the latter only recognizes al-Maṣlaḥa al-Mursala with some extreme conditions, while al-Ṭūfī does not divide al-Maṣlaḥa into different types as others do, but he sees that all kind of Maṣlaḥa should be applied in the field of al-Mu'āmalāt (non-worshipping actions)<sup>(2)</sup> .

al-Ṭūfī's argument does not rely on the hadith mentioned above only, but several propositions indicate the concern of the sharia 'towards the Maṣlaḥa; according to him, It has been unequivocally proven that the Islamic law takes into account the interests (al-Maṣlaḥa) in all of its evidence; as for the Qur'an, there is not a single verse that does not encompass an interest or interests. The Sunnah serves as an explanation of the Qur'an, and it follows the Qur'an in this regard. As for Consensus (Ijmā'), all reputable scholars agreed that the Islamic rulings are based on attaining benefits and preventing harm, even those who do not acknowledge the Consensus as an authority. As for Logic, every sound-minded individual is confident that the purpose of legal rulings and customs in every just law is to achieve the welfare of people, and no Law is fairer in safeguarding interests than Islamic law; thus, it is the most deserving of protecting interests<sup>(3)</sup> .

After this overview of al-Ṭūfī's opinion on al-Maṣlaḥa, we can summarize it by saying that this opinion is based on three issues:

1- al-Ṭūfī, Al-Ta'yīn, 239-236.

2- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 83.

3- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 89.





**Firstly**, that the Maṣlaḥa is the intended pole of the Islamic legal system, and therefore it is its most potent and most specific evidence.

**The second** issue is that al-Maṣlaḥa doesn't need to align with The Naṣṣ or the Ijmā', as it may contradict them, and in such cases, it should take precedence over them based on the previous issue.

**The third** issue is that the scope of all this is limited to the field of customs and transactions, which are intended to be according to the policy of the people. As for worship, it is the right of Allah, and it is only derived from the Naṣṣ and Ijmā'.<sup>(1)</sup>

### 3.2. The evidence of the theory:

Al-Ṭūfī attempts to justify his theory by deciding that three reasons indicate the priority of considering the Maṣlaḥa over al-Naṣṣ and al-Ijmā':

- **The first reason** is that those who reject Ijmā' have stated the importance of considering al-Maṣlaḥa. Therefore, it becomes a common ground, while Ijmā' becomes a point of disagreement. Thus, adhering to what they agree upon takes precedence over their differences.<sup>(2)</sup>
- **The second reason** is that texts (The Qur'an and the Sunnah) are different and conflicting, which causes disagreement in condemned legal rulings. On the other hand, considering the Maṣlaḥa is unanimously agreed upon and does not vary, Thus, following it should take precedence.<sup>(3)</sup>

Moreover, after mentioning some texts that demand

1- al-Būṭī, Ḍawābiṭ al-Maṣlaḥa, 206; Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 84.

2- al-Ṭūfī, Al-Ta'yīn, 259.

3- al-Ṭūfī, Al-Ta'yīn, 259.

agreement, he describes the conflicts and disputes among the followers of the four famous Madhhabs. He concludes that the reason for the disputes is the competition among the schools on favoring simple matters over considering clear interests, which have substantial evidence. If their opinions were to agree somehow, there would be no conflict. <sup>(1)</sup>

- **The third reason** is that the contradiction between the texts and al-Maṣlaḥa has been established in the Sunnah regarding various issues. Then he provides eight examples where he believes this contradiction is evident. From this, he concludes that whoever considers the interests of the Mukallaf (Legally competent) <sup>(2)</sup> above other sources of Sharia intending to rectify their affairs, maintain their well-being, achieve what Allah has favored for them in terms of righteousness, and gather scattered rulings and reconciling differences - their ijtihād (interpretation) should be approved <sup>(3)</sup> .

As a result of these three reasons, he decides that the evidence of considering the Maṣlaḥa is stronger than the evidence of Ijmā' itself. Therefore, it is obligatory to prioritize al-Maṣlaḥa over other sources of Sharia in case of conflict through clarification or particularization. <sup>(4)</sup>

Finally, he justifies the consideration of the Maṣlaḥa in transactions but not acts of worship by stating that the rulings of transactions are a legislative policy designed for the interests of the Mukallafīn; therefore, they are the ones to be considered and achieved. As for acts of worship, they are the right of Allah alone, and they can only be known- in terms of manner, time, and place- from The Texts, and they must be performed as



prescribed to us. <sup>(5)</sup> Thus, in the next chapter, we will discuss al-Ṭūfī's theory in more detail.

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1- al-Ṭūfī, Al-Ta'yīn, 268-260.

2- One who is competent enough to be responsible for religious duties

3- al-Ṭūfī, Al-Ta'yīn, 270-268.

4- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 81.

5- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 83.

## 4. Discussing The Theory

In this last chapter, we will analyze al-Ṭūfī's theory by explaining the differences between it and the mainstream understanding of al-Maṣlaḥa. Also, we will see how strong or weak his evidence is.

### 4.1. The Uniqueness of al-Ṭūfī's Maṣlaḥa:

The Uniqueness of al-Ṭūfī's view on al-Maṣlaḥa can be summarized in his position of glorifying al-Maṣlaḥa to the point of making it the most substantial source of Islamic law. Then, while augmenting his claim, he distinguished himself from the other Islamic scholars with some opinions:

- **Firstly**, he believes that the interest (Maṣlaḥa) is the most substantial evidence in Islamic law; he said, "The consideration of interest is stronger than Ijmā', and therefore, it must be the strongest evidence in Islamic law because what is stronger than the strongest is the strongest". <sup>(1)</sup>
- **Secondly**, he cast doubt on the evidence of Ijmā' from the Quran, Sunnah, and rational reasoning, and arrived at a very dangerous conclusion, stating, "It appears that Ijmā' is not a Hujja". <sup>(2)</sup>

Thus, he claimed that Consensus is not evidence, encompassing Ijmā' in acts of worship, legal determinations, and Consensus in customs and transactions. Although he has some qualifying statements that restrict this claim, limiting Consensus is not considered evidence to customs and transactions <sup>(3)</sup>.

In summary, he states that Consensus is not a source of law in



customs and transactions.

● **Thirdly**, he holds the textual sources (the Qur'an and the hadith) responsible for the differences and disputes within the Ummah, stating, "The textual sources are different and contradictory, and they cause disputes in condemned rulings according to Islamic law. But, taking care of interests is a real matter that does not differ and is the cause of the required agreement according to Islamic law. Therefore, following interests takes precedence".<sup>(4)</sup>

● **Lastly**, he divides the Shari'a into acts of worship, legal determinations, and transactions. In acts of worship and legal determinations, he considers the Naṣṣ and Ijmā', while in transactions, he only recognizes al-Maṣlaḥa. Therefore, whenever one perceives an interest in them (Mu'āmalāt), he follows it without considering the testimony of the Shari'a regarding the nature or type of that interest. Moreover, he said, "Know that this method we have established is not based on the concept of al-Mṣlaḥa al-Mursala as claimed by Imam Malik; rather, it goes beyond that and relies on the Textual sources and Consensus in acts of worship and legal determinations, and considers the interests in transactions and other rulings".<sup>(5)</sup>

These are the most controversial points in al-Ṭūfī's theory with which he differed the mainstream understanding of al-Maṣlaḥa in Islam. Within the following lines, we will see some points of contradiction in these assumptions.

1- al-Ṭūfī, Al-Ta'yīn, 239.

2- al-Ṭūfī, Al-Ta'yīn, 256.

3- al-Ṭūfī, Al-Ta'yīn, 270-268.

4- al-Ṭūfī, Al-Ta'yīn, 259.

5- al-Ṭūfī, Al-Ta'yīn, 277-274

## 4.2. Contradiction Points:

al-Ṭūfī has fallen into some contradictions in his explanation of the hadith, and perhaps the reason for these contradictions lies in his haste in writing and completing the work. Maybe he would have avoided such contradictions if he had taken more time to write and reflect on his book. <sup>(1)</sup>

■ One of these contradictions is that he derived the evidence of considering al-Maṣlaḥa from the Quran, Sunnah, Ijmāʿ, and rational reasoning. However, he excludes Ijmāʿ from the realm of authority in transactions and customs, limiting it to acts of worship and legal determinations. He also limits the concept of Maṣlaḥa to transactions and customs. So how can what he excluded from the authority in transactions and customs serve as evidence for what he limited to transactions and customs? It seems that his statement implies: “al-Ijmāʿ is evidence for the consideration of al-Maṣlaḥa, and it is not valid for Ijmāʿ to be evidence for al-Maṣlaḥa.” <sup>(2)</sup>

■ Another contradiction is that he concludes that Allah considers the interests of His creatures, and all verses in the Quran encompass an interest or interests. He says the same about the Sunnah as it explains the Quran. However, he seems to cast doubt on the precise meanings of the Shari’a Texts regarding their implications for interests and suggests that they may not lead to al-Maṣlaḥa. He said, “Then indeed, Allah has provided us with a path to know our interests customarily, so we do not leave it to an ambiguous matter (referring to the Shari’a Texts) that may or may not be a path to interests.” <sup>(3)</sup>

■ Furthermore, he attributes the differences and disputes within



the Ummah to the textual sources, considering them different and contradictory. According to him, they cause the condemned conflict according to Islamic law. He states there is no way out of the vortex of differences and disputes except by returning to the consideration of interests, as they are not different or contradictory. Therefore, according to Islamic law, interests are the cause of desired harmony and agreement. However, he refers us to the textual sources and Consensus in acts of worship and legal determinations. So how can he claim they are different and contradictory and then refer to them in the essential matters (acts of worship and legal determinations)?

(4)

### 4.3. Criticizing the basics of the theory:

Here we return to the three basics on which al-Ṭūfī built his theory, as mentioned in the third chapter <sup>(5)</sup> .

■ The first issue is that al-Maṣlaḥa is the central objective of the Sharia, and therefore, it is its strongest evidence and the most specific. The first part of this argument seems reasonable and in line with Logic; It is undeniable to any rational person that preserving public interests is the goal of every just legislation. Laws are enacted to protect these interests, and limits and punishments are legislated to safeguard them. Additionally, all legitimate transactions are permitted because of these interests. However, does this mean that interests are the strongest legal evidence and the most specific? How does this reconcile with

1- al-Ṭūfī, Al-Ta'yīn, 23.

2- al-Būṭī, Ḍawābiṭ al-Maṣlaḥa, 207; al-Ṭūfī, Al-Ta'yīn, 23.

3- al-Ṭūfī, Al-Ta'yīn, 272.

4- al-Ṭūfī, Al-Ta'yīn, 23

5- For more: Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 96-95; al-Būṭī, Ḍawābiṭ al-Maṣlaḥa, 215-209

the fact that among these pieces of evidence are the words of Allah and His Messenger, and Allah and His Messenger know best about the interests of people and the ways to protect them?

■ The second issue is that al-Maṣlaḥa doesn't need to align with Textual evidence or Consensus. They may contradict them, and interests should take precedence over them in such cases. We have already clarified the extent of contradiction in this issue; How can the text contradict interests when interests are the central objective of the Sharia? How can Muslim scholars unanimously agree on a matter devoid of interests, let alone contradict them? Who sees Maṣlaḥa in something they do not agree upon, especially when they are the ones who are responsible for setting the law?

■ As for the third issue, which states that the realm of considering interests is limited to transactions, not acts of worship, we accept al-Ṭūfī's view on this matter and see it as an accurate representation of reality. However, we differ from him on the notion that acts of worship alone are the domain of Ijmā', and interests are the criterion for transactions, even if there is textual evidence or Consensus. We do not find his opinion supported by Consensus and textual evidence, especially since he did not present a single example throughout his discourse where interests contradicted textual evidence or Consensus. He did not stipulate that interests must be essential to justify disregarding textual evidence or Consensus, nor did he include in al-Maṣlaḥa what the Maliki and Hanbali schools require, which is the exclusion of personal desires and purposes from their implications. Thus, if textual evidence or Consensus is





designated to serve interests, no restrictions clearly define them as, at least, within the category of interests that the Sharia seeks to protect and for which it establishes rulings.

The truth is that considering al-Maṣlaḥa is one of the recognized principles in Islamic law, and there is no doubt about this. This principle serves as a basis for deriving rulings. Where a partial Maṣlaḥa exists that is not explicitly guaranteed by a text, does not have a specific ruling agreed upon, and does not have a similar case that can be used as a precedent, it is necessary to establish a judgment that fulfills that Maṣlaḥa. When interest is found in a matter where there is textual evidence or Muslims have unanimously agreed upon a ruling, it is assumed that the inter Maṣlaḥa is already fulfilled by that ruling, even if it is assumed rather than explicitly stated. However, when a necessity contradicts this interest with a stronger one, then it is necessary, subject to this necessity alone, to legislate a ruling that guarantees the stronger of the two interests, even if it contradicts the Texts and Consensus <sup>(1)</sup> .

1- Abu Zayd, al-Maṣlaḥa Fī al-Tashrī' al-Islamī, 96.

## 5. The Modernists and al-Ṭūfī:

(1)

It is worth mentioning that some of the modernists misinterpret al-Ṭūfī's opinion and take it as a means of manipulating the Texts according to their desire. However, the fundamental difference between them is in the understanding of interests. al-Ṭūfī's perspective on interests is based on the Sharia framework defining and determining interests. Interests encompass what benefits people in this world and the hereafter, including preserving religious and worldly matters. Then it includes all the principles and rulings prescribed by Sharia. However, the scene completely changes when it comes to those who invoke al-Ṭūfī's name; for them, al-Maṣlaḥa is purely worldly interests, with no consideration given to non-worldly interests. They can hardly comprehend the concept of religious interests because they view religion as an individual matter unrelated to the system. They often deny many religious rulings, as they see no benefit in them since they contradict the prevailing secular culture. Hence, both parties agree upon the term "Maṣlaḥa", however, its meaning differs fundamentally between those who perceive it as an Islamic concept and those who perceive it as a secular concept. At that point, you will find that al-Ṭūfī and others consider jihad (fighting against apostates) and prohibiting forbidden acts among the most significant interests due to their role in preserving the interests of religion. At the same time, this is troublesome for many contemporaries because they view these as rulings that contradict the notion of interest <sup>(1)</sup>.

1- For more: Al Samarrai, The Theory of Interest for Imam Najm al-Din al-Ṭūfī and the Modernists, 12-11



## Conclusion:

In the following lines, we mention the most important findings of this research, and they are as follows:

- 1 In Islam, al-Maṣlaḥa refers to achieving benefits and avoiding harm, with the Sharia law aiming to preserve five core objectives: religion, life, intellect, progeny, and property. Actions taken to uphold these values and prevent evil are considered Maṣlaḥa. al-Maṣlaḥa can be categorized into three types: al-Maṣlaḥa al-Muṭabara, al-Maṣlaḥa al-Mulghāt, and al-Maṣlaḥa al-Mursala. Among these, only al-Maṣlaḥa Al-Mursala is recognized as a source of Islamic law.
- 2 al-Maṣlaḥa al-Mursala is an unrestricted form of Maṣlaḥa that is neither affirmed nor rejected by Sharia Law. Scholars hold differing opinions on its status as a source of Islamic law. They agreed that it could be applied in transactions and customs, where Ijtihad is permitted, but not in acts of worship. However, even among those who accept it, there is a distinction between Maṣlaḥa based solely on personal desires and Maṣlaḥa recognized by the Shari'a.
- 3 Scholars have established conditions for the validity of al-Maṣlaḥa al-Mursala as a source of law. These conditions include: it should not contradict specific textual evidence, Consensus, or analogical reasoning; it should have general applicability and benefit all Muslims; it should align with the objectives of the Shari'a; it should be logical and reasonable; and it should address urgent issues related to preserving

religion, life, property, lineage, and reason. The existence and practice of such recognized benefits among Muslims are also essential factors.

- 4 al-Ṭūfī's theory on al-Maṣlaḥa is based on his interpretation of the prophetic Hadith "lā ḍarar wa lā ḍirār" emphasizing the importance of avoiding harm. He argues that Maṣlaḥa is the primary focus of the Islamic legal system and should take precedence over textual evidence and Consensus. He supports his argument with three reasons: the acceptance of Maṣlaḥa by those who reject Consensus, conflicts between textual evidence and Consensus, and contradictions between textual evidence and Maṣlaḥa in the Sunnah. As a result, he concludes that Maṣlaḥa should be prioritized in cases of conflict. He also differentiates the application of Maṣlaḥa to transactions governed by societal policies from acts of worship, which strictly adhere to textual guidance.
- 5 al-Ṭūfī's view on al-Maṣlaḥa is unique in its strong emphasis on Maṣlaḥa as the strongest source of Islamic law. However, his explanations of the hadith and some contradictions in his work raise concerns. The foundations of his theory also lack logical and textual evidence, relying primarily on unsupported assumptions.
- 6 The interpretation of al-Ṭūfī's ideas by modernists often diverges from his intended meaning. They manipulate religious texts to align with their desires, particularly in understanding al-Maṣlaḥa. While al-Ṭūfī and other scholars view interests in a comprehensive Sharia-based framework, including both worldly and non-worldly benefits, those



who invoke al-Ṭūfi's name often prioritize purely material concerns and disregard religious considerations. This divergence in understanding is evident in their differing interpretations of the term (al-Maṣlaḥa).

Thus, at the end of this research, we hope that it covered all essential factors concerning al-Maṣlaḥa, and we urge all researchers in the field of Islamic law to pay more attention to this two-folded subject; as it is not only an indispensable asset of Islam to face new issues and events that arise almost daily in our ever-evolving world, but also, is a tool that some modernists use to manipulate the Islamic law according to their desire in the name of prioritizing al-Maṣalaḥa.

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