

## *Maslahah* as a Source of Islamic Transactions (*Mu'amalat*)

### *Maslahah* Sebagai Sumber Transaksi Islam (*Mu'amalat*)

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#### ABSTRACT

*Ijtihad is an important task, and the ability of undertaking it constitutes the main objective of the science of the principles of Islamic jurisprudence (‘ilm usul al-fiqh). Beside the principles of jurisprudence, legal maxims (qawa’id fihiyyah) and purposes of the law (maqasid al-shari’ah) lay at the core of its structure. In fact, Islamic law is synonymous with term maslahah, for, it aims at its attainment and the removal of its opposite harm (mafsadah). Recently, maslahah has emerged as an important source of the law and its capacity as such has been acknowledged by many scholars. This is particularly true in the areas of transactions and finance. Therefore, this paper attempts to examine the status of maslahah as a source of law in Islamic legal framework and deliberate on its conditions and criterion dawabit necessary for such consideration. A few instances of its application in the area of mu’amalat (Islamic transactions) are presented to highlight its significance in such capacity.*

*Keywords: Maslahah, Source, Islamic Transaction, Mu’amalat*

#### ABSTRAK

*Ijtihad merupakan satu tugas penting dan ia menjadi matlamat utama dalam ilmu usul al-fiqh. Di samping ilmu usul fiqh, kaedah fihiyyah dan maqasid al-shari’ah menjadi struktur utama ijtihad. Malah, syariat Islam sangat sinonim dengan istilah maslahah. Ini kerana syariat itu sendiri tertegak di atas landasan mewujudkan maslahah dan menolak mafsadah daripada manusia. Dewasa ini, maslahah menjadi asas hukum perundangan Islam dan kepentingannya diakui ramai sarjana Islam khususnya berkaitan hukum-hukum muamalat dan kewangan Islam. Justeru, kertas ini akan menjelaskan kedudukan maslahah sebagai sumber hukum dalam kerangka perundangan Islam dan membincangkan syarat dan dawabit serta kriteria yang perlu dipatuhi ketika menjadikan maslahah sebagai sumber. Beberapa contoh pengaplikasian maslahah dalam fiqh muamalat dikemukakan bagi membuktikan signifikansi maslahah sebagai asas hukum dalam muamalat.*

*Kata Kunci: Maslahah, Sumber, Transaksi Islam, Mu’amalat*

#### INTRODUCTION

Generally speaking, *maslahah* (public interest) constitute the very base of the Islamic law. This means that any thing constituting public interest is recommended by Islam while, its opposite, things that cause harm, is prohibited. This is the basic principle unanimously agreed upon by all jurists (*fuqaha*). They also agree on the fact that Islamic law cater for the *maslahah* or good of mankind in this world as well as in the Hereafter (al-Bugha 1999: 28). However, the substantiation of the status of the *maslahah* as one of the sources of Islamic law, in general, and in that of commercial law in particular, heavily depend on its compatibility with the *shari’ah* and the fulfilment of certain conditions.

#### COMPATIBILITY OF MASLAHAH WITH SPIRIT OF SHARI’AH

As stated earlier, *maslahah* constitutes an important element of the source of Islamic law. For, it is in conformity with its purposes and objectives. Its compatibility with the spirit of *shari’ah* can be attributed to the following factors:

First : Islamic law tends to realize and promote public interest and eradicate *mafsadah* (damage) in both, worldly life and the life in Hereafter. It does not endorse something that contradicts public interest. In other words, it does not allow things that are detrimental to public good and conducive to public harm. All its rulings (*ahkam*) are embedded with public good (*maslahah*).

- Thus, the attainment of public interest and the eradication of harm are the basic considerations underlying all its rulings.
- Second : Islamic law does not neglect any single *maslahah*. It is inclusive of all its variety without any exception. The Prophet (p.b.u.h.) enjoined his *ummah* to do things that are conducive to their welfare and forbade the harmful things.
- Third : There is no space for conflict between Islamic law and *maslahah*. This is because, it is unimaginable that Islamic law prohibits things which bring about *maslahah*. It rather promotes the largest possible public interest. It also does not demand things that are conducive to damage either at large scale or small scale.
- Fourth : The claim of its non existence in the text of the law, as argued by some, is due to either of the following two reasons:
1. Their failure in proper understanding of the text of the law that embodies *maslahah* or;
  2. The *maslahah* which they are talking about is not the real one. For example, consideration of an act or a thing as righteous deed in the absence of specific command from Allah (s.w.t.) may not prove as such and it may result in greater harm than its presumed good.

#### DEFINITION OF MASLAHAH

Jurists have treated *maslahah* variablely. Some of them have talked about in the discussion of *masalik al-illah* in chapter related to *qiyas*. Whereas, some other have categorized it as one of the sources of the Islamic law under the designation of *al-istidlal al-mursal*. For example, Imam al-Haramayn al-Juwayni and Ibn al-San'ani called it *al-istidlal* while, Ibn Qudamah lebaled it *al-istislah* (al-Hilali 2004: 159).

#### LITERAL MEANING

Etymologically, *maslahah* is the abstract noun of the verb *saluha* / *salaha*. In other words, it is an infinitive noun of the root *salaha*, which indicate when a thing or man becomes good, right, virtuous, honest or to show the state of possessing these virtues. *Maslahah* with preposition (*Li*) means suitability. In relational sense it implies a cause, a means, an occasion or a goal which is good or is for good (Lane 1863-93: 1714-1715).

When used as a noun, it means something considered good or useful (Rida', n.d.: 479) *Madarraah* (harm) and *mafsadah* (evil) are its antonyms. In general sense, *maslahah* means welfare (Bosworth 1978: 738). It also connotes the undertaking of endeavours which bring about individual as well as social utility (*Al-Munjid fi al-Lughah* n.d.: 432). In Juristic sense or usage, it means general good or public interest. It denotes a form of legal reasoning by means of analogy which incorporates the idea that analogy is drawn with a clear vision to the social well-being at large than to a strict set of logical required results (Rosen, Lawrence n.d.: 48) From this we can draw the conclusion that *maslahah* is the consideration of public interests in a broader sense.

Even though, the word *maslahah* as such does not appear in the Qur'an, but various derivatives of its root, *saluha* are used. Its antonyms such as *zalama* (he did wrong) and *fasada* (he/it was corrupted) are used in the Qur'an as opposite terms to *saluha*. On the other hand, *salih* (righteous), the active participle of *saluha* occurs very often in the Qur'an. Its meaning is elaborated in the Qur'an as follows: They believe in God and in the last day and enjoin goodness and forbid evil and hasten to do good deeds, and those are the righteous ones (*Salihin*) (Isfahani 1961: 286).

Its usage in the Qur'an is essentially related to goodness and utility before it's emergence as a technical term. Jurists' tendency of deriving law for new cases with regard mainly to utility eventually gave rise to recognition of the concept of *maslahah* as a technical term in the discussion of the Islamic jurisprudence.

#### TECHNICAL AND TERMINOLOGICAL MEANINGS

Technically, it means the consideration of the purposes of the law and the means of their realization. This can be understood from Imam al-Ghazali's statement: "what we mean by *maslahah* is the safeguarding of the purposes of *Shariah* which comprise: preservation of religion, life, reason, descendants and property" (Al-Ghazali 1949: 278)

It also includes the means which lead to preservation of these five principles. Hence, *maslahah* in its essence is not only securing of benefits and prevention of harm, but it is also necessary to be in harmony with the objectives of the law-giver.

Consequently, *maslahah* has the same meaning as benefit and interest, which Islamic law tends to

achieve for humans by way of protecting the five basic values; religion, life, intellect, lineage, and property (al-Bugha 1999: 29).

*Maslahah* is discussed comprehensively in the principles of Islamic jurisprudence. Some theologians define *maslahah* per se without the addition of term, *mursalah* whereas, some other define it under the designation of *maslahah mursalah* thus, combining both terms. It is therefore, imperative to distinguish its meanings when used with and without the qualification *mursalah*. When *maslahah* is used per se without the qualification, *mursalah*, from legal perspective, it falls into three following categories (al-Jizani n.d.: 242-243).

1. *Maslahah Mu'tabarah* (legally considered public interest): this is also called *maslahah shar'iyah* for, it has an evidence for its validity from al-Qur'an, Sunnah, consensus (*ijma'*) or *qiyas* (al-Bugha 1999: 32). Most of the theologians view this type of *maslahah* to constitute the basis of *qiyas*. For example, *maslahah* which is based on the al-Qur'an:

يا أيها الذين آمنوا إذانودى للصلاة من يوم الجمعة فاسعوا إلى ذكر الله و ذروا البيع.

Which means: "O ye who believe! When the call for Friday prayer is conducted, Rush (to the Mosque) for the remembrance of Allah for (Friday prayer) and leave your purchase" (al-Jum'ah 62: 9).

This verse shows that the order to leave the transaction is due to the call for Friday prayer. The underlying reason for leaving the transaction, after the call for Friday prayer is the diligence in observing Friday prayer, but not the transaction itself. Therefore, any transaction that interfere with the remembrance of Allah s.w.t. and prayers, be it lease, *rahn* or any other form of transaction, at the same time, can be subjected to the same ruling (*hukm*) which is prohibition, based on *qiyas*. The required *maslahah* underlying *qiyas*, here is recognized by *shari'ah* and is called *maslahah mu'tabarah* (al-Bugha 1999: 32).

2. *Maslahah mulghah* (not legally considered public interest), it is a *maslahah* which is presumed to be so, but there is a clear evidence in the law that prohibits it. In other words, there is clear evidence in al-Qur'an, the Sunnah, consensus (*ijma'*) or *qiyas* to this effect. For example, the contention that, trade involving alcohol, enhances economic

development is not acceptable. For, there is a provision in the Islamic law that prohibit such transaction. In fact, Islamic law considers this to be harm (*mafsadah*) rather than *maslahah*. Its designation as *maslahah*, based on human perception, is weak and cannot stand its ground in relation the clear cut prohibition provided by the text of the Qur'an.

3. *Maslahah mursalah* is a *maslahah* which has no textual evidence for its approval or disapproval. This *maslahah*, unlike, the previous two categories has no specific evidence, from the al-Qur'an, the Sunnah, consensus or *qiyas*, for its acceptance or rejection. Nevertheless, it still has a general evidence (*dalil kulli*) for its support. In other words, it is not based on specific evidence but the general posture of the law or its objectives (*maqasid al-shari'ah*) support it. It is for this reason that jurists called it as *mursalah* which means being free from specific evidence indicating its acceptance or rejection.

Al-Bugha gives the imposition of tax on citizen by the Islamic state, as an example of *maslahah mursalah*. The justification for such a decision by the state, according to him, is the need for financing the economic activities of the state. This is done when the national treasury is short of enough funds to meet the military, security and national defense expenses, provided that such drastic measures are not mired in plundering of public fund or wastage in worthless projects. Hence, such an action taken by the state can be considered as a *maslahah mursalah*, which is rooted in the main objectives of *shari'ah* namely *hifz al-din* (al-Bugha 1999: 36). This is in line with the following general ruling or legal maxim:

تصرف الراعي على الرعية منوط بالمصلحة

Which means: "Consideration of public interest constitute the justifying ground for ruler's actions" This *maslahah* is a *maslahah mursalah* which aims at preservation of *maqasid al-shari'ah*.

#### DEFINITION OF MASLAHAH MURSALAH

From the forgoing discussion, it becomes clear that *maslahah mursalah* is something which acceptance or rejection is not clearly stated in the textual sources of the law. It is also called *al-istislah*, *al-munasib al-mursal* and *maslahah*.

### DIVISIONS OF MASLAHAH MURSALAH

*Maslahah* from the aspects of its strength and consequences, can be divided into the following categories.

1. From the aspect of its consequences that can be divided into five categories (al-Shanqiti, n.d.: 17-24).
  - a. *Maslahah* which maintains or preserves religion (*hifz al-din*)
  - b. *Maslahah* which maintains or preserves life (*hifz al-nafs*)
  - c. *Maslahah* which maintains or preserves intellect (*hifz al-aql*)
  - d. *Maslahah* which maintains or preserves progeny (*hifz al-nasl*)
  - e. *Maslahah* which maintains or preserves property (*hifz al-mal*)

These five elements are called *daruriyyat khamsah* (five basic necessities) or *maqasid al-shari'ah* (purposes of the law). They are the main values that are taken into account, in the process of legislation of the rulings of the Islamic law. They are extensively interlinked with the corpus of Islamic law and cannot be ignored at any cost.

2. From the aspect of its strength and weakness it can be divided into three categories.

Al-Shawkani refers to this classification saying: “*al-maslahah al-mursalah* can be placed at three different levels; *darurah*, *hajjah* or *tahsin*” (Al-Shawkani 1979: 215).

From his statement, it is clear that if *maslahah al-mursalah* is viewed, from the aspect of its strength it can be divided into three categories:

*Maslahah daruriyyah*, this is a *maslahah* which is placed at the level of necessity, *darurah*. It is of fundamental importance to the existence of the human society. This kind of *maslahah* consist of five fundamental objectives (*al-daruriyyat al-khams*) the neglect of any of these objectives lead to the neglect of the whole hence, the emergence of chaos and disruption in social life (al-Jizani n.d.: 244).

In other words, this kind of *maslahah* comprises things that are necessary for the existence of life and its continuity in the world and hereafter. Without the existence of these things the survival of worldly life is impossible (al-Shatibi 1395H: 8). An example of the preservation of *darury maslahah* is the prohibition of murder and the obligation of *qisas*.

On the other hand, preservation of property or its maintenance represents a form of *darury maslahah* in the area of *mu'amalat*. This two types of *maslahah* are closely related, for, life without property cannot be imagined. What is meant by property here is the thing that a person possesses or acquires from others by legal means. This includes food, drink, clothing and all kinds of goods that can be owned by a person. In the absence of these things the existence or continuity of life is not possible. This is an obvious fact which cannot be denied by any one who knew the affairs of the world. In fact, these things are not exclusively necessary for the continuity of worldly life they also have a strong bearing on the future life as well (al-Shatibi 1395H: 10, 17).

*Maslahah hajiyyah* is the kind which is located at the level of (need) only. It is needed for removal of hardship and difficulties, and the attainment of convenience and ease in life. Unlike *darury maslahah*, its absence does not consequent the disruption of the social life hence, desperate situation. Its disregard only results in inconvenience and hardship rather than chaos. The example of this kind of *maslahah* is the contracts of leasing (*ijarah*) and irrigation *musaqah*. Its total disregard can cause hardships that can gradually interfere with *darury* kind of *maslahah*, for example, religion. Bearing this in mind, it is therefore logically required to eliminate difficulties and hardship from all human activities, be it in the form of religious worship or customs, *mu'amalat* (business) and crime (Al-Ayubi 1998: 318-319).

For example, the necessity of the contracts of sale and purchase, rent, wages, *mudarabah* and *musaqah* are justified on the ground that the owner of a product would not give it for free, hence, the need for the contract of purchase arises. In the same manner an owner of a product would not want to borrow his product, hence, the need for the contract of rent became obvious. In addition, not all people are capable of running business, despite having property and their need for managing it, hence, the contract of *mudarabah* is needed. Also people having large portion of land may not have the necessary skills of managing it. Hence, the contract of *musaqat* and *mudarabah* is required to utilize the land effectively. All these are the instances of the *haji* type of *maslahah* which abandonment would not necessarily lead to the loss of *daruriyyat*, but

would cause hardship and difficulty in human life (Ibn al-Najjar 1402H: 165).

*Maslahah tahsiniyyah* is a type of *maslahah* which is below the level of *maslahah daruriyyah* and *maslahah hajiyyah*. It is related to what facilitate worldly benefits and and enhances the best type of customs and social interaction. al-Shatibi has defined it as “practices that are carried out in the best manners, complying with standard of good morality, and is free from things, disapproved by a person of sound mind. As a whole, it constitutes part of noble morality” (al-Shatibi 1395H: 11). In other words, it is the adaptation and conformity to the best customs and the avoidance of habits and manners disliked by people of sound mind. Among its examples in the area of *mu'amalat*, is the prohibition of sale of faeces. This is because a noble heart avoid and distances itself from such form of sale. Similarly, the sale of surplus water and grass is avoided for the same reason, because it reflect miserliness and individualism which is disliked by the Muslims (Al-Ayubi 1998: 333).

This significance of this classification lays in the fact that it provides a criterion through which conflict between these categories can be solved. For example, when there is a conflict between the three categories – *daruriyyat* would be given the first priority followed by *hajiyyat* and then *tahsiniyyat*.

#### VALIDITY OF MASLAHAH MURSALAH

Attainment of utility and the avoidance of harm is a commonly agreed upon principle among the jurists. However, they have difference of opinion as far as the validity of *maslahah mursalah* is concerned. In brief, their opinions can be categorized into two: the opinion that supports it and the opinion that rejects it.

1. According to the proponents, those supporting the validity of *maslahah mursalah*, it comes under the pervue of the principle of *jalb al-masalih* and *dar' al-mafasid*, thus, it can be considered as an evidence for the validity of *maslahah mursalah*.
2. The opponents, those reject the validity of *maslahah mursalah*, say that it cannot be included in the principle of *jalb al-masalih wa dar' al-mafasid*, because its notion is derived from mere passion, therefore, cannot be considered as a valid source for legislation.

However, al-Shanqiti, arguing for the validity of *maslahah mursalah* states: “The companions of the prophet p.b.u.h. in the absence of any specific opposing proof, relied on *masalih mursalah*. Moreover, all schools of thought uphold *masalih mursalah* by one way or another, despite, their claim of its denial. Examination of the incidences and events that happened during companion’s period and that of different branches of schools, can prove the validity of this statement. However, *maslahah mursalah*’s validity must be analysed with care in order to ascertain its authenticity, and avoid its conflict with a *maslahah* of stronger implication (al-Shanqiti 1410H: 21).

From the foregoing discussion it becomes clear, that the conflict of opinions, concerning the validity of *maslahah mursalah* is only literal and not real. Therefore, it can be concluded that all scholars, unreservedly, agree on the validity of the principle of the ‘attraction of *masalih* and the repulsion of *mafasid*’, the nucleus of *maslahah mursalah*, as the genuin base of legislation. The appaerent conflict of opinions concerning its validity can be attributed to its identification in different terms. For example, some have indentified it as *al-maslahah al-mursalah*, whereas, other have described it as, *maslahah*, *qiyas*, general evidence and *ijtihad* (al-Jizani n.d.: 246).

#### MASLAHAH MURSALAH’S AREA OF APPLICATION

Islamic law embodies, human welfare in this world, as well as, in the Hereafter. This signifies that human welfare constitutes the main objective underlying its rules and regulations. It regulates human transactions and activity in a manner that is conducive to human welfare in this world and the world Hereafter. Therefore, public interest, *maslahah mursalah* constitute an important element of the structure of Islamic law, thus, can play an effective role in the process of legislation. However, in the realm of *‘ibadat* (rituals) such as, prayer, fasting and other acts of pure worship, *maslahah mursalah* cannot play such a role. This is because, in the contect of ritual matters human mind fails to realize their real objectives. It is the jurisdiction of the revelation, explaining how to perform a form of worship in what manner, without delving deep into its underlying objectives. Hence, matters related to worship are not the product of human mind, hence, cannot be modified (al-Bugha 1999: 36-37).

On the contrary, matters other than those relating to the realm of worship, such as transactions, customs and other human affairs can be subjected to reasoning and *ijtihad* through *qiyas* or *maslahah mursalah*. An example of this is the juristic principle of permissibility of things in the absence of evidence to the contrary (Shubayr n.d.: 18).

Allah says in the Holy Qur'an:

وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ

“Allah have explained to you all that He has forbidden.”

Majority of the jurists, hold permissibility to be the basic underlying principle of all transaction (*mu'amalat*). Ibn Rajab al-Hanbali says: “In fact, according to some jurists, there is a consensus of opinions on this.” It means all jurists are agreed on permissibility being the basic principle in *mu'amalat*” (Ibn Rajab 1991: 166). The difference between matters related to *ibadat* (worship) and *mu'amalat* (transaction) is that, Allah s.w.t cannot be worshipped except in the manner prescribed by Him and His prophet p.b.u.h. For, it is the right of Allah therefore, it cannot be carried out without the existence of a specific evidence demanding its performance. The contrary is the case with matters related to the field of *mu'amalat*, such as, sale and purchase which is permitted, as long as there is no specific evidence prohibiting it. This is because, transactions *mu'amalat*, are matters where the derivation of ruling is guided by *maslahah* or objective of the law. As such, in the area of commerce and *mu'amalat*, exploitation, usury, hoarding, manipulation and gambling are prohibited. For, they are harmful and jeopardise the objective of fair dealing in the market-place. Islamic law does not prohibit a transaction unless it contains an element of oppression, deception and cheating such as *riba*, gambling and the sale of goods that are not in existence. However, certain transactions, though contain one of these elements are exempted, because of the public interest, *maslahah* such as the permission of the *al-istisnā'* (Kamil 1999: 336).

This substantiate the validity of *maslahah mursalah* as a dynamic principle of Islamic law that play a major constructive role in area of *mu'amalat* (transaction) However, its role in such capacity heavily depends on fulfilling the following conditions.

#### CONDITIONS OF MASLAHAH MURSALAH

1. *Maslahah* should not be contrary to the consensus of scholars or *ijma'*
2. It should lead to the preservation and maintainance of *maqasid al-shariah*
3. It should not be applied in the areas that are fixed and unchangable, such as, obligatory act, illegal business, *hudud* rates, and matter proven by *ijma'*.
4. It should not contradict another *maslahah*, of the same strength or a higher level.

When a *maslahah mursalah*, fulfils these conditions its status as a valid source for derivation of rulling, specially, in the realm of *mu'amalat* is recognised.

#### EVIDENCES OF MASLAHAH MURSALAH'S VALIDITY

Among the evidences that substantiate the validity of *maslahah mursalah* as a source for derivation of rulings are the following (al-Jizani n.d.: 247).

1. Practice of Companions of the prophet (p.b.u.h): Companions used *maslahah mursalah* in numerous occasions as the base for their decisions. For example, the appointment of Umar as the caliph by Abu Bakr, the use of *al-dawawin* in Umar 's time and the construction of prison for mischievious persons were based on *maslahah mursalah*.
2. Its practice is justified by the principle “*ma la yatimm al-wajib illa bihi fahuwa wajib*” which mean ‘what leads to the perfection of *wajib*, (obligatory) comes under its perview as well. In other words, a thing without which a *wajib* (obligatory) cannot be completed is *wajib* also. This is because, the fact that presevation of *maqasid al-shari'ah* is necessary, is established through *istiqra'* (induction). This preservation can only be materialized through the utilization of the principle of *maslahah mursalah*, hence, it necessity become evident as well.

#### APPLICATION OF MASLAHAH MURSALAH IN COMMERCIAL TRANSACTIONS

1. Compensation as Manufacturer's Obligation: There is a consensus of opinion among jurists that private employee is not obliged to compensate

for the damage he causes without intention. However, if the damage caused is due to his negligence and excessive act, he is obliged to compensate it. On the contrary, a general employee or the manufacturer is, unconditionally, required to compensate the damage he causes. This view, is held by Imam Malik, which he justifies based on *maslahah mursalah*. The rationale of his justification is that, if no such compensation is required for the damage, the general employee will not exercise a reasonable level of care in safeguarding people's property despite their need for his service. On the other hand, al-Shafi'i and Abu Hanifah, do not see compensation as necessary, except when the damage caused is due to the exceeding normal act or negligence on the part of the manufacturer or general employee. Hence, in this context *maslahah mursalah* constitutes the basic consideration for the necessity of compensation, as this would lead to the preservation of people's property when in manufacturer's possession.

2. Utilization of Other's Property Without Permission. In a situation when it is difficult to get the owner's permission, it is permitted to utilize his property without obtaining a prior permission, provided such an act is conducive to benefit. This can be justified on the ground of consideration of *maslahah* not specifically mentioned in the text of the law. However, this act can be validated on the base of customary law that prevailed during the time of the prophet p.b.u.h. According to some jurists, this is based on the tradition of the prophet, the second textual source of the Islamic law, as narrated by Urwah al-Bariqi whereby the Prophet p.b.u.h. gave him one dinar to buy a goat. After managing to buy two goats with one dinar, he sold one and brought the other along with a dinar to the prophet and the prophet praised his act. Thus, Urwah acts here without obtaining the permission of Messenger because of the difficulty involved. This is because of multiple sales that he was involved in. According to al-Zuhayli, various cases with no specific evidence for their support, can be decided through *maslahah*, hence, come under the principle of *maslahah mursalah*. For example:

- a. If someone sees a goat belonging to others, is dying and he intends to prevent its being wasted by slaughtering, his act is necessary. For, it is better to slaughter and preserve it

value rather than letting it die in vain. Thus, this case is exempted from the provision of the law that bans the use of people's property without their permission, provided such utilization enhances the owner's interest rather than causing harm to him.

- b. If a person finds his neighbour's house burning, and he demolishes a part of it so as to prevent its being totally consumed by the fire, based on the previous example he is not obliged to compensate for the part which he has demolished.
- c. Price control (*tas'ir*). Islam is not against free market theory, however, in certain circumstances, it allows the state to interfere in the market based on public interest. For, example, price control becomes a must, when traders raise commodities' price to the level that is extremely, beyond the limit. This is particularly, necessary when the goods owned by the traders are of the kind which constitutes the basic needs of the society. In such circumstances, traders can be forced to sell their goods with a reasonable price. Even though this may not, apparently, be in line with the interest of the traders, it certainly enhances public interest *maslahah* on a greater scale. This is because, it removes the harm caused by increase in the price from the society as a whole. However, if the fluctuation of price is, due to demand and supply factor it is not necessary for the state to fix the price.

Consequently, *maslahah* plays a significant role in the areas of commercial transactions. It provides a criterion through which the validity of business transactions can be substantiated. Furthermore, its consideration in the area of commercial transactions can lead to the elimination of malpractices that are the underlying factors of tyranny, oppression and social disharmony. For example, a property must be released from the possession of his owner based on the consideration of public interest, *maslahah*, as is the case in the law of *al-shuf'ah*. It is narrated that, the Prophet requested a master of date palms planted in the land of another person, and was causing harm to the landlord, either to sell it or give it to him. When he refused to do so, the Prophet said that: "You are harmful" and he permitted the landlord to uproot the palms.

## CONCLUSION

*Maslahah mursalah* as a dynamic principle of the sources of Islamic law is impliedly accepted by all jurists, with the stipulation of certain conditions and in according to certain criterion. Utilization of *maslahah mursalah* as a base for the justification and initiation of commercial transaction, can lead to the elimination of malpractices that are the underlying factors of tyranny, oppression and social disharmony. This is an evidence of the comprehensive nature of Islamic law that include all aspects of human life and is suitable for all times and places. Its sole objective is to maintain human interest. Hence, it is a current obligation of the experts in the field of economy to undertake an indept study of the concept of *maslahah* in order to get a better understanding of *shari'ah*, thus, enabling them to find adequate answers to the current issues relating to economy and transactions.

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