**Plagiarism of Rouhani’s Ph.D. Thesis from Mtupah’s Ph.D. Thesis**

Approximately 2800 words of Rouhani’s Ph.D. Thesis in chapter 5 word by word have been plagiarized from Ph.D. Thesis of Mtupah:

Omari Mtupah, Juma Mikidadi (1990), *Theory of Al-Masalih Al-Mursalah in Islamic Law*, A Thesis Presented for The Degree of Doctor of Philosophy (Ph. D) in The Faculty of Arts, University of Edinburgh.

<https://www.era.lib.ed.ac.uk/handle/1842/19169>

**Rouhani’s Ph.D. Thesis, pp. 287-288**

In the *Quran* various derivatives of the root of *Maslaha* (*Saluha*) are used, the word *Maslaha*, however, does not appear there. The Quran uses *zalama* (he did wrong) 4 and *fasada* (he/it is corrupted) 5 as opposite terms to *Saluha*. *Saleh* the active participle of *Salulia* occurs very frequently in the *Quran*. On one occasion the meaning of this term is elaborated textually as follows:

**"They believe in God and in the last day and enjoin goodness and forbid evil and hasten to do good deeds and these are the righteous ones (*salehin*)"6**

Whereas it is clear that its use in the early period and in the Quran was essentially related to the meanings of good and utility, there can be no doubt that the word had not yet become a technical term.

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 20**

In the Qur'an various derivatives of the root "s-l-h" are used, the word maslahah, however, does not appear there. The Qur'an uses "zalama" (he did wrong)30 and "fasada" (he/it corrupted)31 as opposite terms to "saluha". "Salih" the active participle of "s-l-h", occurs very frequently in the Qur'an. On one occasion the meaning of this term is elaborated textually as follows:

**"They believe in God and in the last day and enjoin goodness and forbid evil and hasten to do good deeds and these are the righteous ones (*salihin*).32**

Whereas it is clear that its use in the early period and in the Qur'an was essentially related to the meanings of good and utility, there can be no doubt that the word had not yet become a technical term.

**Rouhani’s Ph.D. Thesis, p. 288**

For the term Maslaha some scholars use other terms. Some call it as Maslaha mursalah (considerations of public interest), others use the term istislah (seeking the better) and still others use the term istihsan (equity). Although these terms may seem different, in reality they imply the same objective. Yet, each term looks at the same objective from a different angle. 7

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 21**

For the term "al-masalih al-mursalah" some Muslim lawyers, jurists and scholars use other terms. Some call it as "al-munasib al-mursal" (unrestricted suitability), while others use the term "istislah". (seeking the better) and still others use the term "istidlal" (seeking proof). Although these terms may seem different, in reality they imply the same objective. Yet, each term looks at the same objective from a different angle.

**Rouhani’s Ph.D. Thesis, p. 288**

Obviously, the Maslaha is not a primary source of the Shariah and cannot be used alone in legislation unless dictated by the existing certain conditions. Some Islamic jurists have outlined nineteen sources for Islamic law in which Maslaha could be described as one of these sources.8

**pp. 330-331 endnote 8:**

8. These sources are: (1) The *Quran,* (2) the *Sunnah;* (3) *Ijma* of the Islamic Ummah; (4) *Ijma* of the Madinah people; (5) Qiyas; (6) A saying of the Companion of the Prophet (S.A W.); (7) *Al- miaslaha* (8) *Istishab* (continuation of a practice); (9) *Al-Bara' Al- Asliyyah* (original exemption); (10) *Al-Urf* (customs); (11*) Al- istiqra'* (induction); (12) *Sadd Al-Zarai* (preventive measures); (13) *Istidlal* (deducation); (14) *Istihsan* (equity); (15) *Ikhtiyar Al- Aysar* (taking the simple); (16) *Al-ismah* (immunity from sins); (17) *Ijma* of the people of Kufah; (18) *Ijma* of *Al-Itrah* (the house of the Prophet (S.A.W.)); and (19) *Ijma* of the four caliphs. (Abd Al-Wahhab, *masader Al-Tashriih, P.* 109)

**p. 288**

Some of these sources are accepted by all Islamic jurists and lawyers and some of them are disagreed upon.

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 23-24**

**p. 23**

al-masalih al-mursalah is not a primary source of the Sharicah, hence it cannot stand alone in legislation except by conditions. Some Islamic jurists have outlined nineteen sources for Islamic law in which al-masalih al-mursalah could be described as one of these sources. These sources are: (i) The Qur'an; (ii) The Sunnah; (iii) Ijmac of the Islamic Ummah; (iv) Ijmac of the Medinah people; (v) Qiyas; (vi) A saying of the Companion of the Prophet; (vii) al-Masalih al-Mursalah; (viii) Istishab (continuation of a practice); (ix) Al-Bara' al-asliyyah (original exemption); (x) Al-Cawaid (customs); (xi) Al-istiqra' (induction); (xii) Sadd al-dharaic (preventive measures); (xiii) Istidlal ( deduction); (xiv) Istihsan (equity); (xv) Ikhtiyar al-aysar (taking the simple); (xvi) Al-Cismah (immunity from sins); (xvii) Ijmac of the people of Kufah; (xviii) Ijmac of al-GItrah (the house of the Prophet) for Shicas; and (xix) Ijmac of the four caliphs.37

37 See cAbd al-Wahhab Khallaf, Masadir al-tashrlc al-Islami fi ma la nass fih, p. 109

**p. 24**

Some of these sources are accepted by all Muslim jurists and lawyers and some of them are disagreed upon.

**Rouhani’s Ph.D. Thesis, p. 288**

Clearly the strongest of these nineteen sources are the Quran and Sunnah, which are the prime origins of the Shariah. As far as Maslaha is concerned, it is derived from the the Quranic a'yat and the sayings of the Prophet (S.A.W.).9

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 24**

Clearly the strongest out of these nineteen sources are the Qur'an and Sunnah, which are the prime origins of the Sharicah. As far as al-masalih al-mursalah is concerned, it is derived from the saying of the Prophet which states: "Do not inflict injury, nor repay one injury by another"

**Rouhani’s Ph.D. Thesis, p. 290**

This indicates the importance of confirming the consideration of benefits and the negation of injuries; and since the injuries are detested in the *Shariah* and benefits are confirmed it thus formulates the basis of the theory of *Maslaha.*

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 24**

This indicates the importance of confirming the consideration of benefits and the negation of injuries; and since the injuries are detested in the Sharicah and benefits are confirmed it thus formulates the basis of the theory of al-masalih al-mursalah.

**Rouhani’s Ph.D. Thesis, p. 291**

**The nature of the theory of Maslaha**

In the strict sense of Maslaha the terminology is limited within the environment of benefits, which have not been dealt with by the main origins of the Shariah. The benefits should be independently judged by a Mujtahid and weighed out without referring to previous experience, simply because when new cases are referred to old ones bearing the same causes, the whole exercise develops into analogy and ceases to work under the theory of Maslaha. The Islamic understanding is that God has made rules in the best way to fit the lives of people by providing general principles and guidance and has left out the details of things to be discovered by the people themselves through observation and the use of common sense. He has dealt with the primary issues of life in general and has left the secondary ones to be tackled by the human beings themselves (as a mercy to them and not through forgetfulness or failure). The Quran says:

**"O ye who believe! Ask not questions about things which may cause trouble. But if you ask about things when the Quran is being revealed, they will be made plain to you, God will forgive those: for God is oft forgiving, Most Forbearing. Some people before you did ask such questions, and on that account lost their faith” 20**

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 25-26**

**p. 25**

the nature of the theory of al-masalih al-mursalah in the strict sense of the terminology is limited within the environment of benefits which have neither been dealt with by the main origins of the Sharlcah nor cancelled by them. The benefits should be independently judged by a mujtahid and weighed out without referring to previous experience, simply because when new cases are referred to old ones bearing the same causes, the whole exercise develops into analogy and ceases to work under the theory of al-masalih al-mursalah. The Islamic understanding is that God has made rules in the best way to fit the lives of people by providing general principles and guidance and has left out the details of things to be discovered by the people themselves through observation and the use of common sense. He has dealt with the primary issues of life in general and has left the secondary ones to be tackled by the human beings themselves (as a mercy to them and not through forgetfulness or failure). The Qur'an says:

**"O ye who believe! Ask not questions about things**

**p. 26**

**which may cause trouble. But if you ask about things when the Qur'an is being revealed, they will be made plain to you, God will forgive those: for God is Oft-forgiving, Most Forbearing. Some people before you did ask such questions, and on that account lost their faith".40**

**Rouhani’s Ph.D. Thesis, p. 292**

The Prophet (S.A.W.) is also reported to have said:

**"... And (God) has kept silent over some things as a mercy to you without forgetting them, so do not ask about them". 21**

Whenever the Quran and the Sunnah are reticent on any issue, the theory of Maslaha can be resorted to. Actually, the Quran and the Sunnah's ordinances on legal issues are very few in comparisons to injections pertinent to other aspects of life in general. The main purpose of this is to give enough room to accommodate every benefit possible without the need of altering anything in the main structure of the Shariah. The Quran, for instance, has not gone into detail of laying each and every rule, but instead it has just laid down general principles for the legislation.22

**pp. 331-332 endnote 22:**

22. For example, in trade the Quran has limited its rules to four things only:

(1) its legality: " … And God has permitted trade and forbidden usury ...”; (the Quran 2: 275)

(2) The condition of mutual agreement: "O ye who believe! Eat not your property among yourselves in vanities: but let there be amongst you traffic and trade of mutual good-will..." (the Quran 4: 29);

 (3) The act of witnessing: .. And take witnesses whenever ye make a commercial contract..." (the Quran 2: 282);

and (4) its prohibition:

"O ye who believe! when a call is made for the prayer of Friday, rush for the rememberance of God, and leave trade ..." (the Quran 62:9).

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 26-27**

**p. 26**

The Prophet is also reported to have said:

**"...And (God) has kept silent over some things as a mercy to you without forgetting them, so do not ask about them".41**

1.10 LEGAL ORDINANCES IN THE QUR'AN AND SUNNAH

 It follows that the sphere in which the theory of al-masalih al-mursalah could operate is that in which the Qur'an and Sunnah are silent. In actual fact the ordinances of the Qur'an and Sunnah which deal with legal issues are quite scanty compared to the injunctions which deal with other aspects of life in general. The main purpose of this is to give enough room to accommodate every benefit possible without the need of altering anything in the main structure of the Sharicah. The Qur'an, for instance, has not gone into detail of laying each and every rule, but instead it has just laid down general principles for the legislation of practical rules whether in matters concerning civil rights, constitution, criminology or economics. We see, for example, in trade the Qur'an has limited its rules to four things only:- (i) its legality:

**p. 27**

**"...And God has permitted trade and forbidden usury...";42**

(ii) the condition of mutual agreement:

**"O ye who believe! Eat not your property among yourselves in vanities: but let there be amongst you traffic and trade of mutual good-will...";43**

(iii) the act of witnessing:

**"...And take witnesses whenever ye make a commercial contract...";44**

and (iv) its prohibition:

**"O ye who believe! When a call is made for the prayer of Friday, rush for the rememberance of God, and leave trade...".45**

**Rouhani’s Ph.D. Thesis, p. 292**

**The Legal Definition of Maslaha**

The Islamic jurists have differing definitions of Maslaha and its specifications. To Al-Ghazali (d. 1111) the word Maslaha denotes "obtaining benefit and preventing injury". he goes further adding after that,

**"We do not mean by interpreting Maslaha as obtaining benefit and preventing injury only because these are human aims concerned with human welfare in human terms only, whereas what we actually mean by Maslaha is the preservation of the aims of the Shariah. The aim of the Shariah in regard to man is fivefold: viz: (i) to preserve his religion, (ii) to preserve his life, (iii) to preserve his**

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 52**

3.1 A.THE LEGAL DEFINITION OF MASLAHAH

The Muslim lawyers have differing definitions of maslahah and its specifications. To al-Ghazali (d. 1111) the word "maslahah" denotes "obtaining benefit and preventing injury". He goes further adding after that,

**"We do not mean by interpreting maslahah as obtaining benefit and preventing injury only because these are human aims concerned with human welfare in human terms only, whereas what we actually mean by maslahah is the preservation of the aims of the Shariuah. The aim of the Sharicah in regard to man is fivefold: viz: (i) to preserve his religion, (ii) to preserve his life, (iii) to preserve his**

**Rouhani’s Ph.D. Thesis, p. 293**

**mind (reason), (iv) to preserve his offspring and (v) to preserve his material wealth. Everything which secures the preservation of these five elements is a Maslaha, and everything which jeopardizes them is a "mafsada" (injury), the prevention of which is a Maslaha. 23**

Apparently, the general meaning of Maslaha cannot be clearly distinguished from the definition put forward by Al-Ghazzali, since the Shariah actually fosters the attainment of benefit and the preclusion of injury and loss. Still, there is not anything which brings benefits and repels injuries that is not encompassed in the intention of the Shariah and is directly or indirectly connected with religion, or life, or mind, or offspring, or material wealth. Nevertheless, does it not happen that an individual person considers a thing to be beneficial to him while the Lawgiver considers it the other way round? We read, for instance, in the Quran:

**"Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing, which is good for you, and that ye love a thing, which is bad for you. But God knoweth and ye know not”. 24**

On the other hand, Al-khwarizmi (d.850) defines Maslaha by saying:

**it is the preservation of the objective of tire Shariah to prevent injuries to human beings".25**

Maslaha, or protection of the Shariah's objectivity, does not solely signify preclusion of injuries to human beings, and this is only one side

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 52-53**

**p. 52**

**mind (reason), (iv) to preserve his offspring, and (v) to preserve his material wealth. Everything which secures the preservation of these five elements is a ma \_ slahah, and everything which jeopardizes them is a "mafsadah" (injury), the prevention of which is a maslahah.1**

It could be said that there is no clear cut difference between the general meaning of maslahah and the definition given by al-Ghazali, because the obtaining of benefit and the prevention of injury is the real intention of the Sharlcah. Still, there is not: anything which brings benefits and repels injuries that is not encompassed in the intention of the Sharicah and is

**p. 53**

directly or indirectly connected with religion, or life, or mind, or offspring, or material wealth. Nevertheless, does it not happen that an individual person considers a thing to be beneficial to himself while the Lawgiver considers it the other way round? We read, for instance, in the Quran:

**"Fighting is prescribed for you, and ye dislike it. But it is possible that ye dislike a thing which is good for you, and that ye love a thing which is bad for you. But God knoweth and ye know not".2**

On the other hand, al-Khwarizml (d.850) defines maslahah by saying:

**"It is the preservation of the objective of the Sharicah to prevent injuries to human beings".3**

Maslahah or the preservation of the objectivity of the Sharlcah does not only mean the prevention of injuries to human beings because this is one aspect of it only.

**Rouhani’s Ph.D. Thesis, p. 294**

and aspect of it. The other aspect, which is equally important, is the positive side of Maslaha - the obtaining of benefits. Although the Islamic juristic principle has stressed the prevention of injury more than the attainment of benefit by saying: "Prevention of injury precedes the attainment of benefit", in reality they are two different things altogether and are therefore not the same; nonetheless it is necessary, in order to understand them both, that they should be considered as complementary.

However, in defining Maslaha Ibn Abd Al-Salaam (d. 1263 A.H.) puts a check and says:

**"He who wants to know the rights, the benefits and the injuries, strong amongst them as well as the weak, has to review his mind with a visualization as to why the Shariah hasn't mentioned the solution or judgment of a particular problem he is confronted with in spite of the fact that the Shariah manifested rudes in which every single rule demands the subservience of human beings to their Creator and has not necessarily informed them of the benefit or injury of a thing in particular".**

Then he goes on to define benefits and injuries saying:

**"Benefits are four kinds: needs and their causes; and happiness and their causes. Injuries are also of four kinds: pains and their causes and worries and their causes”.26**

Ibn Abd Al-Salam elsewhere depicts real and allegorical benefits, noting that benefits fall into two categories: “real (happiness and desire)

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 53-54**

**p. 53**

this is one aspect of it only. The other aspect which is equally important is the positive side of maslahah - the obtaining of benefits. Although the Islamic juristic principle has stressed the prevention of injury more than the attainment of benefit by saying: "Prevention of injury precedes the attainment

**p. 54**

of benefit", in reality they are two different things altogether and are therefore not the same; nonetheless it is necessary, in order to understand them both, that they should be considered as complementary. However, in defining maslahah cIzz al-Din ibn cAbd al-Salam (d.660/1263), the Egyptian scholar, puts a check and says:

**"He who wants to know the rights, the benefits and the injuries, strong amongst them as well as the weak, has to review his mind with a visualization as to why the Sharlcah hasn't mentioned the solution or judgment of a particular problem he is confronted with inspite of the fact that the Sharlcah manifested rules in which every single rule demands the subservience of human beings to their Creator and has not necessarily informed them of the benefit or injury of a thing in particular".**

Then he goes on to define benefits and injuries saying:

**"Benefits are four kinds:- needs and their causes; and happinesses and their causes. Injuries are also of four kinds:- pains and their causes and worries and their causes".4**

Elsewhere, cIzz al-Din ibn cAbd al-Salam discusses real benefits and the allegorical ones in which he says:

"Benefits are two types: real (happinesses and desires),

**Rouhani’s Ph.D. Thesis, p. 295**

and allegorical (their causes)”. At times, the causes of benefits crate injuries; nevertheless, they are commanded or allowed since they serve as a means to insure benefits, for instance, amputating the hand of a thief to safeguard the wealth of the people and issuing warning ahead of Jihad to safeguard the lives of the people. As is also the case with all legal punishments which are in actual fact not pleasant due to their injury, nonetheless, they are enforced to attain peace and security which is in one way or the other meant to attain benefits such as killing the transgressors, stoning the married adulterers and lashing or deporting the unmarried adulterers etc. All these injuries have been legalised in the Shariah to attain real benefits, and they are called allegorical benefits, although this seems to be calling them "means" when it is "ends" that is really meant. 27

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 54-55**

**p. 54**

and the allegorical (their causes). Sometimes the causes of benefits inflict injuries, they are commanded or allowed, not because they are injuries "per se" but they are a means to secure benefits, such as the amputation of

**p. 55**

a thief's hand to protect people's wealth and the warning before jihad to protect people's lives. As is also the case with all legal punishments which are in actual fact not pleasant due to their injury, nonetheless, they are enforced to attain peace and security which is in one way or the other meant to attain benefits - such as killing the transgressors, stoning the married adulterers and lashing or deporting the unmarried adulterers etc. All these injuries have been legalised in the Sharicah to attain real benefits, and they are called allegorical benefits, although this seems to be calling them "means" when it is "ends" that is really meant.5

**Rouhani’s Ph.D. Thesis, p. 297**

One of the contemporary jurists says: the Maslaha has pre-eminence over all the proof of the Shariah. He goes on to say: "The consideration of Maslaha is in actual fact a support of the nusus (the Quran and the Sunnah) and Ijma in the acts of worship whereas its consideration in transactions, customary law and general social obligations, it is a basic condition".32 In connection with acts of worship he says the rules and judgments are verified either by single clear cut proofs or by a variety of proofs which are congruent in meaning, or by contradicting proofs which could be grouped together without affecting the nusus. But if the contradicting proofs could not be grouped together, then nusus take precedence over the rest of the proofs.

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 176 -177**

**p. 176**

He goes on to say: "The consideration of maslahah is in actual fact a support of the nusus (of the Qur'an and Sunnah) and ijmac in the acts of worship whereas its consideration in transactions, customary law and general social

**p. 177**

obligations, it is a basic condition". In connection with acts of worship says al-Tufi, the rules and judgments are verified either by single clear cut proofs or by a variety of proofs which are congruent in meaning, or by contradicting proofs which could be grouped together without affecting the nusus. But if the contradicting proofs could not be grouped together, then ijmac takes precedence over the rest of the proofs,

**Rouhani’s Ph.D. Thesis, pp. 297-298**

**p. 297**

Whereas in connection with transactions and practices the established norm is the consideration of Maslaha of people in the first

**p. 298**

place before all else, then if any other proof agrees with it, no word is to be added as is the case with the five fundamentals where nass, Ijnia and Maslaha have all agreed together - e g., to kill the killer, or to amputate the hand of a thief, in the case of divergence between the Quran and the Sunnah when there is the possibility of merging some of the proofs into others in some judgments or conditions while excluding the others or of taking into account the consideration of Maslaha, then they could be grouped together. If grouping them together is not possible, Maslaha takes precedence over the rest of the proofs due to the fact that the hadith "la- zarar wa la-zarar" states categorically the negation of injury which prompts the consideration of Maslaha, and thus it must take precedence due to the fact that Maslaha is the main objective as far as people are concerned in the legislation of laws, whereas the rest of the proofs are in reality a means to this objective. Logically, the ends should take pre-eminence over the means.33

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 179-180**

**p. 179**

Whereas in connection with transactions and practices the established norm is the consideration of maslahah of people in the first place before all else, then if any other proof agrees with it, no word is to be added as is the case with the five fundamentals (al-ahkam al-khamsah) where nass, ijmac and maslahah have all agreed together - eg, to kill the killer, or to amputate the hand of a thief, or to flog or stone an adulterer... In the case of divergence between the Qur'an and the Sunnah when there is the possibility of merging some of the proofs into others in some judgments or conditions while excluding the others or of taking into account the consideration of maslahah, then they could be grouped together. If grouping together is not possible, maslahah takes precedence over the rest of the proofs due to the fact that the hadith "la darar wala dirar" states categorically the negation of injury which

**p. 180**

prompts the consideration of maslahah, and thus it must take precedence due to the fact that maslahah is the main objective as far as people are concerned in the legislation of laws, whereas the rest of the proofs are in reality a means to this objective. Logically, the ends should take pre-eminence over the means...

**Rouhani’s Ph.D. Thesis, p. 299**

The Shariah has comprehensively dealt with the conservation of religion as a salient benefit. The Shariah has obliged able Muslims to fight for the cause of God (jihad) to preserve religion, so that the doctrine of monotheism should reign supreme and eradicate all the impediments and shackles confronting humanity at large. 34

**p. 332 endnote 34:**

34 "And fight them (the transgressors) until there is no more tumult or oppression, and there prevail justice and faith in God. But if they cease, let there be no hostility except to those who practise oppression". (the Quran, 2:193).

**p. 299**

The Shariah has fully dealt with the conservation of life as a legal benefit. The Shariah ordains a severe penalty for illegitimate murder to protect man's life and preclude the extinction of the human race. The rule of legal retaliation (Qisas) has been laid down by the Shariah in order to prevent any hostility among human beings. 35

**p. 332 endnote 35:**

 35."And if anyone is slain wrongfully, we have given his heir (next of kin) authority (to demand qisas or to forgive); but let him not exceed bounds in the matter of taking life; for he is helped (by the Law)", (the Quran, 17:33).

**p. 299**

In order to assure the security of mankind and the right to life for every human being the Quran has laid underlying principles for the preservation of human life, prevention of committing sins, removal of severity in duties, in addition to the ^legalization of committing suicide; all these show clearly that the Shariah is deeply concerned with the preservation of life.36

**p. 333 endnote 36:**

36. "O ye who believe! the law of equality is prescribed to you in cases of murder: Tlte free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty", (the Quran 2: 178)

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 71-72**

**p. 71**

The Sharicah has obliged able Muslims to fight for the cause of God (jihad) to preserve religion, so that the doctrine of monotheism should reign supreme and eradicate all the impediments and shackles confronting humanity at large. The Qur'an says:

**"And fight them (the transgressors) until there is no more tumult or oppression, and there prevail justice and faith in God. But if they cease, let there be no hostility except to those who practise oppression".23**

The preservation of life is a legal benefit which has been dealt with by the Sharicah at length; and a severe penalty has been specified by the Sharlcah for those who illegitimately take life in order to secure the life of mankind and preserve it from extinction. The rule of legal retaliation (qisas) has been laid down by the Sharlcah in order to prevent any hostility among human beings. The Qur'an says:

**" And if anyone is slain wrongfully, we have given his heir (next of kin) authority (to demand qisas or to forgive); but let him not exceed bounds in the matter of taking life; for he is helped (by the Law)".24**

In order to assure the security of mankind and the right to life for every human being and to crush cruelties and transgressions the Qur'an says:

**"O ye who believe! the law of equality is prescribed to you in cases of murder: The free**

**p. 72**

**for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude. This is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty".25**

The Qur'an has laid underlying principles for thepreservation of human life, prevention of committing sins,removal of severity in duties, in addition to the illegalization of commiting suicide; all these show clearly that the Sharlcah is deeply concerned with the preservation of life.

**Rouhani’s Ph.D. Thesis, p. 299**

In order to preserve a balanced mind, the Shariah has prohibited intoxicants and has enjoined the Muslims to refrain from all activities, which make the mind vicious, and speculative.37

**p. 333 endnote 37:**

37. "O ye who believe! Wine and gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan's handiwork; Eschew such (abomination), that ye may prosper", (the Quran 5:90)

**p. 299**

The Shariah ordains marriage as a positive act preserving offspring, which is deemed by certain scholars as the preservation of

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 72-73**

**p. 72**

In order to preserve a balanced mind, the Sharlcah has prohibited intoxicants and has enjoined the Muslims to refrain from all activities which make the mind vicious and speculative. The Qur'an says:

**p.73**

"O ye who believe! Wine and gambling, (dedication of) stones, and (divination by) arrows, are an abomination of Satan's handiwork; Eschew such (abomination), that ye may prosper".27

… In connection with the preservation of offspring, which is named by some scholars as - the safeguarding of kinship and chastity - the Sharicah has ordained the act of marriage as a positive measure …

**Rouhani’s Ph.D. Thesis, p. 300**

kinship and chastity. To the Same end, the Shariah has prohibited adultery and fornication and laid down a painful punishment to those who do it and has legislated it in order to close all the doors leading to this sinful act which, in the long run, breaks down the bonds of kinship and demolishes good character and generates recklessness and irresponsibility in society.38

**p. 333 endnote 38:**

38. The Prophet (S.A.W.) of Islam said:

"Intermarry extensively and spread so that / may stand proudly with you as the best of the nations on the Day of Judgment", (Al-Bukhari hadith no. 4157)

**p. 300**

Concerning the preservation of material wealth, the Shariah has imposed a severe punishment to thieves and robbers and laid down various rules to enable people to earn their living legally, and prohibited them from plundering the belongings of others.39

**p. 333 endnote 39:**

39. "As to the thief, male or female, cut off his or her hand; a punishment by way of example from God for their crime; and God is Exalted in Power", (the Quran 5:38)

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 73-74**

**p. 73**

as - the safeguarding of kinship and chastity - the Sharicah has ordained the act of marriage as a positive measure. We read in the saying of the Prophet of Islam:

**"Intermarry extensively and spread so that I may stand proudly with you as the best of the nations on the Day of Judgment".29**

**p. 74**

To the same end, the Sharicah has prohibited adultery and fornication and laid down a painful punishment to those who do it and has legislated it in order to close all the doors leading to this sinful act which, in the long run, breaks down the bonds of kinship and demolishes good character and generates recklessness and irresponsibility in society. Concerning the preservation of material wealth, the Sharlcah has imposed a severe punishment to thieves and robbers and laid down various rules to enable people to earn their living legally, and prohibited them from plundering the belongings of others. The Qur'an says:

**"As to the thief, male or female, cut off his or her hand; a punishment by way of example from God for their crime; and God is Exalted in Power".**

**Rouhani’s Ph.D. Thesis, p. 328**

**Conclusion**

The rules or laws in Islam are not established for an individual or a particular family or for a specific group, but they are generally promulgated for all individuals; because one of the most important qualities of the nature of Islamic legislation is universality.

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 62**

A rule or law in Islam is not established for an individual or a particular family or for a specific group, but it is generally promulgated for all individuals; because one of the most important qualities of the legislating nature of Islam is universality.

**Rouhani’s Ph.D. Thesis, p. 328**

The Quran and Sunnah have given broad lines to the tackling of the legal problems leaving so much space to accommodate every sensible legislation which considers public interest in the strict sense of the word. In this way the

**Plagiarized from Mtupah’s Ph.D. Thesis, pp. 31-32**

**p. 31**

the Qur'an and Sunnah have

**p. 32**

given broad lines to the tackling of the legal problems leaving so much space to accommodate every sensible legislation which considers public interest in the strict sense of the word. In this way

**Rouhani’s Ph.D. Thesis, p. 329**

theory of Maslaha has a great role to play. It stands as a useful tool to a faqih without which his potential to solve new problems according to the Shariah could not work. The Quran and Sunnah have not mentioned all legal cases known to mankind and thus have not given ready made answers to all possible problems, which could occur. This gives scope for a Mujtahid to find answers to the daily questions of the society. For the very nature of the theory of Maslaha demands that a Mujtahid has to consider the unrestricted benefits in the light and according to the intentions of the lawgiver.

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 32**

the theory of al-masalih al-mursalah has a great role to play. It stands as a useful tool to a faqih without which his potential to solve new problems according to the Sharlcah could not work. The Qur'an and Sunnah have not mentioned all legal cases known to mankind and thus have not given ready made answers to all possible problems which could occur. This gives scope for a mujtahid to find answers to the daily questions of the society. For the very nature of the theory of al-masalih al-mursalah demands that a mujtahid has to consider the unrestricted benefits in the light and according to the intentions of the Lawgiver.

**Rouhani’s Ph.D. Thesis, p. 329**

The lawgiver (God) has considered each and every benefit in the Shariah in a sense that all benefits are connected, whether directly or indirectly, to the preservation of the five fundamentals, viz: religion, life, mind, offspring and material wealth. There is no difference of opinion between the Islamic scholars in that whatever preserves these fundamentals is a benefit and therefore must be taken into consideration, and whatsoever jeopardizes them has to be eradicated.

**Plagiarized from Mtupah’s Ph.D. Thesis, p. 56**

the Lawgiver (God) has considered each and every benefit in the Sharicah in a sense that all benefits are connected, whether directly or indirectly, to the preservation of the five fundamentals, viz: religion, life, mind, offspring and material wealth. There is no difference of opinion between the Muslim scholars in that whatever preserves these fundamentals is a benefit and therefore must be taken into consideration, and whatsoever jeopardizes them has to be eradicated.