

المصالح المرسله أو الاستصلاح

Consideration of Public Interest (Al-Masalih al Mursalah/ Istislah)

I. Definition of public interest (maslahah)

• **Literal meaning:** Benefit. It also means a cause of benefit, for instance, it is said that commerce is a maslahah, meaning that it is the cause of benefit. Removing harm is also a maslahah, as benefit is opposite to harm and they cannot combine together. So maslahah literally means securing benefit and removing harm.

• **Legal meaning:** • Al-Ghazali (505H/1112AD) defines maslahah, “the benefit that intended by The Law Giver for mankind in preservation and protection of their religion, life, reason, lineage and property. Whatever ensures the protection of these five things is beneficial (maslahah), and whatever causes the missing of these five things is harmful (mafsadah) and to remove it, is a maslahah.”

II. Types of Maslahah

There are three types:

1- Maslahah that is acknowledged by Shari’ah (masalih mu’tabarah). It includes all types of maslahah where the Qur’an and Sunnah enacted a law for its realization. There are of three types namely: essential public interest (masalih daruriyyah), needed public interest (masalih hajiyyat) and refining public interest (masalih tahsiniyyat). For example, maslahah of preservation of religion, life, reason, lineage and property. This type of maslahah can be relied upon.

2- Maslahah that is rejected by the Shari’ah (masalih mulghat). It is one that is not acknowledged by the Shari’ah. This type of maslahah is nullified by Qur’an and Sunnah. Example, practicing usury in transaction, prohibition of polygamy, equal share of man and woman in the inheritance. This type of maslahah cannot be relied upon.

3- Maslahah that is neither acknowledged nor rejected by Shari’ah. It is called masalih mursalah. It is one which is neither nullified nor considered by Shari’ah. There is no text validates it nor invalidates it. Example: the compilation of the Qur’an, using the prison, liability of trustee, registration of marriage, HIV test for those to get marriage, etc.