CONSIDERATION OF PUBLIC INTEREST
(AL-MASALIH AL MURSALAH/ISTISLAH)

- Definition of public interest (maslahah)
- Types of public interest
- The position and proof of al-masalih al-mursalah as a source of Islamic law
- Conditions of valid al-masalih al-mursalah
Definition

• 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.
Definition continue...

- 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, linage 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*.**
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, linage and property.
   - This type of *maslahah* can be relied upon.
Types of *Maslahah* continue...

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.
Types of *Maslahah* continue...

3) *Maslahah* that is neither acknowledge 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.
Al-Masalih al-Mursalah as a source of Islamic law

- Majority of Muslim jurists consider al-masalih al-mursalah as a source of Islamic law.
- Meanwhile the Zahiri, some Maliki and Shafi’i reject it.
Proof of *al-masalih al-mursalah* as a source of law

1) General verses of the Qur’an.

   Indicate that what have been laid down by Qur’an and Sunnah are for the benefit of mankind.

   • “And we have sent you (O Muhammad S.A.W.) not but as a mercy for the whole world” (al-Anbiya’(21): 107)
   • “...He has not laid upon you in religion any hardship..” (al-Hajj(22): 78)
   • “In the law of retaliation there is (saving of) life to you, O ye men of understanding.” (al-Baqarah(2): 179)
2) Sunnah

“When the Messenger of Allah intended to send Mu’az bin Jabal to Yeman (as judge), he asked: How will you judge when the occasion of deciding case arises? He replied: I shall judge in accordance with Allah’s Book. He asked: (What will you do) if you do not find guidance in Allah’s Book? He replied (I will act) in accordance with the Sunnah of the Messenger of Allah. He asked: (What will you do) if you do not find guidance in the Sunnah of the Messenger of Allah? He replied: I shall do my best to form an opinion and spare no pains.
The Messenger of Allah then patted him on the breast and said: Praised be to Allah who helped the messenger of the Messenger of Allah to find a thing which pleased the Messenger of Allah.”

• (Reported by Abu Daud and al-Tirmizi)
Proof continue...

- Ijma’ of Companions

Example:
- compilation of the Qur’an,
- perpetual prohibition of marriage for one who married woman during waiting period and consummated the marriage,
- imposition of liability on trustee. etc.
Conditions of valid *al-masalih al-mursalah*

- Must not in conflict with definitive proof of the Qur’an and Sunnah.
- Must be genuine. It really brings benefit and removes harm.
- Must be general. Securing benefit and removing harm to the people as a whole and not to particular person or group of person.
- Must be reasonable. It is acceptable by people of wise reason.