

Masalah mursalah



The concept of MM does not apply to the rulings of the Prophet : When there is a Prophetic ruling in favour of a maslahah, it becomes part of the established law, hence no longer a MM. – from a historical vantage, the notion of MM originates in the practice of the Companions. This is not to say that the Prophet has not ruled in favour of maslahah, but merely to point out that as a principle of jurisprudence, MM does not apply to the rulings of Sunnah. Caliph Bakr also waged war on those who refused to pay the zakah, ?

The rule for murder provided in the texts was that one life could be taken for one life by way of retaliation. It was not clear whether a number of persons could be subjected to qisas when they participated in killing in a single person. Caliph Umar decided that all of them shd be put to death. This rule is said to be based on the “ preservation of life”, which is a purpose of Islamic law. This is strengthened by the words of the AQ :” in retaliation there is life for you”. Caliph Umar is reported to hv said (in this decision) that if all the ppl of Sana’a had conspired to kill a single person he wld put all of them to death.

JUSTIFICATION OF MM : The main objection against the use of MM in particular and the concept of maslahah in general is that it is based upon the hikmah (wisdom) of the rule rather than on ethe illah. The jurists hv been very cautious in the use of hukm for the determination of laws. The principle of maslahah is more flexible and is bsd on an interplay of general principles and the maqasid are based on the hikmah underlying the various rules. Sometimes advanced is that it will be misused by ignorant ppl.

The response to this is that the legal system must ensure that its professionals observe the proper methodology that meets the conditions imposed above. Further, the principle is to be used mostly by the judges of the Higher Ctts of the country and by the lawyers who assist these ctts. It is not up to every person to employ legal reasoning. PROOF (HUJJAH) OF MM : ?

Surah Al Anbiya' : 107 “ We hv sent you but a mercy for all creatures” ?

Surah Yunus : 75 “ O mankind, a direction has come to you from your Lord, it is a healing for the ailments in your hearts.. - the msg for these 2 phrases here transcends all barriers that divide the humanity, none must stand on the way of seeking mercy & beneficence to human beings. ? Surah Al Maidah