

Maqasidal- Shari'ah: An Introduction to its Ontological Orientation

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Abstract

Maqasid al-Shari'ah (the *Shari'ah's* objectives) refers to the broader and higher doctrines, tenets, values, ideals and objectives of the Islamic Law. The field of *maqasid al-Shari'ah* highlights human welfare as the ultimate purpose of all Islamic rulings and stresses its importance, while basing itself on the foundational postulates of the *Qur'an* and the *Sunnah*, it forms an important area of Islamic jurisprudence, particularly relevant to address contemporary challenges faced by Muslim Civilisation. The paper presents the ontological and epistemological implication of *maqasid al- Shari'ah* to the Islamic law. This paper examines the conceptual framework of *maqasid al- Shari'ah* in Islamic jurisprudence in order to highlight its contribution to more comprehensive, rational and realistic answers to contemporary societal issues and to thereby increase awareness of the *maqasid al- Shari'ah* approach in structuring and developing legal framework for civilisational orientation and intellectual liberation. For this purpose, the paper will examine the literal and technical meanings of *maqasid al- Shari'ah* and scrutinise the position of the concept within the *Usul-al-fiqh*. It will also present the essential characteristics of *maqasid al- Shari'ah* and explain how this approach may contribute to better solutions for various challenges to human development. The *maqasid al- Shari'ah* principles provide a better framework that academicians, scholars, and practitioners of jurisprudence can use when faced with potential conflicts arising from the diverse expectations and interests of varied stake holders. The paper will deliberate on how Islam's holistic and dynamic canons of justice, fairness and equity can be understood, and interpreted for the post-industrial society.

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Introduction

The time has come to reform Muslim ways of thinking in order to make the required mental transition from preoccupation with particulars to a concern with universals, from stopping at outward structures to attention to truths and meanings, from a focus on means and methods to activity for the purpose of achieving intentions and objectives. It is high time to move from rampant imitation and subordination to creativity, rationality and authenticity. The dynamic, purposeful awareness of the challenging objectives will only be realised through rigorous and relevant academic endeavours. All these objectives in all their varied aspects of time-space paradigms and dimensions will be realised in the broader shade of *Maqasid al-Shari'ah*.

To fulfil the objectives of justice, fairness, equality, human rights, development, and civility in today's context, understanding and implementation of *Maqasid al-Shari'ah* is of paramount importance and relevance. The contemporary jurisprudence about which we are acquainted has entered a phase in which it is closer to stagnation, apathy and inertia than to dynamism. The primary reason for it is that it has lost among other things, the spirit of the Law, that is to say, a living awareness of the objectives of Islamic Law and its associated conceptualisation framework. This has led to the decadence and backwardness of modern Islamic jurisprudence and practice. The call of the present times is the revival of objective-based jurisprudence as a necessary condition for renewal of Islamic jurisprudence and for the restoration of its role, status and application. The Islamic jurisprudence, which we pursue to reconstruct and to strengthen, whose purity and vitality we are seeking to restore, and which we try to link to the objectives and universal principles of Islamic Law, is among the best ways that we will be able to restore legal norms for a contemporary Islamic governance and public policy. The underlying and foremost reason for it is that Islamic jurisprudence, with its unlimited comprehensiveness and authenticity is the most 'Islamic' of all the Islamic sciences in the sense that it is the furthest from being coloured by extraneous intellectual influences.

The present conceptual research paper explains the concept of *Maqasid al-Shari'ah* in Islamic jurisprudence in order to highlight its contribution to more comprehensive, rational and realistic framework for understanding and deliberating on the contemporary challenges, issues and to thereby increase awareness, knowledge and implications of the *Maqasid al-Shari'ah* approach in restructuring and reconstructing Islamic thought for the establishment of Islamic civilisation. Further, the paper will present the essential elements and characteristics of *Maqasid al-Shari'ah*. The paper propounds to make the contemporary scholars and academicians aware about the significance and academic value of this solid inductive methodological approach of *Maqasid al-Shari'ah* based understanding of the Qur'an and the *Sunnah*.

Maqasid al-Shari'ah reflects the holistic and systematic approach of Islam, which has to be looked at as a whole, not in parts, as Islam visualises a complete and integrated code of life, including the individual, the society, this world and the hereafter. The rift has begun to emerge between the teachings and principles of Islam and Muslims' reality and practices. The study of *Maqasid al-Shari'ah* is to mend the rift and restore the intimate contact between Muslims and their religion. The best way towards that is to restore and elucidate the objectives of Islam, the causes behind its legal rulings within the walls of intentions and goals which underlie the *Shari'ah*. The earlier scholars of the *Ummah* made it clear that every legal ruling in Islam has a function which it performs, an aim which it realises, a cause and an intention which it seeks to fulfil, and all this in order to realise simultaneously benefits to humanity, or to ward off harm. They showed how these intentions, higher objectives and causes might at times be contained explicitly in the texts of the *Qur'an* and the *Sunnah*, while at other times *mujtahideen* might bring them to light by means of thorough comprehensive *Ijtihad* based on their understanding of the *Qur'an* and the *Sunnah*. Through this process of re-examination and revision, it becomes possible to derive their basis and also make clear the benefits which it helps to realise. The Islamic scholars defined the approaches which lead to the discovery of these objectives, to an understanding of these benefits, and to an identification of the causes underlying Islamic legal rulings. The objective based

jurisprudence was likewise dealt within studies concerned with the elucidation of the secrets and wisdom underlying Islamic Legislation, based on the Islamic tenets of *usuliyyun*, *qiyas* and *istislah*.

The paper would like to highlight the approaches to understand the text of Islamic law within its importance of relying on what might be termed as '*legislative universals*' and at the same time allowing these universals to mediate our understanding and use of particular injections. In other words, it is a matter of underpinning our understanding of allegorical texts (*al- mutashabihat*) on those which are established tenets and canons of (*al- muhkamat*) thus understanding of particulars on our broader understanding of universals. The universal principles and objectives of Islamic law are unshakable uncompromising foundations for every act of *ijtihad* and for all reconstruction of Islamic thought. It is of paramount importance that these principles and objectives be re-established and allow them to be basis for all else, in order to reshape the Muslim mentality and reorder its criteria and priorities. Contemporary Muslim scholars argue that there is a need to articulate a jurisprudence that addresses contemporary concerns and issues, for what is essential to a proper understanding of Islam is not the letter of the text, but rather the spirit of the Qur'an and the prophetic (SAAS) traditions.

They maintain that there is no single valid interpretation of the *Qur'an* or the *Sunnah*. It is within the framework of Islamic jurisprudence that the discussion of reformation in Islam and the role of *ijtihad* in the reformation process need to be established.

Definition of *Maqasid al-Shari'ah*

The most important thing that needs to be clarified is the role of objectives (*maqasid*) for any new legal, intellectual and civilisational renewal of the *Ummah*. Surveying the legal texts in the context of the objectives of Islamic law, it is known that one of the main goals of *Shari'ah* is to serve and protect the interests of entire humanity. Indeed, in the framework and spirit of the divine law of Islam, public interest and the wellbeing of humanity, be it in this world or in the hereafter, becomes one of the most sought after issues of more merit and value. No doubt that the entire law of the Islam runs through the vein of 'human interest'. In fact, whatever thing that is for the benefit

and success of humanity in this world and in the hereafter, the law of Islam always supports it and provides the necessary means, principles and values to its sustainable establishment, enhancement and preservation. For instance, if man in this world strives to achieve justice, equality, dignity, honour, freedom, tolerance, mercy, peace, security, stability, moderation, co- existence and balance in human life, the law of Islam does not only speak of these values, but also sets the necessary guidelines, principles and values that can ensure their realization in human context and reality.

The *Maqasid al-Shari'ah* presents a distinctive model relevant to the methods of understanding and of studying the *Qur'an* and the *Sunnah* and drawing upon their inspiration and guidance. The definition of the *Maqasid al-Shari'ah* has achieved a paramount importance especially in present context of developing comprehensive theory of the objectives of the Islamic law within the various aspects and dimensions. *Maqasid al-Shari'ah* offers us the uniquely powerful manner, the methods of arriving at a sound well-defined understanding of the *Qur'an* and the *Sunnah*. In order to achieve these objectives it becomes of paramount importance to first of all define it, to define the nature and scope of the *Maqasid al-Shari'ah* as understood by the pioneers of the Islamic jurisprudence discipline. Muslim scholars have agreed that the ultimate objective of *Maqasid al-Shari'ah* is to serve the interests (*jalb al-mas'alih*/ جلب المصلحة) of all human beings and to save them from harm (*daf' al-mafasid*/ دفع المفسدة) they choose to define *al-Shari'ah* from a different perspective¹.

Abu Hamid al-Gazali, (d.505/1111) a prominent and highly respected *Mujtahid* of fifth century *Hijrah* splendidly identified the *Maqasid al-Shari'ah* in one of the renowned definitions of *maqasid*² by stressing the *Shari'ah* concern with safeguarding.

مَقْصُودُ الشَّرْعِ مِنَ الْخَلْقِ خَمْسَةٌ، وَهُوَ أَنْ يُحْفَظَ عَلَيْهِمْ دِينُهُمْ وَنَفْسُهُمْ وَعَقْلُهُمْ
وَنَسْلُهُمْ وَمَالُهُمْ، فَكُلُّمَا يُتَعَنَّنُ حِفْظَ هَذِهِ الْأَصُولِ الْخَمْسِ فِيهِ مَصْلَحَةٌ،
وَكَلُّ مَا يَتَّقُوتُ هَذِهِ الْأَصُولَ فِيهِ مَفْسَدَةٌ، وَدَقَّقَهَا مَصْلَحَةٌ.

The very objective of the *Shari'ah* is to promote the well-being of the people, which lies in safeguarding their faith (*Deen*), their lives (*nafs*), their intellect (*aql*),

their posterity (*nasl*), and their wealth (*mal*). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable³.

Imam al-Shatibi (d. 790/1388) also, writing a little less than three centuries after al-Ghazâlî, put his stamp of approval on al-Ghazâlî's list,⁴ and furthering the concept by emphasising the epistemological (*aqidah*) dimension. He went through both *al-muwafaqat* and *al-Itisam* and extracted from them a wealth of objective-related principles. According to him:

المَقْصِدُ الشَّرْعِيُّ مِنْ وَضْعِ الشَّرِيعَةِ إِخْرَاجُ الْمَكْلُوفِ مِنْ ذَاعِيَةِ هَوَاهُ حَتَّى يَكُونَ
عَبْدًا لِلَّهِ اخْتِيَارًا كَمَا هُوَ عَبْدٌ لِلَّهِ اضْطِرَارًا.

The primary goal of the Shari'ah is to free man from the grip of his own whims, so that he may be the servant of Allah by choice, just as he is His slave [in matters about which he has] no choice.⁵

Ibn-Ashur, on the other hand, defines *Maqasid al-Shari'ah* from a broader angle:

المَقْصِدُ الْعَامُّ مِنَ التَّشْرِيعِ هُوَ حِفْظُ نِظَامِ الْأُمَّةِ وَاسْتِدَامَةُ صِلَاحِهِ بِصِلَاحِ
الْمُهَيِّمِينَ عَلَيْهِ، وَهُوَ تَوْعُّدُ الْإِنْسَانِ. وَيَشْمَلُ صِلَاحُهُ صِلَاحَ عَقْلِهِ وَصِلَاحَ عَمَلِهِ
وَصِلَاحَ مَا بَيْنَ يَدَيْهِ مِنْ مَوْجُودَاتِ الْعَالَمِ الَّذِي يَعِيشُ فِيهِ.

The overall objective (*maqсад'aam*) of Islamic legislation is to preserve the social order of the community and ensure its healthy progress by promoting the well-being and virtue (*sa'lah*) of the human being. The *Sa'lah* of human beings consists of the soundness of their intellects and the righteousness of their deeds, as well as the goodness of the things of the world in which they live that are put at their disposal.⁶

The ultimate objectives of *Maqasid al-Shari'ah* rest within the concepts of compassion and guidance that seek to establish justice and fairness in order to eliminate prejudice and alleviate hardship.

Allal al-Fassi(d.1394/1974) stresses the following elements in his definition, which states:

المَقْصِدُ العَامُّ للشرعة الإسلامية هو عِمَارَةُ الأَرْضِ، وَحِفْظُ نِظَامِ التَّعَايُنِ فِيهَا، وَاسْتِقْرَارُ صِلَاحِهَا بِصِلَاحِ المُسْتَخْلَفِينَ فِيهَا، وَقِيَامِهِمْ بِمَا كَلَّفُوا بِهِ مِنْ عَدْلِ وَاسْتِقَامَةٍ، وَمِنْ صِلَاحِ فِي العَقْلِ وَفِي العَمَلِ، وَاصْلَاحِ فِي الأَرْضِ وَاسْتِنْبَاطِ خَيْرَاتِهَا وَتُدْبِيرِ مَنَافِعِ الحَمِيعِ.

The overall objective of Islamic law is to populate and civilize the earth and preserve the order of peaceful coexistence therein; to ensure the earth's ongoing well-being and usefulness through the piety of those who have been placed there as God's vicegerents; to ensure that people conduct themselves justly, with moral probity and with integrity in thought and action, and that they reform that which needs reform on earth, that they tap its resources and plan for the good of all.

Characteristics of *Maqasid al-Shari'ah*

The *Maqasid al Shari'ah* has four recognised and established characteristics:

The first and foremost is that they are basis of legislation, as legislation has to serve the interests of all human beings *jalb al-mas'lih*/ جلب المصلحة and save them from harm (*daf'al mafasid*/ دفع المفسدة). Scholars argued that identification of this characteristic is based on an inductive reading (*istiqra'*) of the texts of the Qur'an and the Sunnah. Ibn al-Qayyim says:

إِنَّ الشَّرِيعَةَ مَبْنَاهَا وَأَسَاسُهَا عَلَى الحِكْمِ وَمَصَالِحِ العِبَادِ فِي المَعَاشِ وَالمَعَادِ وَهِيَ عَدْلٌ كَلِّهَا وَرَحْمَةٌ كَلِّهَا وَمَصَالِحُ كَلِّهَا وَحِكْمَةٌ كَلِّهَا ، فَكُلُّ مَسْأَلَةٍ خَرَجَتْ عَنِ العَدْلِ إِلَى الجَوْرِ وَعَنِ الرَّحْمَةِ إِلَى ضِدِّهَا وَعَنِ المَصْلَحَةِ إِلَى المَفْسَدَةِ وَعَنِ الحِكْمَةِ إِلَى العَبَثِ فَلَيْسَتْ مِنَ الشَّرِيعَةِ وَإِنَّ أُدْخِلْتَ فِيهَا بِالتَّأْوِيلِ.

The *Shar'iah* is based on wisdom and achieving people's welfare in this life and in the hereafter. The *Shar'iah* is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its

opposite, common good with harm, or wisdom with nonsense, is a ruling that does not belong to the *Shar'iah* even if it is claimed to be so according to some interpretations.

The second characteristic is that *Maqasid al-Shari'ah* is universal, aiming to serve the interests of mankind and requiring the adherence of all human beings. This is because the *Qur'an* is the last revelation, applicable to the whole of mankind every where on earth until the end of this world. The supporting evidence is so abundant in the *Qur'an* and the *Sunnah* that it amounts to a thematic recurrence. For example, Allah says,

وَمَا أَرْسَلْنَاكَ إِلَّا حَافَّةً لِّلنَّاسِ

We have not sent you, [O Muhammad,] except to mankind as a whole.⁷

قُلْ يَا أَيُّهَا النَّاسُ إِنِّي رَسُولُ اللَّهِ إِلَيْكُمْ جَمِيعًا

Say [O Muhammad]: 'O mankind, verily, I am an apostle to all of you.⁸

The third characteristic is that *Maqasid al-Shari'ah* is inclusive (absolute). They encompass all human acts whether they are related to *ibadah* (responsibilities to God) or *mu'amalah* (responsibilities towards other human beings). Iman al-Shafi, the epitomic intellect of Islamic jurisprudence, stated in *al-Risalah*:

فَلَيْسَتْ تُنَزَّلُ فِي أَحَدٍ مِّنْ أَهْلِ دِينِ اللَّهِ نَازِلَةٌ إِلَّا وَفِي كِتَابِ اللَّهِ الدَّلِيلُ عَلَى سَبِيلِ الْهُدَى فِيهَا. قَالَ اللَّهُ تَبَارَكَ وَتَعَالَى: "كِتَابٌ أَنْزَلْنَاهُ إِلَيْكَ لِتُخْرِجَ النَّاسَ مِنَ الظُّلُمَاتِ إِلَى النُّورِ بِإِذْنِ رَبِّهِمْ إِلَى صِرَاطٍ الْعَزِيزِ الْحَمِيدِ" وَقَالَ أَيْضًا: "وَنَزَلْنَا عَلَيْكَ الْكِتَابَ تَبَيَانًا لِّكُلِّ شَيْءٍ وَهُدًى وَرَحْمَةً وَبُشْرَىٰ لِلْمُسْلِمِينَ."

No misfortune will ever descend upon any of the followers of Gods religion for which there is no guidance in the Book of God to indicate the right way, for God, Blessed and Most High, said: "A Book We

have sent down to you that you may bring forth mankind from darkness to light, by the permission of their Lord, to the path of the Almighty, the Praiseworthy” [15:1-2]. And He said: “And we sent down to you the Book as a clarification for everything and as guidance and a mercy and good tidings to the Muslims.”⁹

The fourth characteristic of *Maqasid al Shari‘ah* is that they are definitive, i.e. they have not been derived from a single text or item of evidence, but from a multiplicity of texts and different aspects of evidence. Clear indications of this characteristic can be found in *Usul al Fiqh* maxims such as: “Acts are judged by intentions” and “Where there is a definitive text, there is no room for interpretation”, as well as in *Fiqhi* maxims such as “[The right to] gain with responsibility [for loss]” and “Necessity renders prohibited things permissible”.

The Islamic scholars further divided the *Maqasid al Shari‘ah* into two main categories: general objectives and specific objectives. Moreover, if we wish to ensure the sustained development and well-being of a society, the word ‘safeguarding’ used by al-Ghazali in the above definition need not necessarily be taken to imply preservation of just the status quo with respect to the *maqasid*. Unless there is a continuous enrichment of these through an intellectual movement in the positive direction, it may not be possible to safeguard them and to sustain the society’s well-being in the contemporary times. It is, therefore, necessary to strive for the continued enrichment of the primary *maqasid* as well as their corollaries in such a way that well-being keeps on improving continuously in keeping with the changing needs and environment of not only the individuals, but also their society and mankind, thereby enabling everyone to continue the march forward towards a better future. Such an enrichment may be difficult to attain if we stick to the framework of just the needs that were discussed by the classical ‘*ulum al Shari‘ah*’ (The *Shar‘iah* sciences), the reason being the societies in the context of time-space have changed. It is, therefore, important to understand the *maqasid* within the context of contemporary times.

Conclusion

The aim of the present paper was to present that the theory of objectives and intents of *Islamic Shari'ah*, which is termed as *Maqasid al-Shari'ah al-Islamiyah*, can provide a vision through which present and future challenges and opportunities and development of the humanity can be proactively defined, analysed and legalised. It addresses the issue of the objectives of *Islamic Shari'ah* not only as a tool for the development within the traditional framework of our legal thought and practice, but within a more extended spectrum of thought that brings the concept of the objectives of *Islamic Shari'ah* to the overall development as well as the reconstruction of the Muslim thought, personality, culture and civilization. The theme showed in the paper is that the knowledge of the objectives of *Islamic Shari'ah* can play an important role as a universal paradigm in enhancing the abilities and qualities of the *Ummah* to bring a positive change and development from the contemporary social, political and economic malaise. But there is a need to review the framework based on the knowledge of the objectives of *Maqasid al-Shari'ah* in order to ensure its effectiveness in providing the necessary principles, methods and guidelines required in the processes of transformational strategy. Thus, the paper suggests the ways of restoring back the sense of dynamism to the objective approach of *Islamic Shari'ah* in creating the methodological, ontological, epistemological frameworks as a paradigm of development strategies, policies and processes for the betterment of the contemporary *Ummah*.

The objectives of Islamic law (*maqasid*) have become the focus of attention as it tends to provide ready and convenient access to the intellectual, social, political, and economic development of not only the *Ummah*, but also the whole mankind. An adequate knowledge of the objectives of *Islamic Shari'ah* can easily equip the Muslims with insight and provide them with the essential and imperative theoretical framework in which the practical attempt to pursue the jurisprudential work for the welfare of the contemporary Islamic society can be more meaningful and interesting. Thus the knowledge of the Objectives of *Islamic Shari'ah* can be an effective paradigm for the juristic

exigencies, although it is still a necessity to transfuse the concept of *maqasid* into contemporary fields of action as strategies, policies and process.

The values conveyed in the *maqasid* of the law in Islam provide a great starting point for Muslims today to launch into study and action for the benefit of all, and particularly the upliftment of the Muslim civilisation and thought. It provides a common objective appeal constructed upon directions that we have been given in our primary textual sources. It will not be a panacea, but may act as a stimulant, a catalyst, or a detonation wave, for a genuinely participatory and qualitative advancement of *ummah* in its comprehensiveness and totality.

The *Maqasid al Shari'ah* will translate into the development of a framework that will be able to scrutinize the principles and patterns governing the analysis of jurisprudential issues as well as the different concepts and sub-concepts enabling their construction of meanings and answers. The characteristics and its determining indicators also need to be analysed. A comprehensive study of the relevant psychosocial, socio-political, and cultural factors that bear heavily on any analysis within the framework also needs an intellectual provocation. The present era of intellectual malaise and disorder in the *Ummatic* understanding of reordering priorities, rebuilding Muslims' system of standards and values and restoring everything to its logical abode. Its importance in the sense that to develop principles and norms that systemises and lends order to the objectives of Islamic Law.

Notes and References:

- ¹ Some of the most prominent exponents of the maqasid al-Sharī‘ah are: al-Mâturîdî (d.333/945), al- Shâshî (d.365/975), al-Bâqillânî (d. 403/1012), al- Juwaynî (d.478/1085), al-Ghazâlî (d.505/111), Fakhr al-Dîn al-Râzî (d. 606/1209), al-Âmidî (d. 631/1234), ‘Izz al-Dîn ‘Abd al-Salâm (d. 660/1252), Ibn Taymiyyah (d. 728/1327), al-Shâtîbî (d. 790/1388) and Ibn ‘Âshûr (d.1393/1973) For a modern discussion of these, see: Masud, 1977; al Raysuni, 2011.
- ² The word *maqasid* is plural of *maqsid* meaning: destination, intent, purpose, object, goal, aim, end.
- ³ Abu Hamid al-Ghazali, *al-Mustasfa min Ilm an-Usul* (Cairo:al-Maktabah al- tijariyyah,1973,1:139-40.
- ⁴ While al-Shâtîbî has given the same sequence as that of Ghazâlî on p.38 of Vol.1, he has given somewhat different sequence on pp.46-7 of Vol.3 : *al-Dîn, al-Nafs, al-Nasl, al-Mâl, and al-‘Aql*. This implies that he does not consider al- Ghazali’s sequence to be inevitable. The sequence may change in accordance with the purpose of the discussion.
- ⁵ Imran Ahsan Khan Nyazee, *Theories of the Islamic Law: The Methodology of Ijtihad*, Kuala Lumpur, Other Press, 2002; 235.
- ⁶ Muhammad Tahir Ibn Ashur. *Treatise on Maqasid Al-Shari ‘ah*, Trans and annotated by Muhammad El-Tahir El-Misawi. International Institute of Islamic Thought.2006, Herson Verginia ,USA.
- ⁷ The *Qur’an*: 34:28.
- ⁸ This is crucially important because, according to the Qur’an, Prophet Muhammad was sent to all people and not to any particular group (7:158 and 34:128). The words used in the Qur’an are *Rahmatunlil- ‘Alamîn*. The word *al-Amîn* has been understood in different senses by the Qur’ân commentators. Their interpretations vary from the broadest sense of including everything created by God in this universe to the narrowest sense of including everything on planet earth: all human beings, animals, birds, insects and the entire physical environment.
- ⁹ The Qur’an: 16:89