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## Maqasid al-Shari'ah IN MODERN TIMES: AN OVERVIEW OF SOME CONTEMPORARY DEVELOPMENTS

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### Abstract

Maqasid al-Shari'ah is the important theme which is being discussed globally in relation to Islamic law and interpretation of Islamic law in modern times. Since, in the modern times the Muslim societies are facing new challenges and needs a fresh analysis of the problems of the Muslims face today, the actual situation of the Muslims and the reference from the Sacred texts. For such reformative pattern of thinking, Muslim scholars find the theory of maqasid al-Shari'ah very interesting and very relevant. In this perspective, the paper looks into some of the contemporary developments in the field of maqasid al-Shari'ah with the special mention of the objectives proposed to be included in the list of traditionally recognized objectives of Shari'ah in the wake up of modern compulsions and needs.

**Keywords:** Maqasid Al-Shari'ah, Maslaha, Interest, Public Welfare, Objectives.

### Introduction

#### What is maqasid al-Shari'ah

The Arabic term maqasid is plural of the word maqsid, which refers to mean a purpose, an objective, an intent or an end. Maqasid al-Shariah or the objectives of Islamic law are generally termed as the objectives of Islamic legislation which consist of the deeper meanings and inward aspects of wisdom considered by the Lawgiver (Shari') in various aspects and situations of legislation. These include the general characteristics of the Shari'ah.<sup>1</sup>

The general rules and specific proofs of the Shari'ah point to the general principle of Islamic legislation is to safeguard the social order of communities and to guarantee their well-being. Overt textual proofs confirm that the overall objective of the Shari'ah is to remove corruption in every aspect of human activity.<sup>2</sup>

Maqasid al al-Shari'ah is a legal doctrine in Islamic law. It is related to other classical legal concept called as maslahah (public interest). The notion of maqasid al-Shari'ah has become very prominent in modern times among experts of Islamic law, Muslims and non-Muslims alike. The concept of maqasid al-Shariah was first clearly articulated by al-Ghazali (d. 1111) and his teacher al-Juwayni, who argued that public welfare (maslahah) was the general objective in revealing the divine law. To mean the preservation of public welfare (maslahah) was preservation of five essentials of human well-beings<sup>3</sup>, which are:

1. Preservation of the Religion.
2. Preservation of the Life.
3. Preservation of the Intellect
4. Preservation of the lineage.
5. Preservation of the property.

Although most classical-era jurists predict maslaha and maqasid as important legal principles, they held unlike views regarding the role of these legal principles in formation of Islamic law. Some jurists viewed them as supplementary rationales controlled by scriptural sources and analogical reasoning (qiyas). While others considered these legal principles as independent source of law, whose general principles could override specific inferences based on the letter of scripture.<sup>4</sup> The latter view was held by a minority of classical jurists. But in modern times, it came to be championed in different forms and shades by prominent scholars who sought to adapt Islamic law to changing social conditions by drawing on the intellectual heritage of traditional jurisprudence.<sup>5</sup> This class of scholars attempted to expanded the landscape of maqasid to include the objectives addressing the questions of reform and women's

<sup>1</sup> Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*, One world Book, Oxford, 2008, pp. 27-28.

<sup>2</sup> Kamali, Mohammad Hashim. *Maqasid al-Shari'ah: The Objectives of Islamic Law*, Islamic Studies, Vol. 38, no. 2, 1999 (Summer), pp. 193-208.

<sup>3</sup> Ibid. pp. 195-198.

<sup>4</sup> Duderija, Adis. *Maqasid al Shari'a and Contemporary Reformist Muslim Thought: An Examination*, Palgrave Macmillan, New York, 2014, pp. 2-6.

<sup>5</sup> Ziadeh, Farhat. *Usul al Fiqh*, in J. Esposito's (ed.) *The Oxford Encyclopedia of Islamic World*, Oxford University Press, Oxford, 2009.



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rights advocated by Rashid Rida, justice and freedom championed by Muhammad Ghazali, human dignity and environmental conservation argued by Yusuf al-Qaradawi and civilizing the individual and justice contended by Hashim Kamali.

The legal philosopher Abu Ishaq al-Shatibi (d.1388) wrote groundbreaking thesis on maqasid al-Shari'ah in his work *Al-Muwafaqat fi Usool al-Shariah* and defined maqasid al-shari'ah as: the attainment of good, welfare, advantage, benefits and warding off evil, injury, loss of the creatures.

According to al-Shatibi, the objectives of Islamic law are the benefits intended by the law. Thus, one who keeps legal form while squandering its substance and spirit does not follow the law.<sup>6</sup> However, it was not until modern times that Islamic scholars have shown a renewed interest in the maqasid. The scholarship began with the work of the Egyptian Muhammad Abduh, Syrian Rashid Rida, then ibn Ashur (d. 1973 CE) and Allal Al-Fasi. Since the turn of the century, a number of Islamic scholars, including Said Ramadan al-Bouti, Mukhtar al-Khadimi, Taha Jabir al-Alwani, Mohammad Hashim Kamali, Imran Ahsan Khan Nyazee, Ahmad Raysuni, and Tariq Ramadan have advocated the maqasid approach and contributed to its development and application in various allied fields.

Maqasid al-Shariah as a branch of Islamic knowledge dives deep into the rationale of the law and higher intent of Islamic law. It studies the application of Islamic law to achieve its intended outcome and goals, while enduring the spirit of the law. It is through the maqasid approach that the Islamic law can be applied in a more holistic and multidimensional form in diverse contexts.

### The Classification of Maqasid al-Shari'ah

Traditionally, maqasid al Shariah have been classified on the basis of the importance of the interest served in a hierarchical graph. So, the necessary interests were divided into three categories in the descending order of importance:

1. Darurat (Essentials)
2. Hajjiyyat (Needs)
3. Tahsiniyyat (Embellishment)

The Darurat consist of five fundamental objectives: faith, life, intellect, lineage and wealth. These are seen as absolute requirements for the survival of an individual and his spiritual well-being as well. The Shari'ah seeks to protect and promote these essential values and all necessary preservation measures. Theft, adultery or the drinking of alcohol and other intoxicants are prohibited for the reason that they do not conform to the fundamental objectives; rather these are agents of harm to the realization of these objectives. In other words, Darurat organizes the universal theme of the Shari'ah and all the laws formulated are in one way or another related to the protection of these masalih. This includes encouraging the pursuit of knowledge and education to guarantee people's intellectual development and the advancement of arts, sciences, and civilization.

The second category of hajjiyyat (complementary needs) are defined as benefits that seek to remove hardship and severity in cases where such strictness and difficulty do not pose a serious threat to the normal way survival. Hajjiyyat are purposes that are less important for human life than darurat. Some examples of such interests are marriage, means of transportations etc and Islam encourages and regulates these interests. In totality, human life cannot be claimed to be in any sort of serious danger if some individuals choose not to marry or travel. However, if the lack of fulfilling any of these hajjiyyat becomes widespread, these interests move up from the level of hajjah to the level of darurah; as the legal maxim states: A need that is widespread should be treated as a necessity.

The third category, known as tahsiniyyat are translated as the embellishments. It seeks to attain refinement, beauty and perfection in the people's life and conduct. The Shari'ah thus encourages cleanliness of the body and attire for worship and recommends the wearing of perfume when attending the Friday congregational prayer, the wearing of nice and clean clothing, having beautiful spacious homes and means of transportation.

### Addition to Five Classical Objectives in the Light of Modern Developments

One of the contestations with regard to traditional five objectives is that the maqasid al-Shari'ah is not strictly adhering to only these five objectives. Rather, the number of objectives can be increased by adding some authentic objectives obligatory for the times and defining the categorization based on some newer dimensions of expressing the intents of the Shari'ah rooted in its central

<sup>6</sup>Al-Raysuni, Ahmad. *Nazariyyat al-Maqasid* 'Inda Al-Imam Al-Shatibi, Dar Al-Kalimah, Mansoura, Egypt, 1997, p. 129.



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theme of attaining public welfare and warding off anything that is detrimental to the facilitation of public welfare. Muhammad Abu Zahra believed that Shari'ah is a mercy to humanity with three major goals:

1. Development of the righteous individual.
2. Establishment of Justice.
3. Realization of welfares.<sup>7</sup>

In the context of modern developments, Nejatullah Siddiqui proposes addition of some new maqasid <sup>8</sup> to be included as:

1. **Human Dignity:** The Quranic verses (17:70<sup>9</sup>, 49:11,13<sup>10</sup>) are clear in their statement of dignity for humans. The right to human dignity must traverse the identities of race and color, language or geography, religion or one's social status. These Quranic verses talk of human dignity in universal sense and hence as one of its objectives.
2. **Fundamental Liberties:** In the Quranic perspective (67:02,<sup>11</sup> 19: 95<sup>12</sup>, 53: 37-38<sup>13</sup>) the life in this world is a test. It is the freedom of will that makes this test meaningful and responsible for one's acts. If there is no freedom, the legal subjects of Islam cease to be subjects anymore. So the fundamental freedoms include the freedom of conscience, freedom of expression or freedom to gather, unless they use these freedoms as tools abuse what is clearly coming from God or to put curbs on other humans.
3. **Fairness and Justice:** The Quran counts the establishment of justice as the prime goal for raising the Prophets among nations (57:25<sup>14</sup>). The Quran repetitively ordains to establish justice and hence one of the objectives of the Shari'ah. Hashim Kamali comments in establishment of 'adl (justice) as one of the objectives of Shari'ah: Whereas the basic objective of Islam and its Shari'ah concerning the individual is purification of character, in the social sphere it is to establish justice. This Islamic concept of justice is not confined to a merely formal or regulatory justice, but makes it a part of the faith, character and personality of believers.<sup>15</sup>
4. **Elimination of Poverty:** Islam believes in providing equal opportunities to all to give them the opportunity to bring out the best from them and to maintain social justice. In the modern world, one of the major problems is the unequal distribution of wealth. Quran maintains that humans are provided with enough of resources by God on the planet they inhabit (07:10<sup>16</sup>). So removal of poverty is one of the objectives of the Shari'ah as a leap towards offering them a better life and hence better socio-economic condition to live their life responsibly.
5. **Social Equality and Elimination of Economic Inequality:** Islam does not believe in superiority of certain humans over other on the basis of social classes, their faith, languages or race. Hence, Islam is essentially against any sort of injustice done in the name of social inequality. So, it stands as one of the objectives of Shari'ah to come forward with a working theory of equal and fair distribution of wealth among people and hence eliminate the economic injustice and inequality.
6. **Peace and Order:** The absence of peace and harmony is detrimental to one of the major essential rights that humans hold-the right to live. In Islam, it is the prime objective of the legislation to maintain a civilized order on the Earth. So that the people may live their lives peacefully. Hence, in the present scenario of new age war concepts and warfare, it is incumbent to have the process of maintain peace and order as one of the objectives of the Shari'ah.
7. **International Cooperation:** The Quran (03:110<sup>17</sup>, 05:02<sup>18</sup>) very powerfully contends that the nation of Islam is raised to invite people towards goodness and to forbid them from evil and to believe in true God. It also invites people to unite for the cause of fairness and goodness of the people and to abstain from perpetrating injustice and coercion. In the present-day world, this objective becomes more important when are generally living in multi-cultural societies and as a global community.

<sup>7</sup> Abu Zahra, Muhammad. *Tarikh al-Madhahib al-Islamiya fi al-Siyasah wa al-cAqa'id wa Tarikh al-Madhahib al-Fiqhiyah*, Dar al-Fikr al Arabi, Cairo, pp. 291-3.

<sup>8</sup> Siddiqui, Mohammed Nejatullah. *Maqasid Shari'ah*, Markazi Maktaba Islami, New Delhi, 2009, pp. 38-48.

<sup>9</sup> Al-Qur'an, Surah al-Isra.

<sup>10</sup> Al-Qur'an, Surah al-Hujrat.

<sup>11</sup> Al-Qur'an, Surah al-Mulk.

<sup>12</sup> Al-Qur'an, Surah al-Maryam.

<sup>13</sup> Al-Qur'an, Surah al-Najm.

<sup>14</sup> Al-Qur'an, Surah al-Hadid.

<sup>15</sup> Kamali, Mohammad Hashim. *Shari'ah Law: An Introduction*, One world Book, Oxford, 2008, p. 30.

<sup>16</sup> Al-Qur'an, Surah al-Aaraf.

<sup>17</sup> Al-Qur'an, Surah Al-Imran.

<sup>18</sup> Al-Qur'an, Surah al-Mai'da.



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**Conclusion:** In the wake of modern developments and challenges, it is vital to open the debate about the intents the Shari'ah aims from its legal subjects for their well-being. As it is the central theme of the Shari'ah to safeguard the interests and welfare of the people and to ward off all the detrimental tools and causes which adversely affect realization of public welfare. With the radical revolutionary changes on the societies and the institutions that regulate the societies, the scholars of Shari'ah must take note of all these advancements and explore the modern objectives of the Shari'ah to serve its central theme and in a way to impress upon the living nature of Shari'ah.

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