

The nature and purpose of shariah philosophy essay



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The word Maqasid al Shariah later Maqasid is formed of two words, Maqasid and Shariah. Literally they mean main or long-term goals / objectives of Shariah i. e. Islamic Law. The word Maqasid is plural of Maqsad, which means goals or aims. This paper intends to briefly discuss these long-term goals of Shariah. It will start with the meaning and levels of the Maqasid. From there it will embark upon analysing the five Universals of Shariah, (al-Kulliyat / al-Dharuriyyat al-Khams) and finally there will be conclusion. However before discussing in detail about Maqasid it is necessary to shed light on the nature and purpose of Shariah, which is the foundation stone of the concept of this study.

The Nature and Purpose Of Shariah

Shariah is the framework of ultimate reality and the ethical guidance that Muslim scholars have derived from the direct revelation of Allah to man. The ultimate source of Shariah is Qur'an, which is also regarded as the ultimate source of all knowledge about both physical and metaphysical reality. This divine text was revealed directly in human language to the Prophet Muhammad (Salla llahu alayhi wasallam, -later (saw)), and is exemplified in the Sunnah, which reports the Prophet's understanding of this final revelation as shown through his words and deeds.

The main purpose of Shariah is to guide human's search for the truth, hence it touches on both transcendent and material experience. All aspects of every person's spiritual understandings and undertakings, which come under the rubric of purification, or Tazkiyah, should be consciously subject to the reality-check of Shariah. This deeply spiritual nature of Shariah provides the perspective for understanding and acting in accordance with the ethical or moral standards that the creator has provided to guide every person and community's relation with other humans and with the rest of the creation. It can therefore be concluded here that Shariah provides the ultimate criteria for judgment on every aspect of one's individual and social life.

From the above it follows that the process of gaining knowledge of Islam through jurisprudence, and the body of legal advisements so derived is known as Fiqh. The Shariah consists of both specific rules and regulations, known as Ahkam, which are the subject of Fiqh analyses (or Istifta), and of general principles (known also as kulliyat or Universals)[1]induced by the

scholars from the overall study of Qur'an and Sunnah and their application in everyday life. These universals constitute the foundations of Shariah.

The specific directives in Qur'an focus primarily on the elements of formal worship, generally known as ' Ibadat because man cannot reason to this knowledge alone. On the other hand, the general principles of Shariah are derived from the system of reasoning known as Istislah, (hence the word Maslaha), which focuses on common good of mankind. This consists of considerations which secure a benefit or prevent harm but which are, simultaneously, harmonious with the objectives of Shariah. ' Any measure which secure these values falls within the scope of Maslaha, and anything which violates them is Mafsada (' evil'), and preventing the latter is also Maslaha'[2]

Meaning and Categories Of Maqasid

As earlier said, Maqasid are the (long-term) goals or objectives of Shariah. These include everything that is needed to realize the success and good life for the Muslims within the constraints of Shariah. As Ibn al-Qayyim puts it: ' the basis of the Shariah is the wisdom and welfare of the people in this world as well as the Hereafter. This welfare lies in complete justice, mercy, wellbeing and wisdom. Anything that departs from justice to oppression, from mercy to harshness, from welfare to misery and from wisdom to folly, has nothing to do with Shariah'[3]

The existential purpose of Shariah is to be the protection and promotion of three legal categories, namely Dharuriyyat, Hajiyyat, and Tahsiniyyat. The aim of these is to ensure that the interests of Muslims and (community at

large) are preserved in the best of fashions in this world and in the hereafter, for Allah acts according to the best interests of His subjects. In other words, 'the Shariah was instituted for the promotion of the good of believers'.[4]

The Dharuriyyat (lit. necessities),-which comprise of five fundamental universals-, signify those aspects of Shariah that are absolutely necessary for the proper functioning of religious and worldly affairs. Any rapture in these will result in disorder and chaos in this world and in a less than a happy state in the life to come. These, i. e. Dharuriyyat, are maintained by two means: on the one hand, they are enhanced and strengthened, while on the other hand all harm that may be about to affect them is prevented. (Examples for justification of this will follow under the analysis of five universals.)

The Hajiyyat (lit. needs) signify those aspects of the Shariah that are needed in order to alleviate hardship so that the Shariah can be followed without causing distress or predicament. The admission of Araya contract[5], which involves risk, and the abridgement of ritual obligations under the circumstances of hardship and illness, are two examples of relaxing the Shariah when the need to accommodate the pressures of daily life arises. These mitigated laws are needed in order to make life and legal practice of Muslims tolerable. In other words, the function of this category is to mitigate the stiff demands of the category of Dharuriyyat.

The Tahsiniyyat (lit. improvements) refer to those aspects of Shariah such as recommendation to free slaves, to pray added sunnah-prayers before or after obligatory ones, to be charitable to the poor and needy, etc. These are not needed to such an extent that without them the law becomes inoperable

or deficient, and relinquishing them is not detrimental to the Dharuriyyat or Hajiyyat but, but they certainly improve the general character of the Shariah.

Analysis Of Five Necessities (Al-Dharuriyyat Al-Khams)

According to the majority of scholars of Fundamentals of Shariah, (that is, legal theorists or Usuliyyun), the very objective of Shariah is to promote the welfare of the people, which lies in safeguarding their faith, their life, their intellect, their posterity and their wealth. Whatever ensures the safeguarding of these five serves public interest and is desirable'[6]In the following lines it will be shown what is meant by promoting these five necessities, examples of some Shariah injunctions, which are used to justify the importance and universality of these Dharuriyyat. Also some light will be shed if there are any exceptions or criticisms against these rules

Safeguarding and Promoting Life

Life is among the most sacred things in Islam. It comes even before the faith and religion itself. A Muslim is allowed to literary hide his faith if that will protect his life. Quran is full of injunctions about safeguarding and promoting Life. It has provided for the protection of every member of society as long as he does not violate this rule in respect of the others. For example, Shariah has not only requested for the respect of unborn baby after the spirit / Ruh has been breathed into the fetus but also has provided such social duties as respect for non-belligerents in war and the use of dispute settling mechanisms whenever possible to avoid violence that might threaten lives of oneself or others.

In other words Shariah requires Muslims (and humanity at large) to understand that lasting peace can result only from justice and therefore stability should be sought as by product of sound and responsible relationship between the nations. Similarly crime should be combated primarily by addressing the causes rather than the result of the criminal mentality.

But on the other hand Shariah has allowed for Capital Punishment if it is necessary, especially with the aim of protecting life of remaining members of the society. Even though, mercy and forgiveness are highly recommended[7]

Safeguarding and Promoting Faith

This is the mechanism by which Shariah protects itself and the member of its faith. It requires the believers to take it with high respect and be totally committed to it. That is why Innovation in religion and Apostasy are regarded are the most serious Crimes in Shariah[8]. This also involves safeguarding and promoting the very existence and wellbeing of the Muslim Community., and it will necessitate prevention of any harm that is likely to be facing the Muslim Ummah.

On the other hand Shariah gives complete freedom of religion. This means that no one should be compelled to become or remain as Muslim[9]. The issue of Qitaal should not lead to any confusion with this freedom. Basically this was meant to be defensive for the protection of the Muslim Community. Sometimes fighting was conducted as an offensive operation and that will be necessary removal of injustice in order to assure equal rights to all members

of a given society, including the right to embrace any religion which is full assured by Islam.

Safeguarding and Promoting Intellect

Intellect or ' Aql is also among the most sacred things from the Shariah point of view. It has to be protected, promoted and properly used for the benefit of Muslim community and humanity at large. In order to protect intellect Shariah has passed injunctions that prevent any type of Khamr, i. e. intoxicants and anything that will prevent intellect from functioning properly. There is also in Sunnah a prescribed punishment for the drunkards for the purpose of protecting intellect.

Shariah has also made it compulsory for the Muslims to seek knowledge, and the first message to the Muslims was about the importance of knowledge. This indicates that Islam has laid very high emphasis on promotion of human mind. Islamic Civilization was primarily based on this noble principle, and when Muslims started to ignore the role of human intellect, they started to become irrational and therefore were left to the margins of the modern world.

Safeguarding and Promoting Wealth

Shariah has made it very clear that Wealth or Mal has to be protected and promoted. Every individual is entitled to own and keep wealth as long as the resources at his disposal permit him. Regardless of any human differences (i. e. Gender, Race, or Age), everyone is entitled to the right of having his wealth safeguarded and promoted, and this can be done either individually or at family or at society level[10] Shariah did not impose upon Muslims any particular mode of ownership of wealth, which means Muslims are free to

operate a free market mode of ownership or communal mode or social welfare or mixed mode of ownership, whichever they feel suitable in their given society. Shariah only intends to see members of its community having good life, i. e. Hayat al-Tayyibah and that is meant to be in this world and in the hereafter.

On the other hand Qur-an has passed very severe penal law for any acts of theft or robbery. It has condemned any mismanagement of ones wealth or merely spending out of bravado or for idle show[11].

Safeguarding and Promoting Posterity

Shariah is very unique in the sense that it focuses on the family and the right to one's identity as a member of family. In this way it intends to promote human life and society in the best fashion where every member of that society has full respect or dignity. It intends to promote the reproduction of future generations where individual parents will be solely responsible for their offspring and not some kind of governmental councils or commissions. This is done through safeguarding and promotion of the institutions of Marriage and Family. One of the social evils of the modern society is to let Marriage and Family decline as Social Institutions, which has led to enormous physical and psychological hardships to the children who are born outside the wedlock or within the broken family.

On the other hand Islam forbids adultery and fornication and has ordered severe punishment for the people who are committing these sins. It has condemned blasphemous accusations against any member of the society for the reason of protecting good image of that particular society.

Conclusion.

The study of Maqasid is very important aspect in studying Shariah because it gives broader understanding of Shariah itself, its spirit and wisdom. These elements are very important when one (Mufti or Shariah Student for example), tries to formulate Shariah point of view for the given new case in society. For example, there are so many developments in the modern society in the fields of Medicine, Finance, Economics, Technology, etc. It is only through proper understanding of the Maqasid that one will be able to say that Shariah is not obsolete. It is only through Maqasid that one can say without any reservation that Blood Transfusion is allowed even if it is known that filth things (Najasaat) e. g. blood is not to be consumed for the human benefit. This is because safeguarding life is of utmost necessity.

The last point here is to say that the study of Maqasid is about studying the universals of Shariah. Logically speaking Universals are not possible without particulars. In other words particulars of Shariah, i. e. different injunctions and rulings of Shariah are necessary for these Universals (Kulliyat) to exist. Therefore the method preferred if one wants to know Maqasid is through Induction, i. e. through analyzing given set of injunctions and rulings and henceforth formulating general aims. This method, which is known in Arabic as Istiqraa enables Shariah analyst to see the wisdom and spirit of Islam and hence develop principles of Shariah and Fiqh. Abu Is-haq al-Shatibi who is regarded as the father of the study of Maqasid has regarded Induction as one of the main sources of Shariah, but rather as the source of sources because of the role it plays in understanding and deriving its rules and principles[12]