

Al maqasid al sharia

Religion



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The word “ Maqsid” (plural: Maqasid) reflects a meaning of purpose, objective, principle, intent, goal. Maqasid comprise the wisdom and knowledge behind rulings, the objectives of particular actions. As for the term “ Shari’ah ”, some scholars define the word as following strictly the injunctions of Allah or the way of Islam (din). Hence, Maqasid al-Shari’ah represents “ the objectives and the rationale of the Shari’ah.

It encompasses all disciplines, laws, regulations, policies, instructions, obligations, principles, beliefs, devotion and actions designed to protect the interest of human beings in all segments and aspects of life. Various scholars have tried to elucidate the purposes and the objectives of Shari’ah upon which it is established. Among these the exceptional individuals are the Malikite Abu Ishaqal-Shatibi, the Shafite al-‘ Izz ibn ‘ Abd al-Salam, and the Hanbalite Ibn Qayyim al Jawziyyah.

According to Ibn Qayyim al-Jawziyyah, Shari’ ah aims at safeguarding people’s interest in this world and the Hereafter. Referring to the maqasid al-Shari’ ah , al-Ghazali said: “ The objective of the Shari’ ah is to promote the welfare of human beings, which lies in safeguarding their faith, their life, their intellect, their posterity, and their wealth. Whatever ensures the safeguard of these five fundamentals serves public interest and is desirable”. Al-Shatibi approves al-Ghazali’s list and sequence, hereby indicating that they are the most preferable in terms of their harmony with essence of Shari’ah .

Finally, Ibn Ashur provides a broader definition stating that: Both its general rules and specific proofs indicate that the all-purpose principle(maqasad ‘ amm) of Islamic legislation is to preserve the social order of the community

and insure its healthy progress by promoting the well-being and righteousness (salah) of that which prevails in it, namely, the human species. The well-being and virtue of human beings consist of the soundness of their intellect, the righteousness of their deeds as well as the goodness of the things of the world where they live that are put at their disposal.

Maqasid al-Shari'ah : An Overview Maqasid al-Shari'ah calls for establishment of justice, elimination of unfairness and alleviation of privation. It endorses relationship and mutual support within the family and community in general. This has for outcome a preservation of public interest (maslahah) as the most important objective of the Shari'ah. Shari'ah recognizes three areas which constitute well-being, namely, endorsing benefits (maslahah) to people, educating individual and establishing justice.

One of the objectives and the underlying principle of the Shari'ah is endorsing benefits (maslahah) to the people. It is associated with people livelihood in this world and the Hereafter Qur'anic verse: "... and establish regular prayer: for prayer restrains from shameful and unjust deeds; and remembrance of Allah is the greatest (thing In life) without doubt. and Allah knows the (Deeds) that ye do. " (Al-Qur'an , Al-Ankabut: 45). Every verdict in Shari'ah appears with reasoning and with a purpose, which is to shelter and protect public interests (maslahah) in all aspects and segments of life.

It should also be observed that in specific occasions emergence of arguments between endorsement of benefit and avoidance of evil arise. If none appears to be preferable, then avoidance of evil takes precedence over the recognition of benefit. Educating individuals is an essential objective of Shari'ah, too. Education encourages people with faith and Taqwa

(consciousness of Allah s. w. t.) in order to accomplish public objectives. A truthful and moral person can emerge as representative of others and bearer of the ruling of Shari'ah related to ibadah , mu'amalah and jinayah.

Lastly, one of the objectives of the Shari'ah is to maintain the standards of justice (' adl). It must be based on creation of equilibrium which accomplishes rights and responsibilities on one side, and abolishes unfairness and inequality on the other. It must embrace both individual and social justice, regardless whether it is a case of friend or foe, Muslim or non-Muslim, personal or public. Illicit behaviors and wrongdoings are disapproved and punished in order to avoid injustice as it is undesirable and contradictory with the philosophy of Qur'an and the Maqasid al-Shari'ah.

IDENTIFICATION OF THE MAQASID

As already indicated the ulema have differed in their approach to the identification of the maqasid. The first approach to be noted is the purely textualist approach, which confines the identification of the maqasid to the clear text, the commands and prohibitions, which are in themselves the carriers of the maqasid. The maqasid, according to this view, have no separate existence as such. Provided that a command or prohibition is tasrihi (explicit) and ibtida'i (normative) it in itself conveys the maqsud of the Lawgiver.

Although it is generally accepted that textual injunctions must be respected and observed as manifestations of the intentions of the Lawgiver, the majority approach to the identification of the maqasid takes into consideration not only the text but also the underlying 'illah or rationale of the text. 10 The chief exponent of Al-Maqasid, Abu Ishaq Ibrahim al-Shatibi ,
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spoke affirmatively of the need to respect and observe the explicit injunctions, but added, that adherence to the obvious text must not be so rigid as to alienate the rationale and purpose of the text from its words and sentences.

Such rigidity could, of course, then be just as much contrary to the maqasud of the Lawgiver as would be in the case of a conscious and direct neglect of that law. The preferred approach then is to read the text, whether it is of a command or a prohibition, in conjunction with its rationale and objective, for this is most likely to bear the greatest harmony with the intention of the Lawgiver. 11 Al- Shatibi elaborated that the maqasid that are known from such a comprehensive reading of the text are of two types, asliyyah (primary) and tab'iyah (secondary).

The former are the essential maqasid, or the daruriyyah, which the mukallaf must observe and protect regardless of his personal predilections, whereas the latter, the supplementary maqasid, or the hajiyyah, are those regarding which the mukallaf has some flexibility and choice. The comprehensive approach to the textual injunctions of the Shari'ah has given rise to two important questions. Firstly, the question that seeks to establish whether the means to a command, a wajib (obligation) or a haram (prohibition), should also be seen as integral to the goal and objective that is sought by that command.

The general response given to this question is that supplementary aspects of commands and prohibitions are indeed integral to their objectives. Thus, it is generally accepted that whatever might be necessary for the completion of a wajib is also a part of that wajib, and that whatever may lead to a haram is also haram. There has, however, been some disagreement on this, emerging

from certain areas of detail. The second question concerns the silence of the Lawgiver in respect of certain conducts, especially where a general reading of the relevant evidence casts light on the value of that conduct.

The question may be formulated as follows: We know that the maqasid can be known from clear injunctions, but can they also be known from a general reading of the nusus (clear textual rulings) by way of induction? Al-Shatibi's response to this question is possibly the most original. Page 5 of 7 Istiqra' (induction), according to al-Shatibi, is one of the most important methods for identifying the maqasid of the Shari'ah. There may be various textual references to a subject, none of which may be in the nature of a decisive injunction.

Yet their collective weight is such that it leaves little doubt as to the meaning that is to be obtained from them. A decisive conclusion may thus be arrived at from a plurality of inclining expressions. Al-Shatibi illustrates this with an important example. Nowhere in the Qur'an is there a specific declaration to the effect that the Shari'ah has been enacted for the benefit of the people, and yet, this must be the definitive conclusion that is to be drawn from the collective reading of a variety of textual proclamations. 12 To illustrate the point further we may give two more examples.

There is no specific declaration in the textual sources on the classification of the maqasid into the three categories of daruriyyah, hajiyyah and tahsiniyyah or on the conclusion that the Lawgiver has intended that these maqasid must be protected — and yet, through istiqra', this classification and conclusion has generally been accepted by the ulema. Again, there is no specific textual declaration espousing the claim that the protection of the

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five values of life, intellect, faith, lineage and property is of the most primary importance to the Shari'ah — but once again, through istiqla', this has also been generally accepted by the ulema.

It is also to be noted that the inductive method is not confined to the identification of maqasid-cum-masalih alone, but extends to commands and prohibitions. 15 Conclusions arrived at through istiqla', such as those in the above paragraph, are of great overall importance to the understanding and implementation of the Shari'ah. They are not to be seen as being subject to doubt or lacking in credibility by way of being based on speculative reasoning. 14 In fact, al-Shatibi's own position on this was to go so far as saying that the conclusions and positions established through istiqla' are the general premises and overriding objectives of the Shari'ah, over and above the level of the specific rules. Al-Shatibi's approach to the method of induction is reminiscent of knowledge that is acquired of the personality and character of an individual through a sustained association and observation of conduct of that individual. This kind of knowledge is broad and holistic as it is enriched with insight, and is likely to be more reliable compared to, say, knowledge based only on the observation of odd and isolated incidents in the daily activities of that individual.

AL-MAQASID AND IJTIHAD

Having expounded his theory of Al-Maqasid, al-Shatibi advocated and accentuated the need for knowledge of the science of Al-Maqasid as a prerequisite to the attainment of the rank of a mujtahid (jurist). Throughout Muslim history, those who neglected acquiring mastery over the science of Al-Maqasid did so at their own peril, as it made them liable to error in ijihad.

Included amongst these were the ahl al-bida' (the proponents of pernicious innovations), who only looked at the apparent text of the Qur'an without pondering over its ultimate aims and objectives.

These innovators (an allusion to the Kharijites) held steadfastly to the literal text of even the mutashabihah (the intricate segments of the Qur'an) and premised many conclusions on them. They took a fragmented and atomistic approach to the reading of the Qur'an, which failed to tie up the relevant parts of the text together. The leading ulema have, on the other hand, always viewed the Shari'ah as a unity, in which the detailed rules were to be read in the light of their broader premises and objectives. 6 Ibn 'Ashur, the author of another landmark work on Al-Maqasid, also stressed that knowledge of the science of Al-Maqasid was indispensable to ijtihad in all its manifestations. 1 Some ulema, who confined the scope of their ijtihad only to literal interpretations, found it possible, ibn ' Ashur observed, to project their personal opinions into the words of the text, but fell into error as they were out of touch with the general spirit and purpose of the surrounding evidence. We may illustrate this by reference to the differential views taken by the ulema with respect to whether the Zakah on commodities, such as wheat and dates, must be given in kind or could also be given in their monetary equivalent. The Hanafis validated the possibility of this substitution, but some ulema held otherwise. The Hanafi view was founded on the analysis that the purpose of Zakah was to satisfy the needs of the poor, which could just as easily be achieved with the monetary equivalent of the commodity.

Ibn Qayyim al-Jawziyyah likewise observed that where the ahadith on the subject of sadaqah al-fitr (the charity due on the Eid after Ramadan)

sometimes referred to dates and at other times to raisins or food grains, the common purpose in all this was to satisfy the needs of the poor, which could be done with any of these staple foods of Madinah and its environs at that time. The purpose in any of these ahadith was not to confine the payment of the sadaqah to a particular commodity.

A similar example relates to the issue of whether a person may pay his Zakat ahead of time, that is, prior to the expiry of the one year period when it becomes due, and whether he is liable to pay again if he has already paid before that time. Imam Malik, drawing an analogy with Salah, ruled affirmatively that the person would be liable to pay again. Subsequent Maliki jurists, including Ibn al-'Arabi and Ibn Rushd, however, disagreed with this position and ruled that early payment of Zakah was permissible.

Indeed, if someone performs his Salah before its due time, he must perform it again at its proper time. But, there is a difference between Salah and Zakah, in that the former is time-bound to specific times but the latter is not in any such similar ways. Hence, Zakah may be paid earlier, especially if it is prepaid by only a few weeks. Scholars who have taken a non-literalist approach, on the other hand, have often been criticised for departing from certain parts of the textual sources.

Imam Abu Hanifah, for example, was criticised by the Ahl al-Hadith (the Traditionalists), for having departed on occasions from the wordings of particular ahadith. It turns out upon closer inspection, however, that such scholars departed from the text only when they had reached a different conclusion by reading that particular text in the context of the other relevant evidence in the Qur'an and Sunnah. Disharmony and conflict

between the aims and objectives of the Shari'ah and its specific rulings may arise latently.

A mujtahid or a judge may issue a ruling or a decision which appears at that time to be consistent with the text and maqsud of the Shari'ah. With time and further scrutiny, however, it may prove to be not so consistent. A judge may, for example, uphold a duly signed contract and make it binding on the parties. With time, however, the contract may prove to be grossly unfair on one of the parties. In such an eventuality the judge or the mujtahid can hardly ignore the attendant unfairness and insist on the strict adherence to the letter of the contract.

Indeed, according to the Shari'ah laws of obligations, a contract is no longer a governing instrument between the shari'ah al-' aqidayn (the contracting parties) if it becomes an instrument of injustice. The judge must therefore, in order to uphold the maqsud of justice, a primary and all-pervasive characteristic objective of the Shari'ah, set aside the contract. The judge or the mujtahid must, likewise, give priority to the maqasid whenever there is such a latent discord. These discords or conflicts are most likely to occur where the specific rulings have been arrived at through the doctrine of Qiyas (Analogy).

Thus, where a rigid adherence to Qiyas may lead to unsatisfactory results, recourse may be had to Istihsan (Juristic Preference) in order to obtain an alternative ruling that is in greater harmony with the objectives of the Shari'ah. An important feature of the ' Maqasidi' (objectives-based) approach in relation to ijtiḥad and the formulation of specific rules is the attention that the mujtahid must pay to the consequences of his rulings. Indeed, an ijtiḥad

or fatwa would be deficient if it failed to contemplate its own ma'alat (consequences).

The importance of such contemplation is demonstrated by the Prophet's Sunnah. Therein, we note instances where the Prophet paid much attention to the possible consequences of his rulings, often in preference to other considerations. Thus, for example, although acutely aware of the treason and subversive activities of the Munafiqun (the Hypocrites), without and within the Muslim community, we find that he decided not to pursue them, stating simply that " I fear people might say that Muhammad kills his own Companions".

Similarly, although he personally would have liked very much to accept and execute ' A'ishah Siddiqah's suggestion to restore the Ka'bah to its original proportions, as founded by the patriarch Prophet, Ibrahim, again, we find that he decided not to, saying " I would have done so if I didn't fear that this may induce our people into disbelief". In both these instances, therefore, the Prophet did not take what would have been thought to be the normal course because of a foresight of the potential adverse consequences. Finally, we must turn to ijtiḥad in the context of crimes and penalties.

Of course, the normal procedure here is to apply the punishment whenever the cause and occasion for it is present. There may, however, be instances where to pardon the offender would be a more preferable course to take. The mujtahid and the judge must remain open and alert to such possibilities and reflect them in their judgements whenever so required. Al-Shatibi has in this connection drawn a subtle distinction between the normal 'illah that invokes a particular ruling in a given case and what he terms as ' illah tahqiq

manat al-khas (the verification of the particular) in the issuance of ijihad and judgement.

The mujtahid (scholar) may investigate the normal 'illah and identify it in the case, for example, of a poor person who qualifies to be a recipient of zakah, but such an enquiry may take a different course when it is related to a particular individual as to what might seem appropriate or inappropriate to be applied in a particular case. The mujtahid needs therefore to be learned not only of the law and specific evidence but must also have acumen and insight to render judgements that are enlightened by both the overall consequences as well as the special circumstances of each case.

CLASSIFICATION OF MAQASID AL SHARI'AH

Although there are different classifications of maqasid al-Shari'ah, Muslim scholars generally classified them into three main categories: daruriyyat (essentials), hajiyyat (needs) and tahsiniyyat (embellishments). The essentials (daruriyyat) are particulars that are required and considered as vital for the founding of wellbeing in this world and the Hereafter. If society in some way neglects them, the outcome will be anarchy together with disorder of the functionality of the society which will result in total collapse.

The essential masalih (plural of maslahah) or daruriyyat are further divided into five: (i) Preservation of faith/religion (Din); (ii) Preservation of the life (nafs); (iii) Preservation of lineage/descendants/procreation (asl); (iv) Preservation of property (Mal); and (v) Preservation of intellect/reason ('Aql). The embracement of the mentioned values is obligatory to ensure normal functioning of society and welfare of individuals. It is an obligation of society

and people to implement all necessary measures to prevent or eliminate all the barriers that will hinder the realization of these values.

The Shari'ah constantly seeks to embrace and endorse these values and enhance procedures for their continuation and progression. Furthermore, Islam as religion is greatly concerned with eradication of poverty and hardship of individuals and community, which is in consistency with the aims of Shari'ah. This is to ensure that people have prosperous life and that there will be no disruption to their normal life. The needs (hajiyyat) serve as complementary to the essentials. Without the needs, people will face hardship.

However, non-existence of the needs will not create complete disruption of the normal order of life as is the case with the essentials. Ibn Ashur defined the meaning of complementary necessities in the following manner: " It consists of what is needed by the community for the achievement of its interest and the proper functioning of its affairs. If it is neglected, the social order will not actually collapse but will not function well. Likewise, it is not on the level of what is indispensable (daruri). The embellishments (tahsiniyyat) relate to matters which bestow enhancement in the society and guide to improved life.

The admirable illustrations are Shari'ah's guidelines as clean body and attire for purpose of prayer, offering charity and avoiding lavishness and recommendation of supererogatory prayers (' ibadat). The rationale of all these are the accomplishment of integrity and perfection in entire fields of a person's behavior. However, without these values the society will still be able to function and normal life process will not be interrupted. The

illustrations of these matters are: voluntary (sadaqah), and ethical and moral rules, and others.

MAQASID AL-SHARI'AH AND ISLAMIC FINANCE

The significance of the Maqasid al-Shari'ah in Islamic finance originates from the perspective of the wealth in Islamic law. This significance relates also to the objectives of the Islamic law in finance and business transactions and to the overall goals of Shari'ah in wealth. The protection and preservation of the wealth is categorized in the sphere of necessary matters (daruriyyat). In previous section it has been elaborated that essentials necessities are those which, without their preservation, there would be disorder and anarchy in society.

The abolishment of preservation for these matters would have for result loss of everything that we embrace as valued (Ibn Ashur, 2006). This characterization and classification of Maqasid al-Shari'ah demonstrates the most important position of the wealth and the substance of the finance in Islamic law. Therefore, it must be highlighted here that the finance is recognized by Maqasid al-Shari'ah as valuable aspect of life. Furthermore, the finance is preserved by Islamic law in form of Islamic lawful decisions and guidelines.

It is essentially important to stress on the realization of Maqasid al-Shari'ah in the current Islamic finance transactions because of the several important reasons. First, there is a strong relationship between the objectives of Maqasid al-Shari'ah and the objectives of business transactions, as can be observed from the position of the wealth within Islamic law and Maqasid al-

Shari'ah that requests the preservation of wealth in everyday business activities and the promotion of socially responsible activities.

As a result, if objectives of Maqasid al-Shari'ah in business transactions are neglected, it may result in poverty and anarchy. Second, the business transactions in domestic and international trade should be based on the principles of Islamic law, and the fundamental objectives of Maqasid al-Shari'ah in finance and business shall be applied as core guidelines to implement all types of financial transactions. Third, the particular objectives of Maqasid al-Shari'ah in business transactions must have perpetuity and constant outlook of the universal objectives of Maqasid al-Shari'ah .

Last but not the least, the regulations of business transactions should be within the rules and the requirements of Maqasid al-Shari'ah and Islamic law. In other words, Maqasid al-Shari'ah must administer and regulate the Shari'ah principle of the Islamic finance. CONCLUSION The purpose of every civilization is to promote peace, prosperity, and freedom for its own members and for all others through compassionate justice.

The challenge for all of us therefore is how to do this. Hence, The One (Allah) Who creates knows, surely the One Who knows will speak. Since He will speak, surely He will speak to those who possess consciousness and thought, and those who will understand His speech. Since He will speak to those who possess thought, surely he will speak to mankind, whose nature and awareness are the most comprehensive of all conscious beings and indeed He has done by revealing the Quran.

As much as we understand Maqasid al-Shari'ah which are undoubtedly rooted in the textual injunctions of the Qur'an and Sunnah, we will achieve the goal and purpose that is advocated and upheld. 1. MAQASID AL-SHARI'AH IN ISLAMIC FINANCE: AN OVERVIEW, by mirza vezgagic 2. AL-MAQASID AL-SHARI'AH THE OBJECTIVES OF ISLAMIC LAW, Mohammed Hashim Kamali 3. Maqasid al Shari'ah: Strategy to Rehabilitate Religion in America by Dr. Robert D. Crane 4. The Collection of Risale-i Nur, The Letters by Said Nursi