

EFFORTS OF THE CONTEMPORARY MUSLIM SCHOLARS TO THE APPLICATION OF MAQASID AL-SHARIA'H

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Abstract

Contemporary Muslim scholars have embarked on a profound intellectual journey to apply the principles of *Maqasid al-Sharia'h*, a concept rooted in Islamic jurisprudence, to the complex challenges of the modern world. *Maqasid al-Sharia'h*, which translates to the "objectives of Islamic law," seeks to ensure the preservation of essential human interests, such as life, religion, intellect, family, and property. In recent years, scholars have recognized the need to reinterpret and adapt Islamic jurisprudence to address contemporary issues such as human rights, environmental conservation, finance, and technology. These efforts involve reconciling traditional Islamic principles with the evolving needs of society, offering a nuanced and forward-looking approach to the application of Islamic law. The soundness of the application of the *Shari'ah* and related policies is subject to the degree of universality and flexibility of the Islamic rulings with changing circumstances. This paper attempts to explore the efforts of the Contemporary Muslim Scholars in the application of *Maqasid al-Shari'ah*. It tries to uncover specific Contributions made by different scholars across centuries. Secondary data was used in the course of this study in which conventional method was adopted and a descriptive approach was employed. The study finds out that, after the Companion Era, the theory and classifications of *Maqasid* started to evolve. It further, finds out that the theories of *Maqasid* as we know them today were not clearly developed until the time of the later *usulis* of the fifth to eighth Islamic century. The study finally traces the early, as well as contemporary scholars and their efforts toward application of *Maqasid al-Shari'ah*.

Keywords: Application, Efforts Contemporary Islamic Scholars, *Maqasid al-Shari'ah*

1.0 Introduction

1.1 Definition of *Maqasid al-Shari'ah*

The term '*Maqasid*' (plural: of *Maqsad*) refers to a purpose, objective, principle, intent, goal, end, (Ibn Ashur, 20), telos (Greek), finalite (French), or Zweck (German). (Jasser Auda, 27) *Maqasid* of the Islamic law are the objectives/purposes/intents/ends/principles behind the Islamic rulings. (Ibn Ashur 26 & (Jasser Auda, 28), for a number of Islamic legal theorists, it is an alternative expression to people's 'interests' (*Masalih*). For example, AbdulMalik al-Juwaini (d.478 AH/1185 CE), used al-*Maqasid* and public interests (al-Masalih al-aammah) interchangeably. (Al-Juwaini 1400 H & Jasser Auda, 28). Abu Hamid al-Ghazali (d.505 AH/1111 CE) elaborated on a classification of *Maqasid*, which he placed entirely under what he called 'unrestricted interests' (*al-Masalih al-mursalah*). (Al-Ghazali 172 & Jasser Auda, 20), Fakhruddin al-Razi (d.606

AH/1209 CE) and al-Amidi (d.631 AH/1234 CE) followed al-Ghazali in his terminology. (ibn Arabi 91 & Jasser Auda, 28), Najmuddin al-Tufi (d.716 AH/1316 CE), defined *maslahah* as, 'what fulfils the purpose of the Legislator.' (Al Tufi 1419 H. & Jasser Auda, 81). AlQarafi (d.1285 AH/1868 CE) linked *maslahah* and *Maqasid* via a 'fundamental rule' that: 'A purpose (*Maqasid*) is not valid unless it leads to the fulfilment of some good (*maslahah*) or the avoidance of some mischief (*Mafsadah*)' (Al Qarafi 94)

Many scholars attempted to explain the aims and objectives of *Shari'ah*. Among those outstanding scholars are Maliki Abu Ishaq Al-Shatibi, Shafie al- Izz Ibn Abd Al Salam and Hambali Ibn Qayyim Al-Jawizi. The most well-known is the great Muslim scholar Sheikh Muhammad Al-Tahir Ibn Ashur. The translation of his book on *Maqasid Al-Shari'ah* led to a breakthrough in studies of Islamic law in English literature. (Al Qarafi 94).

2.0 The Objectives of *Maqasid Al-Shari'ah*

The objectives of the *Shari'ah* can be divided into three, namely 1, the essentials or necessities (*daruriyyat*), 2, the needs (*hajiyyat*) and 3, the complementary (*tahsiniyyat*). (Al- Shatibi) All the different injunctions of the *Shari'ah* aim at the realization of one of the above objectives. *Maqasid Al-Shari'ah* is an important part of Islam as it teaches us what is good and what is bad, to do good and to prevent bad deeds, and to reason everything we do in our daily lives. Such an approach is the basis of the theory of *Maqasid*. The word '*Maqasid*' is the plural of '*Maqsad*' meaning purpose or objective. The scholars of Islamic law have defined the term in reference to the purpose and objectives of the law and its sources, specifically the Quran and the Prophetic Traditions. The theory of *Maqasid* holds that human interest or benefit and the objectives of the law are interlinked and that, "any independent interpretation of the principles of jurisprudence must be based on what is termed *Istislah* [interest-based reasoning], and that one's understanding of the relevant texts and the conclusions one draws from them must be based on the principle that the objectives of such texts are to achieve benefit and prevent harm". (Al- Shatibi, 26)

In regard to their importance, priority, benefits, and interests were divided by Muslim scholars into three kinds: The essentials (*Daruriyyat*), the needs (*Hajiyyat*), the complementary (*Tahsiniyyat*).

2.1 Categories of *Maqasid Al-Shari'ah*

1-The Essentials or Necessities (*al-Daruriyyat*) The essentials are matters on which the religion and worldly affairs of the people depend upon; their neglect will lead to total disruption and disorder and could lead to an undesirable end. These must be protected and all measures that aim at safeguarding them must be taken, whether by the individual or by government authorities. The essentials (*daruriyyat*) can be further divided into the protection of the five fundamental values (*al-daruriyyat al-khams*), which are necessary for human life. (Muhammad 26) These five values are:

1. Protection of Religion (*al-din*)
2. Protection of life (*al-nafs*)
3. Protection of dignity or lineage (*al-'ird*)
4. Protection of intellect (*al-'aql*)
5. Protection of property (*al-mal*)

The protection of these values include executing all the necessary measures in order to ensure their realization while at the same time ensuring that all possible obstacles to their implementation are removed.

2- The needs (*al-Hajiyyat*) Those interests which are needed or *al-hajiyyat* supplement the five essential interests and refers to those interests the neglect of which leads to hardship of the individual or community although it does not lead to the total disruption of normal life. There are

many examples of *al-hajiyyat* such as the dispensations or legal excuses (*Rukhsah*) that the *Shari'ah* has granted in regards to '*Ibadah* for the travellers and the sick. Travellers are allowed to combine and shorten their five obligatory prayers (al-jam' wa alQasr) and break their fast in Ramadan. A sick person is allowed to pray in the sitting or sleeping position and break his fast in Ramadan. In the area of *Mu'amalah*, the ban of profiteering (*Ihtikar*), for example, or the sale of alcohol so as to prevent its consumption, and concessions, all fall under the category of *hajiyyat*. The basic permissibility (*ibahah*) regarding the enjoyment of victuals and hunting also falls under this category. (Muhammad 26)

3-The Complementary Interests (*al-Tahsiniyyat*): The complementary interests or *al-tahsiniyyat* refer to interests whose realization leads to the improvement and attainment of that which is desirable. Therefore, the observance of cleanliness in personal appearance and in *Ibadah*, moral virtues, avoiding extravagances and measures that are designed to prevent proliferation of false claims in the courts, etc., fall under the category of *al-tahsiniyyat*. The disappearance of *tahsiniyyat* may not interrupt the normal life, but it might lead to the lack of comfort in life. (Kamali, 116-117)

3.0 Historical background of *Maqasid*

3.1 Early Theories of *Maqasid*

In the early centuries between al-Ghazali and al-Shatibi, the influence of al-Ghazali can clearly be seen in terms of the direction in which the theory of *Maqasid* developed. As Ahmad Raysuni documents, the contributions of the scholars during this period served to elaborate the model developed by al-Ghazali.

Al-Shatibi's theory of *Maqasid* is founded on, and originates in, the Maliki School, which possesses an inherent concern for the objectives of Islamic law. Raysuni refers to the Maliki School as "the school of human interest and *Istislah*". The school most concerned about warding off potential evil and harm. He provides extensive documentation of the development of the Maliki School and explains that its knowledge and methods originate with the second Caliph, Umar bin al-Khattab, RA (d. 644).

By contrast, the 14th century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred. (Masud 1995) Similarly, social, political, and economic change formed the catalyst for a renewed focus on the *Maqasid* today.

After the companions' era, the theory and classifications of *Maqasid* started to evolve. However, *Maqasid* as we know them today were not clearly developed until the time of the later *usulis* of the fifth to eighth Islamic century. During the first three centuries, however, the idea of purposes/causes (Arabic: *hikam*, *ilal*, *munasabat*, or *ma'ani*) appeared in a number of reasoning methods utilized by the Imams of the classic schools of Islamic law, such as reasoning by analogy (*qiyas*), juridical preference (*istihsan*), and interest (*maslahah*). Purposes themselves, however, were not subjects of separate monographs or special attention until the end of the third Islamic century. Then, the development of the theory of 'levels of necessity' by Imam al-Juwaini (d.478 AH/ 1085 CE) took place much later in the fifth Islamic century. (Jasser Auda 40)

However, to elaborate more, let us trace the contributions of early scholars and their conceptions of *al-Maqasid* between the third and fifth Islamic centuries.

1. Al-Tirmidhi al-Hakeem (d. 296 AH/908 CE) The first known volume dedicated to the topic of *Maqasid*, in which the term '*Maqasid*' was used in the book's title, is al-Salah wa *Maqasiduha* (Prayers and their Purposes), written by al-Tirmidhi al-Hakeem. The book is a survey of the

wisdoms and spiritual ‘secrets’ behind each of the prayer acts, with an obvious Sufi inclination. Examples are ‘confirming humbleness’ as the *Maqasid* behind glorifying God with every move during prayers, ‘achieving consciousness’ as the *Maqasid* behind praising God, ‘focusing on one’s prayer’ as the *Maqasid* behind facing the direction of the *Ka’bah*, and so on. He also wrote a similar book on pilgrimage, which he entitled, *al-Hajj wa Asraruha* (Pilgrimage and its Secrets). (Ahmad. 26)

2. Abu Zaid al-Balkhi (d.322 AH/933 CE). The first known book on the *Maqasid* of dealings (*Muamalat*) is Abu Zaid al-Balkhi’s book; *al-Ibanah ilal al-Diyanah* (Revealing Purposes in Religious Practices), in which he surveys purposes behind Islamic juridical rulings. He also wrote a book dedicated to *maslahah*, which he entitled, *Masalih al-Abdan wal-Anfus* (Benefits for Bodies and Souls), in which he explained how Islamic practices and rulings contribute to health, physically and mentally. (kamal, 27).

3. Al-Qaffal al-Shashi al-Kabeer (d. 365 AH/975 CE). The oldest manuscript that found in the Egyptian *Dar al-Kutb* on the topic of al-*Maqasid* is al-Qaffal’s *Mahasin-us-Shari’ah* (The Beauties of the Laws). After a 20-page introduction, al-Qaffal proceeds to divide the book into the familiar chapters of traditional books of *Fiqh* (i.e., starting with purification and then ablution and prayers, etc.). He mentions each ruling briefly and elaborates on the purposes and wisdoms behind it. (Izzi Dien, 106 & Jasser Auda 28)

Thus, these ‘meanings’ and ‘reasons,’ on which al-Qaffal al-Shashi is basing the legal rulings, represent an early conception of al-*Maqasid* theory, which was a development in the Shafi’ school. It would add that al-Shashi’s developments of the concepts of necessities (*darurat*), polity (*siyasah*), or moral actions (al- *makrumat*) set up the stage for al-Juwaini’s and al-Ghazali’s contribution to both the Shafi’ theory and al-*Maqasid* theory, via further developments of these terms.

4. Ibn Babaweah al-Qummi (d. 381 AH/991 CE). Some researchers claim that research on *Maqasid* was restricted to the Sunni schools of law until the twentieth century. (Hassan Jaber 2006) However, the first known monograph dedicated to *Maqasid* was, in fact, written by Ibn Babaweah al-Sadouk al-Qummi, one of the main Shia jurists of the fourth Islamic century, who wrote a book of 335 chapters on the subject. (kamal 27) The book, which was entitled ‘*ilal al-Shari’ah*’ (The Reasons behind the Rulings), ‘rationalizes’ believing in God, prophets, heaven, and other beliefs. It also gives moral rationales for prayers, fasting, pilgrimage, charity, caring for parents, and other moral obligations. (Ibn Babaweah 16)

5. Al-Amiri al-Failasuf (d. 381 AH/991 CE). The earliest known direct theoretical classification of purposes was introduced by al-Amiri al-Failasuf. Al-Amiri’s classification, however, was solely based on ‘criminal punishments’ in the Islamic law (*hudud*). Classifications of *Maqasid* according to ‘levels of necessity’ were not developed until the fifth Islamic century. The theory reached its most mature stage (before the twentieth century CE) in the eighth Islamic century.

4.0 *Maqasid* in the Contemporary Era

Modern scholarship introduced new conceptions and classifications of al-*maqasid* by giving consideration to new dimensions. First, considering the scope of rulings they cover, contemporary classifications divide *maqasid* into three levels (Jughaim, 22, 26-35):

1. General *maqasid*. These *maqasid* are observed throughout the entire body of Islamic law, such as the necessities and needs mentioned above, as well as newly-proposed *maqasid*, such as justice and facilitation.

2. Specific *maqasid*. These *maqasid* are observed throughout a certain chapter of Islamic law, such as the welfare of children in family law, preventing criminals in criminal law, and preventing monopoly in financial transactions law.

3. Partial *maqasid*. These *maqasid* are the intents behind specific scripts or rulings, such as the intent of discovering the truth in seeking a certain number of witnesses in certain court cases, the intent of alleviating difficulty in allowing an ill person who is fasting to break his/her fast, and the intent of feeding the poor in banning Muslims from storing meat during Eid/festival days. Moreover, the notion of *maqasid* has been expanded to include a wider scope of people-the community, nation, or humanity, in general. Ibn Ashur, for example, gave *maqasid* that are concerned with the nation (ummah) priority over *maqasid* that are concerned with individuals. Rashid Rida, for a second example, included reform and womens rights in his theory of *maqasid*. Yusuf al-Qardawi, for a third example, included human dignity and rights in his theory of *maqasid*. The above expansions of the scope of *maqasid* allow them to respond to global issues and concerns, and to evolve from wisdoms behind the rulings to systems of values and practical plans for reform and renewal. (Jasser Auda 21)

Contemporary scholarship has introduced new universal *Maqasid* that were directly induced from the scriptures, rather than from the body of Fiqh literature in the schools of Islamic law. This approach allowed *Maqasid* to overcome the historicity of Fiqh edicts and represent the scriptures' higher values and principles. Detailed rulings would, then, stem from these universal principles.

4.1. Efforts of the Contemporary Muslim Scholars to the Application of *Maqasid Al-Sharia'h*

The *Maqasid al-Shari'ah*, which can be translated as the "Objectives of Islamic Law," is a concept in Islamic jurisprudence (fiqh) that aims to understand and apply the underlying goals and objectives of Islamic law. Contemporary Muslim scholars have made significant efforts to apply the principles of *Maqasid al-Shari'ah* in various aspects of Islamic thought and practice. The efforts made by contemporary Muslim scholars can be observe through the following areas:

1. Relevance to Modern Contexts: Contemporary scholars recognize that the traditional legal rulings (fatwas) developed in classical Islamic jurisprudence may not always be directly applicable to modern circumstances. They have sought to apply the *Maqasid* framework to address contemporary issues, such as technology, finance, bioethics, freedom and human rights, in a way that aligns with the core objectives of Islamic law.
2. Social Justice and Equity: Many contemporary scholars emphasize the *Maqasid's* emphasis on justice, equity, and the protection of human dignity. They work to ensure that Islamic legal principles are used to address issues related to poverty, inequality, and social justice, both at the national and international levels. In this context, Yusuf al-Qaradawi (1345 AH/ 1926 CE) and Mohammad al-Ghazali (d.1416 AH/ 1996 CE) also surveyed the Quran and concluded the following universal *Maqasid*: "Preserving true faith, maintaining human dignity and rights, Justice and Equity, calling people to worship God, purifying the soul, restoring moral values,
3. Gender Equity: Some scholars are working to promote gender equity within the framework of *Maqasid al-Shari'ah*, advocating for a more inclusive and equitable interpretation of Islamic law that upholds the dignity and rights of women. However, Rashid Rida (d.1354AH/1935 CE,) and al-Qaradawi explains that proposing a theory in universal *Maqasid* should only happen after developing a level of experience with detailed scripts building good families, treating women fairly, building a strong Islamic nation, and calling for a cooperative world". (Yusuf al-Qaradawi1999).
4. Environmental Ethics: In response to global environmental challenges, some scholars have applied the *Maqasid* framework to address issues related to environmental ethics and sustainable

development. They argue that the protection of the environment is in line with the *Maqasid*'s objective of preserving human well-being. Taha al-Alwani (1354 AH/ 1935 CE), also surveyed the Quran to identify its supreme and prevailing *Maqasid*, which are, according to him, the oneness of God (*tawhid*), purification of the soul (*tazkiyyah*), and developing civilization on earth. (Taha al-Alwani, 21).

4. Islamic Finance: Scholars in the field of Islamic finance have utilized *Maqasid al-Shari'ah* to develop financial products and services that are not only compliant with Islamic law (*Shari'ah* - compliant) but also align with the broader objectives of economic justice, wealth distribution, and avoidance of exploitative practices.

Rashid Rida (d.1354AH/1935 CE,) and Mohammad al-Ghazali (d.1416 AH/ 1996 CE) identify *Maqasid*, included, "reform of the religion, pure natural disposition, reason, knowledge, wisdom, proof, freedom, independence, social, political, and economic reform." (Jasser Auda, 20).

5. Human Rights: There are ongoing efforts by Muslim scholars to reconcile the principles of *Maqasid al-Shari'ah* with universal human rights, emphasizing that many of the objectives of Islamic law align with the values enshrined in international human rights conventions. For example, al-Tahir Ibn Ashur (d.1325 AH/ 1907 CE) proposed that the universal *Maqasid* of the Islamic law is to maintain "orderliness, equality, freedom, human right, facilitation, and the preservation of pure natural disposition (*fitrah*)." (Ibn Ashur, 183)

It is to be noted that the purpose of 'freedom' (*hurriyah*), and human right proposed by Ibn Ashur and several other contemporary scholars, is different from the purpose of 'freedom' (*Itq*) mentioned by jurists. (Al Siwasi p. 513 and Jasser Auda, 18).

Al- itq is freedom from slavery, not 'freedom' in the contemporary sense. 'Will' however, is a well-known Islamic term that bears a number of similarities with current conceptions of 'freedom' and 'free will.' For example, 'freedom of belief is expressed in the Quran, (chapter 18; 29) as the 'will to believe or disbelieve.' In terms of terminology, 'freedom' (*al-hurriyah*) is a 'newly-coined' purpose in the literature of Islamic law. Ibn Ashur, interestingly, accredited his usage of the term *hurriyah* to "literature of the French revolution, which were translated from French to Arabic in the nineteenth century CE," (Ibn Ashur 2001).

6. Medical Ethics: In the field of medical ethics, scholars like al-Ghazali, Ibn Ashur and Al-Qardawi have used the *Maqasid* framework to guide discussions on issues like organ transplantation, genetic engineering, and end-of-life care, ensuring that Islamic principles are considered alongside medical advancements. However, Mohammad al-Ghazali (d.1416 AH/ 1996 CE) included justice and freedom in *Maqasid* at the necessities level. There was other underlying *Maqasid* upon which he based his opinions, such as equality, general ethics including medical and bioethics. (Jamal Atiya & Jasser Auda 49 -119).

7. Counterterrorism and Extremism: In addressing issues related to extremism and terrorism, scholars like Taha al-Alwani (1354 AH/ 1935 CE), Rashid Rida (d.1354AH/1935 CE,) and al-Qaradawi have employed the *Maqasid* framework to emphasize the importance of preserving human life, security, and social harmony as central objectives of Islamic law, while denouncing violence and extremism (Jasser Auda 28).

5.0 Conclusion

Contemporary Muslim scholars recognize the flexibility of the *Maqasid* framework, which allows for the adaptation of Islamic jurisprudence to changing times and circumstances while remaining faithful to the core objectives of *Shari'ah*. Their efforts reflect a commitment to a more holistic and principled approach to Islamic law that takes into account the broader welfare and well-being of individuals and society.

The *Maqasid* structure is best described as a ‘multi-dimensional’ structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications. The theories of *Maqasid al-Shari’ā*, as we know it today, began to develop with the efforts of Scholars of fifth to eight centuries prior of which the idea of purposes/causes (Arabic: *hikam, ilal, munasabat, or ma’ani*) appeared in a number of reasoning methods utilized by the Imams of the classic schools of Islamic law, such as reasoning by analogy (*qiyas*), juridical preference (*istihsan*), and interest (*maslahah*). The views of the contemporary scholars also show that the applications of *Maqasid al-Shari’āh* are not restricted to a particular school, place or time; it is rather an open-ended phenomena which requires more inputs according to the needs of people and time respectably. They added that all these *Maqasid* were introduced from the scriptures. This fusion of the scriptures and contemporary needs for reform gives the *Maqasid* special significance.

Works Cited

- Hassan; J. *Al-Maqasid Fi Al-Madrasah Al-Shi’yyah*, In: El-Awa, Mohamed Saleem, ed. *Maqasid Al-Shari’āh Al-Islamiya: Dirasat Fi Qadaya Al-Manhaj Wa Qadaya Al- Tatbeeq* (Studies in the Philosophy of Islamic Law: Theory and Applications). 1st ed. Cairo: al-Furqan Islamic Heritage Foundation, al-*Maqasid* Research Centre, 2006.
- Ibn Ashur, M. T. Ibn Ashur-Treatise on *Maqasid Al-Shari’āh*, trans. Mohamed El- Tahir El-Mesawi, vol. 1st (London-Washington: International Institute of Islamic Thought (HIT), 2006,
- Jasser, A. M. *Al-Shari’āh An Introductory Guide*, (Herndon, VA: IIIT, 2008)
- Kamali, M. H.. *Shari’āh Law: An Introduction*. One world Publications, 2008.
- Kamali, M. H. The Textbook of Hadith Studies. Islamic Foundation, 2009
- Kamali, M.H. An Introduction to *Shari’āh*, *Ilmiah* Publishers, Kuala Lumpur, 2006,
- Mohamad A. L. Islamic law: an introduction, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006.
- Mohammad, K. I., *Al-Daleel Al-IrshadiIla Maqasid al-Shari’āh al-Islamiyyah* (London: al-*Maqasid* Research Centre, 2007)
- Mohamad A, L. Islamic Law: An Introduction, International Islamic University Malaysia Kuala Lumpur, Malaysia 2006.
- Shihabuddin al-Qarafi, *Al-Dhakheerah* (Beirut: Dar al-Arab, 1994)
- Taha Jabir al-Alwani, *Maqasid Al-Shari’āh*, 1 ed. (Beirut: IIIT and Dar al-Hadi, 2001
- Qaradawi, Kayf *Nata’amal Ma’a Al-Quran Al-’Azeem?* 1st ed. (Cairo: Dar al-Shorouk, 1999).