

## MAQASID AL-SHARI'AH IS A DIVINE SHIELD OF ISLAMIC POLICY

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### Abstract

Shari'ah is the divine law for human beings to regulate their lives according to the will of God. In academia, it became a central focus for a large number of Muslim and non-Muslim scholars. Some considered it revealed law while others considered it a Juristic extraction of law known worldwide as jurisprudence. But it is obvious it is divine in nature as elaborated by Muslim scholarship as per need and requirement for human welfare. In the contemporary era under the influence of secular teachings, the Euro-centric scholarship cogitates it as a private affair but relevant to some issues of Muslim life called personal law affairs and rituals but, Muslim scholarship considered standardized law related to all affairs of life from polity to justice so as to achieve nearness of God (taqwa). It is noteworthy that, though Ghazali codified Maqasid al-Shari'ah within five objectives, other scholars included other necessary aspects which govern all affairs of human life, particularly politics so that no one will be ill-treated. They uphold that it is a human welfare methodology that necessarily, safeguards human interests at local and international levels and makes it incumbent to regulate Muslim life through inclusive and exclusive methods on a priority basis

**Kata Kunci:** *Shari'ah, Maqasid al-Shari'ah, Human welfare, Politics, Religion*

### Abstrak

Syariat adalah hukum ilahi bagi manusia untuk mengatur kehidupannya sesuai dengan kehendak Tuhan. Di dunia akademis, hal ini menjadi fokus utama bagi sejumlah besar cendekiawan Muslim dan non-Muslim. Beberapa orang menganggapnya sebagai hukum wahyu, sementara yang lain menganggapnya sebagai ekstraksi hukum yurisprudensi yang dikenal di seluruh dunia sebagai yurisprudensi. Namun jelas bahwa hal ini bersifat ketuhanan sebagaimana diuraikan oleh para sarjana Muslim sesuai dengan kebutuhan dan kebutuhan kesejahteraan manusia. Di era kontemporer di bawah pengaruh ajaran sekuler, keilmuan Eurosentris menganggapnya sebagai urusan pribadi namun relevan dengan beberapa persoalan kehidupan umat Islam yang disebut urusan hukum dan ritual pribadi. Namun, keilmuan Muslim menganggap hukum yang baku berkaitan dengan semua urusan kehidupan mulai dari pemerintahan menuju keadilan sehingga mencapai kedekatan dengan Tuhan (taqwa). Patut dicatat bahwa, meskipun Al-Ghazali mengkodifikasikan Maqasid al-Shari'ah dalam lima tujuan, para ulama lainnya memasukkan aspek-aspek penting lainnya yang mengatur semua urusan kehidupan manusia, khususnya politik sehingga tidak ada seorang pun yang dianiaya. Mereka berpendapat bahwa metodologi ini merupakan metodologi kesejahteraan manusia

yang harus melindungi kepentingan manusia di tingkat lokal dan internasional dan menjadikannya wajib untuk mengatur kehidupan umat Islam melalui metode inklusif dan eksklusif berdasarkan prioritas.

**Keywords:** Syari'ah, Maqasid al-Shari'ah, Kesejahteraan Manusia, Politik, Agama

Article History: Received 04 September 2023, Revised: 01 October 2023, Accepted: 05 November 2023, Available online 01 December 2023

## A. Introduction

Maqasid *Shari'ah* is the way to understand the basic objectives of life in a more lucid way so that people may understand the purpose of life. It is very significant to know *Shari'ah* is political in nature and governs human life. Politics have higher objectives to implement justice and fascinate equality among fellow human beings. Scholars of Islamic law have a consensus that *Maqasid Shari'ah* has higher objectives being part of the political system. But they have a difference of opinion on how to define and identify those higher objectives. Maqasid scholarship works to implement God's law so that every individual gets equal opportunities according to their capacities. Quran helps to adopt a straight path so that basic objectives of life may be attained without any unjustified way possible through a political agency based on the principles of divinity. According to Quran, it is God who guides to thus e right direction. "God points out the right path. (Qur'an: 16:9)

The objectives of *Shari'ah* are to safeguard human interests through divine command. In Islam *Shari'ah* has prime importance to regulate all affairs of life. All scholars unanimously agree that *Shari'ah* as a term symbolizes laws and regulations to govern human life.<sup>1</sup> Its provisions are a manifestation of God's will, put forth in the Quran and explained further by Prophet Muhammad and later on experts of the law. Such laws are derived with the purpose standardize justice as;

You who have believed, be persistently standing firm in justice, witnesses for God, even if it be against yourselves or parents and relatives. Whether one is rich or poor, God is more worthy of both. So, follow not [personal] inclination, lest you not be just. And if you distort or refuse [to give it], then indeed God is ever, of what you do, Aware." (Surah Nisa'4: 135)

*Shari'ah* being political in nature, guides Muslims to achieve the purpose of life. Islamic political system serves as a basic source of *Maqasid al-Shari'ah* and

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<sup>1</sup>Timothy P. Daniels, *Sharia Dynamics Islamic Law and Socio-political Processes*, New York: Palgrave Macmillan, 2017, p. xiii

provides highly advanced principles and standards of Islamic law which cannot be ignored in present circumstances when the Muslim community is facing challenges of very high magnitude and intensity both in Muslim majority and in Muslim minority countries. In order to achieve the objectives of human development, equality and justice in all spheres of life, the execution of *Maqasid al-Shari'ah* is indispensable. *Maqasid al-Shari'ah* is preordained for human welfare at large and Muslims in particular within the framework of the primary purposes of faith and divine guidance.<sup>2</sup>

In contemporary times apolitical *Maqasid al-Shari'ah* is upheld by scholars, which is a very intricate, complex and rationally perplexing problem, while *Shari'ah* backed by sound political philosophy is a top priority and serves the basic cause of Islam. Scholars came up with the thought that a sound *Shari'ah-oriented* political system serves the welfare of human society and prevents it from wrong and oppressive actions as the purpose of Islam. Maqasid principles are meant for safeguarding religion, life, offspring, wealth and, intelligence. This security is not time-bound but intended for all time, universal, and in terms of *Fiqhi* terminology called *daf al-mafasid and jalb al masaleh* which aims to guide human beings and to make them successful at both individual and collective levels. The major objective of *Shari'ah* is to safeguard humanity from great failures in this world and in the hereafter methodology related to *Maqasid al-Shari'ah* is most important, so that life continues to achieve divine Maqasid and to easily qualify the divine test which humans face up to the day of resurrection (*Yawm ul Qiyamah*). It is imperative to understand the aim of *Shari'ah* and the methodology to achieve the purpose of life, which God vehemently discussed in the Quran as;

﴿وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ ﴿٥٦﴾﴾

*I created the jinn and humankind only that they might worship Me.” (Surah Dhāriyāt: 56)<sup>3</sup>*

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<sup>2</sup>Jasser Auda,, *Maqasid al-Shari'ah* as Philosophy of Islamic Law: A Systems Approach, International Institute of Islamic Thought, London and Washington, 2007, p.16; [Ishak, M.S.I](#) and [Asni, E.](#), "The role of *Maqasid al-Shari'ah* in applying fiqh muamalat into modern Islamic banking in Malaysia", [Journal of Islamic Accounting and Business Research](#), 2020, Vol. 11 No. 9, 2137-54

<sup>3</sup> Abdullah Yusuf Ali, *The Meaning of the Holy Quran*, London: Islamic Foundation, 2016

*Shari'ah*, an Arabic term that has numerous meanings, is a principal symbol and a concern of cultural models that fashioned the cultural representations for Muslims across the globe. In a dogmatic sense, *Maqasid* represents the Islamic provisions and ethical guidelines, all-embracing in the *Quran* and validated and demonstrated by the daily acts of the Prophet Muhammad (SAAS). From a symbolic point of view, it also means, “the way to asylum”, because it is vital for existence and a beacon light in unfavorable conditions.<sup>4</sup> Moreover, it is also declared, an oasis in a desert environment. *Shari'ah* has existence, value and acts that serve as a sanctuary, necessary for survival and accomplishment in the life of Muslims. Muslims in general consider *Shari'ah* as the true representative of their daily life affairs and consider it as a shield to protect their religion, life and property.<sup>5</sup>

*Shari'ah* has evolved from its basic sources, which legitimately uphold the main position in Islamic polity, being a legitimate body of rules. *Shari'ah*<sup>6</sup> is a term that suggests the strong sentiments of its followers as the main source of regulating their life in all circumstances. Westerners and non-Muslim scholars consider it, a very tough and strict medieval code of life that breeds hatred in the hearts of others. For all Muslims, *Shari'ah* represents a system that implements and stimulates human welfare in the form of justice and goodness.

## **B. Evolution and Endurance: The Historical Continuity of Shari'ah from the 7th Century to the Contemporary Era**

Historically speaking *Shari'ah* has a well-established foundation, basics and growth spread from the 7th century to the contemporary era.<sup>7</sup> Historical accounts about *Shari'ah* expound that legal rules were often within the framework of culture and institutional standards and its principles and guidelines are well

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<sup>4</sup>Wael Hallaq, *The Origins and Evolution of Islamic Law* Cambridge: Cambridge University Press, 2005, p. 32; Yasin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta'and Madinan 'Amal*, Curzon Press, 1999.

<sup>5</sup>Lewis, B., *What Went Wrong? Western Impact and Middle Eastern Response*, Oxford: Oxford University Press, 2002, 106

<sup>6</sup>*Ibid*, 14

<sup>7</sup>Joseph Schacht, *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1993, p.9; N J Coulson, *A History of Islamic Law*, Edinburgh: Edinburgh University Press, 1997, pp.103-104

established to fulfil needs at all times.<sup>8</sup> For Muslims, *Shari'ah* serves as an ideology and a powerful slogan, across the globe, demanding the implementation of Sharia, with the cry 'Islam is the solution.'<sup>9</sup> The outstanding importance of *Shari'ah* lies in its divine nature and its principles described in the Islamic primary sources and Muslims undoubtedly consider it as divine law<sup>10</sup>, authorized by God to demonstrate His will through it and was interpreted variously by scholars according to the circumstances. Liberals, radicals and conservatives hold varying opinions just as modernists, traditionalists and fundamentalists hold different views of *Shari'ah*, being advocates of diverse schools of Islamic scholarship.<sup>11</sup>

According to Professor Irshad Abdal-Haqq; "*Shari'ah*, literally means the path to be followed and to mean the path upon which the believer has to stride. Generally, *Shari'ah* means the road to welfare and growth but the technical application of the term as a reference to the law of Islam is traced directly to the Qur'an, wherein the adherents of Islam, are admonished by God to follow undoubtedly *Shari'ah*. "Then we put thee on the (right) Way of religion so follow thou that (Way) and follow not the desires of those who know not as mentioned in Chapter-45 verse-18 of the Holy Quran."<sup>12</sup>

According to Ahmadi, "The sustainable development from an Islamic perceptive is understanding the role of human beings based on responsibility and to care for nature, with a purpose mainly in safeguarding the benefits to all spectrum including the animal kingdom and the environment".<sup>13</sup> So *Maqasid al-Shari'ah* is all-inclusive in nature and deals with issues that are politico-economic, social and personal in significance.

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<sup>8</sup> George Makdisi, *The Rise of Colleges: Institutions of Learning in Islam and the West*, Edinburgh: Edinburgh University Press, 1981, pp. 36-39

<sup>9</sup>Said al-Ashmawy, *al-Sharia al-Islamiyya wa-l-qanun al-misri*, Cario: Maktabat Madbuli al Saghir, 1966, p.11

<sup>10</sup>Otto, Jan Michiel, *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy*, Amsterdam University Press, 2008, p.11; Jan Michel Otto, *Sharia Incorporated A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, Leiden: Leiden University Press 2010, P.43

<sup>11</sup>Mansoor Moaddel *and* Kamran Talattof, *Modernist And Fundamentalist Debates In Islam*, Palgrave Macmillan, 2002, pp.3-7

<sup>12</sup> Irshad Abdal-Haqq, *Understanding Islamic Law: From Classical to Contemporary*, Chapter 1 *Islamic Law: An Overview of its Origin and Elements*. Alta Mira Press, 2006, p.4

<sup>13</sup>Ahmadi, M., *Sustainable Development-Islamic Perspectives*, 2016, [www.ijaur.ir](http://www.ijaur.ir). Retrieved on 8/09/2020

Ibrahim et al. behold, that *Shari'ah*' basic aim is the development and welfare or well-being of humans as well as the natural environment for sustainable development through integrating social and economic development to work for human welfare. They further explained social development means discharge of human rights by providing fundamental requirements of life like food, health care and access to education. Moreover, economic progress correctly means that all people may earn for themselves and for fulfilling the needs of their families.<sup>14</sup> The prime significance of *Maqasid al-Shari'ah* is to protect the divine scheme, attitude and nature of life. All secular philosophies, whether social, economic, or political resulted in human suffering and massacre at a larger scale.

*Maqasid al-Shari'ah* is meant to restrict humans from all unethical activities and promote moral values for the proper disposal of human growth on equal grounds. Islamic polity is responsible for the application of Islamic principles. It is among the top priorities of the *Shari'ah* to appoint uncompromising judges who cannot succumb to any external influence. *Shari'ah* decisions are executed by judges, having varying responsibilities from the interpretation of *Shari'ah* to execute their decisions and depending on the nature of the problem for a long-lasting solution. According to Ibn Nujaym, "Islam provides principles as guidelines to Muslims for regulating their life and in their decision making to implement sustainable development. Principles governing human life concentrate on protecting human interests from any harm under the principle of "any wrong is to be undone".<sup>15</sup>

Generally, Islamic law's basic objective is to provide relief and justice to humans at large. The Quran has a clear message for justice. No blood relation should stand between justice and the one who is the witness of an issue and strongly condemns those involved in any kind of guilt, injustice and oppression. The *Maqasid al-Shari'ah* is the integration of justice with state and human life<sup>16</sup> so that equality before law will flourish as a model of Islamic state. Evidently, impartiality or justice means equality in the ability to associate things together as in an intellectual sense, it might mean equality before the law as the Quran says;

<sup>14</sup> Ibrahim Abiodun Oladapo, Asmak Ab Rahman, *Maqasid Shari'ah: The Drive for an Inclusive Human Development Policy*, *Journal Shari'ah*, 2016, 24/2, pp.330-337

<sup>15</sup> Ibn Nujaym, Z.B, *Al-Asybah wa al-Nazair*, Dar al-Kutub al-Ilmiyyah, Beirut, 1993, p.55

<sup>16</sup>Ibrahim and Ab. Rahman 2016, Op. cit., pp.287-302

“The Believers are indeed brothers.....” (Surah al-Hujurat; 49:10).

Isfahani tried to explain the basic purpose of the *Vicegerency* of God before implementing it in any sphere of life, particularly in the social sphere. He is of the view that one must be able to exercise authority over oneself first before implementing it in society as;

“He who cannot rule over his own soul is not suitable to rule over others. For this reason, God Most High rebukes unworthy men who wish to rule over other people, commanding good and prohibiting evil without having reformed themselves. He declares: Do you command others to be righteous and forget yourself while you recite the Book?”<sup>17</sup>

More than two hundred verses of the Quran are directly related to people involved in injustice and cruelty. Hashim Kamali says that the Qur’an holds more than 350 legal verses of such nature<sup>18</sup> which openly speak about the legal framework of *Shari’ah*. Abdullah Ahmad An-Na’im, declared 500 to 600 Qur’anic verses focus on the legal aspect of the Quran to uphold the task of justice.<sup>19</sup> He also advocated that “the Ijtihad should be applied even to matters governed by clear and categorical texts of the Quran”.<sup>20</sup>

The *Maqasid al-Shari’ah* contains all characteristics of human existence in a developmental way with distinctive prominence on the general well-being of all individuals. In the contemporary era imparting education is completely backed by modern political ideology. Though they consider education as human development indicator, but it is a vague statement because modern day educational system lacks moral aspect which is basic factor of Maqasid-based education. So Lack of moral and ethical teachings becomes a cause of every kind of corruption. If education is supported by an immoral political system cannot rightly guide the human mind to reality. So the core concern of Maqasid *Shari’ah* is to organize society and its educational system with ethical values so that every human being accomplish his responsibility at individual and collective levels. In

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<sup>17</sup>Raghib al-Isfahani, *al-Dhari’ah ila Makarim al-Shari’ah*, Cairo: Dār al-Wafa, 1987, p.92

<sup>18</sup>Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed., Cambridge: Islamic Texts Society, 2003, p.26

<sup>19</sup>Abdullahi Ahmad An-Na’im, *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse: Syracuse University Press, 1990, p.20

<sup>20</sup>An-Na’im, Abdullah, et al. *Human rights and religious values: an uneasy relationship*, Zed Books, 1995, p.239

general human, development economics plays an important role, if it is imparted with basic human objectives to serve the community. But economics is intertwined with state politics and has always had a stronghold on human life. So in *Maqasid al-Shari'ah*, politics must be given higher priority. From an Islamic perspective, sustainable development fulfils the needs of people holistically and without compromising the privileges of future generations, because it takes into consideration both the material and spiritual needs of human beings. It is indispensable that economic growth must stabilize amid worldly life. In this regard Umar Chapra says; "Satisfaction of the spiritual needs requires moral development and that satisfaction of the material needs requires the development of all human and material resources in a just manner in which the needs of all human beings are adequately fulfilled"<sup>21</sup>

*Maqasid al-Shari'ah* was always linked with state power during the classical period of Muslim history. The first two rulers of the Rashidun period directed state officials to work for the upbringing of human society. But later on, the link between *Shari'ah* and governance break down when the rule changed from Caliphate to kingship. In such circumstance a dichotomy was created between politics and *Shari'ah* and few rituals and worldly life were given priority without caring about *Shari'ah* governance system which acts as divine protection. While analysing historical sources, the theory of Maqasid evolved later as a field of interdisciplinary study. Scholars who made earlier efforts on the theory of *Maqasid al-Shari'ah* are Hakim Tirmidhi, Ali b. Ibrahim al-Qummi, Ali ibn Babawayh Qummi, Imam al-Haramayn al-Juwayni (478H) and later on Imam Ghazali developed it from a legal perspective. His theory of *Maqasid al-Shari'ah* was earlier divided into three basic levels of *maslahah* ranging from Essentials (*daruriyyah*), needs (*hajiyyah*) and refinements (*tahsiniyyah*).<sup>22</sup> *Maqasid al-Shari'ah* is meant for the overall protection of religion, life and property. Scholars hold variant opinions about the objectives of *Shari'ah* which Imam Ghazali categorized into five called basic objectives of *Shari'ah*. Ibn Taimiyah is of the

<sup>21</sup> Chapra, M.E., *Islam and Economic Development*, The International Institute of Islamic Thought and Islamabad: Islamic Research Institute, 1993, p.6

<sup>22</sup> Muhammad Al-Ghazali, *Ihya' 'Ulum al-Din* Cairo: al-Maktabah al-Tijariyyah al- Kubra, 1937, p.237



opinion that Maqasid must not be limited to five only but need to be elaborated and other significant aspects like rights of neighbors, rights of Muslims, justice and relation between Muslims. Ibn Ashur held the opinion that instead of being limited to five *deruriyyat* (needs) of society at large to be integrated for the larger benefit of humans, while Audah held that higher values like civility, freedom and human rights need to be incorporated into Maqasid theory.<sup>23</sup>

Imam Abu Hamid al-Ghazali has stated that Shari'ah as purpose is dependent on five objectives: to preserve religion, soul, offspring, wealth and mind. So, everything that includes preserving these five principles is considered a *maslaha*. And everything that resulted in the failure of these principles harms that should be fought and turned into interest. The prohibition of failing or restraining these five principles has always been included in *Shari'ah*, as it works for the interest of humankind. Therefore, Muslims believe that the purpose of the provisions of the legislation is to keep these five essentials. These essentials are indispensable in the interests of the religion and the world, so if they are lost so are the interests of the world. The world would be of corruption and all human destiny in the afterlife to manifest loss. The reason why these five essentials are called objectives is that all of the *Shari'ah* legal rulings are emerged and based upon them.<sup>24</sup>

### C. Dynamic Interpretations of Maqasid in Islamic Thought

The interpretation of Maqasid is not final, it varies in its application and implementation as per circumstances. What earlier scholarship of Islam decided is not absolute and unchangeable. They laid down the foundations of *Maqasid al-Shari'ah* as per the medieval requirements because people across the Muslim medieval era fulfil the religious obligation on traditional lines. Most of the interpretations of the medieval era hardly fulfil the purpose of *Shari'ah* same is the case with *fiqh* which does not fulfil the goals of *Shari'ah* in contemporary.<sup>25</sup> So, researchers who confined their research to the protection of rituals, life and

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<sup>23</sup> Ibrahim and Ab. Rahman 2016, Op. cit., p.293

<sup>24</sup> Mohammad Hashim Kamali, An Introduction to *Shari'ah*, Kuala Lumpur: Dar ul-Ilmiah, 2006, pp.1-7

<sup>25</sup> Muhammad al-Tahir Ibn Ashur, Ibn Ashur Treatise on *Maqasid al-Shari'ah*, Herndon: International Institute of Islamic Thought, 2013, p.2

wealth need to understand modern needs which is possible through a sound political system. In this regard, a paradigm shift is required to focus on the system-based needs which necessitate the protection of all aspects of life. In contemporary circumstances, people have shifted from an exclusive cultural mind-set to a Multicultural lifestyle. Such a shift raised many new challenges like nationalism, minority issues and composite culture to participation in non-Islamic political systems. Many scholars like Shah Waliullah, Allama Iqbal, Maulana Maududi, Mohammad Hamidullah, Muhammad Hashim Kamali, Vali Reza Nasr, Tariq Ramadan, Louay Safi and several Islamic political leaders, including Malaysia's Anwar Ibrahim, Iran's Ayatollah Khomeini, Pakistan's General Ziaul Haq, Turkey's Rajab Tayyib Erdogan and Tunisia's Rashid Ghanoshi and Shaheed President Muhammad Mursi, tried to find compatibility of Islam with modern ideals (human rights, gender equality, pluralism and peaceful coexistence with non-Muslims) of the modern world.<sup>26</sup>

The higher objective of *Shari'ah* is political in nature because it governs humans and fashions their lifestyle. Under dominant Muslim political supremacy such issues were of no significance and were not operative during pious caliphate,<sup>27</sup> but such terminologies materialized after the emergence of *Mulukiyat* (Shift of Caliphate to Kingship) and dominance of colonial powers. To achieve the kernel of *Shari'ah*, the whole life structure needs to be redesigned within the framework of the political objectives of *Shari'ah*. In this regard, some scholars suggested framing Islam within political orientation. Bassam Tibi used the '*Shariatization*' term for achieving the political objectives of Islamization. According to him, it is "one of the key areas in which the twentieth-century political ideology of Islamism invents tradition is its call for a return to sharia law." The process of Shari'atization refers not only to the Islamist agenda of institutionalizing this reinvented conception of *Shari'ah* but also "the claim to derive its laws not from human deliberation but from the will of God is central to Islamist ideology."<sup>28</sup> Shari'atization is an expression of Islamic political ideology

<sup>26</sup>Rane, H., The impact of Maqasid al-*Shari'ah* on Islamist political thought: Implications for Islam-West relations. *Islam & Civilisational Renewal*, 2011, 2(2), 337–357

<sup>27</sup> Mohammad Hashim Kamali (2006), *Op. Cit.* pp.5-9

<sup>28</sup> Bassim Tibi, *Islamism and Islam*, New Haven: Yale University Press, 2012, p.25

derived from basic sources of Islam and is completely free from terrorism and violent Islamism. Its objectives are to be achieved in a justified manner. According to Tibi, “it is a major issue in the distinction between Islamism and Islam,”<sup>29</sup> but in reality, such orientation is an orientalist dichotomy to specify their goal and to create dissent in Muslim scholarship and society. The unified objectives can be achieved by the implementation of Islamic political laws which serve as a shield to avoid any kind of external influence and injustice. Muslim intelligentsia from the early 19<sup>th</sup> century tried to make Islam and democracy compatible for human welfare. Among Arab scholars, Azzam Tamimi (1997) and Rifa’a Tahtawi (d. 1873) considered democracy more compatible with *Shari’ah* than Monarchy.<sup>30</sup> Other distinguished personalities of the Muslim intellectual legacy Jamal ad-Din al-Afghani (d. 1897) proclaimed Pan-Islamic influences in order to revere justice, Shura consultation and adherence to a constitution to overcome authoritarianism and make rulers accountable to the law.<sup>31</sup>

For *Shari’ah* governance political resurgence is necessary to achieve the objectives of religion. Islamic law is meant to maintain individual and collective consciousness of the people for the betterment of humans altogether. Among the major objectives, *Shari’ah* governance needs to be prioritized which encompasses all ingredients of religion. Human nature has a natural tendency to pursue happiness and to live as calmly and comfortably as possible, but this cannot be achieved unless natural ways of the rule are implemented. The tendency of human happiness is directly related to peace and security which can be accomplished reliably through divine rule so as to protect rights in a justified way. In achieving the political objectives of rule for implementation of *Shari’ah* principles, a just, honest and God-fearing power is indispensable. Earnest Muslim scholars, like Maududi, Syed Ahmad Shaheed, Syed Qutb Shaheed, Hasan al-Bana, Muhammad Assad and Ayatollah Khomeini, etc. uphold the thought that politics should be given priority among basic principles of *Maqasid al-Shari’ah*. They believe that sovereignty belongs exclusively to God who guides humans in all walks of life.

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<sup>29</sup> Ibid, p. 161

<sup>30</sup>Tamimi, A. Democracy in Islamic political thought. Lecture given at the Belfast Mosque, October 1997, retrieved on 16/09/2020.

<sup>31</sup>Sherifa Zuhur, Precision In The Global War On Terror: Inciting Muslims Through The War Of Ideas, Strategic Studies Institute , 2008, 31

Bernard Lewis also acknowledged that sovereignty is the central issue perceiving that in principle the state was God's state, ruling over God's people; the law was God's law; the army was God's army; and the enemy, of course, was God's enemy."<sup>32</sup>

Louay Safi upholds that, in the Islamic state legal order is derived from the principle of *Shari'ah* based on vast understanding of behaviour of society. He says;

“In terms of legislation, the domain of the state is to regulate individual behaviour in relation to the society as a whole, termed *maslahah mursalah* (public good), while as the regulation of behaviour between members of society (*mu'amalat*) falls within the domain of the Ummah. Thus, the purpose of the Islamic polity is to “facilitate the realisation of the human undertaking and to coordinate the activities of the Ummah that will enable a society to cope with economic and political challenges and to enhance the quality of life in the community”.<sup>33</sup>

Anwar Ibrahim upholds the thought that democratic Islam is not Western philosophy but terminology based on Islamic perception of human values in order to achieve the objectives of *Shari'ah* through human prosperity. *Maqasid al-Shari'ah* sanctifies the preservation of religion, life, progeny, wealth and intellect, objectives that bear striking resemblance to Lockean ideals expounded centuries later. Apart from the current malaise of authoritarianism plaguing the Muslim world, there can be no question that several crucial elements of constitutional democracy and civil society are also moral imperatives in Islam; freedom of conscience, freedom of expression and the sanctity of life and property as demonstrated very clearly in the Quran, as well as by the teachings of the Prophet Muhammad”.<sup>34</sup>

The Ghazalian theory of higher objectives has an open route for further advancement and enlargement of the classical theory of the *Maqasid* model. Abu

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<sup>32</sup>Bernard Lewis, Islam and liberal Democracy. The Atlantic, <http://www.theatlantic.com/magazine/archive/02/Islam-and-liberal-democracy/308509/95>, 1993, p.95

<sup>33</sup>Louay Safi, The Islamic State: A conceptual framework. The American Journal of Islamic Social Sciences, 1991, 8/2, 221–234

<sup>34</sup>Ibrahim, A. Universal values and Muslim democracy. Journal of Democracy, 2006, 17/3, pp.5–12

Zurah attempted his best to influence the theoretical framework of Ghazali by propounding the philosophy of education and justice as a core issue of *maslahah*.<sup>35</sup> Likewise, amendments to the *Maqasid al-Shari'ah* need to be outlined and modified so as to bring these principles in consonance with modern settings and include new principles within its frame work, so as to satisfy the needs of people and develop idea of the relevance of *Shari'ah* to modern day life.<sup>36</sup>

In the contemporary era, the political framework prevailing in Muslim countries is not based on *Shari'ah* results in corruption and deception. Due to the lack of *Shari'ah* oriented political institutions, it is more difficult to advocate effectively organized rights, protection of faith and life even to advocate women empowerment and liberation which Islam did earlier".<sup>37</sup> But some countries now are trying to give women access to education, economic initiatives and participation in political affairs, protection from domestic abuse and equality before the law.<sup>38</sup> It is necessary that *Maqasid al-Shari'ah* need to be reorganized in this context because *Maqasid* has the potential to make its most significant contribution to the reform of Islamic laws by laying a path towards Islamic democracy as well as the freedom of institutions necessary for citizens to struggle for their rights.

Muhammad Khalid Masud has discussed the issue of political rights which are diminished and dominated by other philosophies. He deliberates on these variations in detail and recaps their influence on political thought as follows:

“.....The economic changes, especially the new developments in the Mediterranean trade, challenged the Andalusian Maliki legal concepts and

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<sup>35</sup>Muhammad. Abu Zahrah, *Usul al-Fiqh*, Cairo: Dar al-Fikr al-'Arabi, 1997, pp.61-71, 711

<sup>36</sup>G.E. Attia, *Nahw Taf'eel Maqasid al-Shari'ah: Towards Revitalizing al-Maqasid*, Herndon, USA: IIIT, 2008, p.12

<sup>37</sup>Halim Rane, *Islam And Contemporary Civilisation: Evolving Ideas, Transforming Relations*, Melbourne University Press, vol.2, 2010, p.114

<sup>38</sup>Sanja Kelly, *Hard-Won Progress and the Long Road Ahead: Women's Rights in the Middle East and North Africa*, in *Women's Rights In The Middle East And North Africa: Progress Amid Resistance* (chapter excerpt available at <http://www.freedomhouse.org/sites/default/files/270.pdf>, Freedom House, 2010, p.7

theories on trade and commerce. In a number of situations, the new trade practices came into apparent conflict with the prevailing doctrines of Islamic law".<sup>39</sup>

The collective nature of *Shari'ah* is upholding general human merit without any discrimination on the basis of beliefs, caste, colour, gender and region. Likewise, the comprehensiveness of *Shari'ah* is embedded in its nature to be implemented in governance to normalise general human life on the basis of equality and justice to accept external contextual changes, both substantial and material changes.<sup>40</sup>

Maqasid issue was stabled in the 12<sup>th</sup> and 13<sup>th</sup> centuries, but the 19<sup>th</sup> and 20<sup>th</sup> centuries had a deep effect on the Muslim world due to the remarkable and long-term psychological, socio-cultural and religious life of Muslims. The economic and political dominance of European colonial rule has a deep impact on Muslim life. Due to the lack of a Maqasid-based political system, European policies created dissent in the Muslim thought resulting in an inter-religious and inter-ethnic conflict, poverty and illusory authoritarian rule which snatched *Shari'ah* governance from the public.<sup>41</sup> Due to the impact of such circumstances, a new breed of Muslim scholarship advocated for the *Maqasid al-Shari'ah* as a full-swing rule for the welfare of society. In order to understand the Chemistry of *Shari'ah* and politics, the liaison between Islam and the nation needs to be understood in its inherent nature. As per Islamic teachings, religion and politics are inherently inseparable institutions. The upholders of this view believe that Islam and politics are inseparable entities and correlative. Symbiosis of religion and nation means mutual need and interdependence. It is clear religion requires politics as a tool for protection and development, while politics need religion as a moral and spiritual force for its official missionary and citizens. The correlative nature of religion and politics brings prosperity and strength to the nation and fashions its outlook on humanitarian values.<sup>42</sup>

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<sup>39</sup>Muhammad Khalid Masud, *Shatibi's Philosophy of Islamic Law*, Islamic Book Trust, KL, 1995, p.86

<sup>40</sup>Afifuddin et.al, Islamic Epistemology in the Socialization of Islamic Sharia and the Implementation of Democracy in Indonesia, *GNOSI: An Interdisciplinary Journal of Human Theory and Praxis*, 2019, Vol. 2(2), 77

<sup>41</sup> Halime Rane, 2010, Op. Cit. , pp. 47-48

<sup>42</sup> Afifuddin, et al; 2019, Op. Cit. p.78

The Muslim scholarship of Al-Azhar believes in the dichotomy of religion and Politics, Shaykh Ali Abdur Raziq believes, Islam does not determine the final system of government; none of the Qur'anic text explains that the nation must be built according to a certain system, republic, caliphate, democracy, theocracy and others. Muslims can choose a form of government that suits their environment.<sup>43</sup>

However, other scholars do not uphold the thought of a dichotomy between Islam and politics. For them, Islam stands within the political framework in its entirety. According to Professor Yasin Mazhar Siddique, it is not permissible to create a dissent between Islam and politics. According to him, the illogical and illegitimate dissent was created by rulers of later ages in political Islam for their personal benefits, for group interests and due to the un-Islamic impact which they adopted from other religions and societies. Due to *Shari'ah* governance, religion gets strength and achieves maximum benefits. Both Islam and politics are intertwined and cannot be separated from each other.<sup>44</sup>

In light of the above facts, the five principles laid down by Ghazali or other principles of *Shari'ah* advocated by other scholars are one way or another dependent on the *Shari'ah* governance. The political system provides a shield to all other aspects of life, necessary for the upbringing of human beings. The same thing was discussed by Ibn Kathir while quoting a prophetic hadith that says, "The Quran implements half of Islam at the individual level while the state implements half of Islam."<sup>45</sup>

#### **D. Maqasid Al-Shari'ah: Charting the Moral Compass of Islamic Law**

Islam is not a mere religion based on some rituals but is a civilization because of its application of *Shari'ah*. In this regard, Gibb said: "Islam is indeed much more than a system of theology. It is a complete civilization,"<sup>46</sup> Islam is not a mere religion but a way of life, a true model of society, culture and civilization.<sup>47</sup> In order to understand the civilizational character of Islam, one must understand that Prophet Muhammad (SAAS) was not merely a prophet, but a

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<sup>43</sup> Sadzali, M. *Islam dan Tata Negara*. Jakarta: UI. Press, 1993, p.139

<sup>44</sup> Ibid, p.91

<sup>45</sup> Ibn Kathir, *Tafsir In Kathir* (urdu), Delhi: Etiqad publishing House, (n.d.), p.369

<sup>46</sup> Gibb, H.A.R, *Whither Islam*, London: Victor Gollencz Ltd. 1932, p. 12

<sup>47</sup> Mortimer, Edward, *Faith and Power: The Politics of Islam*, New York: Vintage Books, 1982, p.16

statesman with the qualities of head of state, a judge and a military commander. Muslims across the globe consider purposefully, that Islam does not separate religion and state, court and mosque.<sup>48</sup> *Shari'ah* is the most important idiosyncratic aspect of Islamic knowledge in the life of state, so that its existence on justice, uprightness, reasonableness and impartiality becomes a source of inspiration for other countries.

Muslim scholarship needs to work firmly to review an Islamic identity in the socio-political context in order to make Islamic polity an undeniable aspect of *Maqasid al-Shari'ah*. Such a concept will give rise to *Shari'ah* governance in order to protect religion, life, progeny, wealth and intellect or sagacity. The second half of the 20th century since political independence from colonial domination witnessed the rise of the voice which advocates *Shari'ah* governance across the Muslim world. A large number of Islamic academicians envision the appropriate role of Islamic politics in society, to provide a reasonable response to the realities of modernity and their relation with Western systems and institutions. A firm ground was provided for the objectives of *Shari'ah* and its role and revival of Islam in its totality by the turn of time.

In order to make Islamic polity a dream come true, Muslim scholarship needs to revisit the classical approach of theory building in this context to interpret and relate the Qur'an as Maqasid tracing back to the administration of the second caliph, Umar bin al-Khattab (d. 644) and relevant Islamic jurisprudence, which accentuates public interest or *maslaha*.<sup>49</sup> Earlier Maqasid was not categorized till the concept was developed by the eleventh and twelfth-century theologian Abu Hamid al-Ghazali (d. 1111) in reference to five fundamental protections: life, religion, property, progeny and intellect. However, this conception was revised and expanded in the fourteenth century by Ibn Taymiyyah (d. 1328) and was developed as a new philosophy of Islamic law by Abu Ishaq al-Shatibi (d. 1388).<sup>50</sup>

<sup>48</sup>Birgit Krawietz, *Islam And The Rule Of Law Between Sharia And Secularization*, Berlin: Konrad-Adenauer-Stiftung E.V., 2008, p.52

<sup>49</sup>Ahmad Raysuni, *Imam Al-Shatibi's Theory of The Higher Objectives And Intents Of Islamic Law*, Herndon: International Institute of Islamic Thought, 2005 pp.38-45

<sup>50</sup>Muhammad Khalid Masud, *The Doctrine Of Siyasa In Islamic Law*, Recht: Van De Islam, 2001, vol.18, pp. 1-29,



The development of *Maqasid al-Shari'ah* further or beyond Ghazali's theory of five principles starts with Izz al-Din Abd al- Salam when he discussed *Maqasid* in larger context and extended the discussion in terms of promoting lawful and unlawful in his work on the *qawa'id al-ahkam* or "legal maxims."<sup>51</sup> A more open-ended list of values, identified by Ibn Taymiyyah, which fulfilment of contracts, preservation of kinship ties, honouring the rights of one's neighbours, sincerity, trustworthiness and moral purity further expanded the *Maqasid*. *Ibn Taymiyyah* objected to the objectives of Islamic law being limited to the five *Maqasid* expounded by al-Ghazali, stating that these five or six do not represent the highest or most significant part of *Shari'ah* objectives.<sup>52</sup>

The work of *al-Shatibi*, however, made a more profound contribution to the theory of *Maqasid* by focusing on the concept of *maslaha* (public interest)<sup>53</sup> as an approach to overcoming the rigidity imposed by literalism and *qiyas* (analogical reasoning). The *Maqasid* theory of *al-Shatibi* is based on an inductive reading of the Qur'an in order to identify the higher objectives, intent and purpose of the Qur'anic verses, which are meant to preserve human interests in both this world and the next. Before *Shatibi* very less importance was given to *Maqasid* by scholars of jurisprudence. Comparatively, it is viewed, very little attention was paid to writing books about Islamic law from the *Maqasid* point of view. It is the need of the hour to study Islamic law from the *Maqasid* point of view and establish a methodology that will enhance significant issues in the like formation of *Shari'ah* governance to protect religion and humans along with their property and progeny. At present, an *ijtihadic* paradigm of *Maqasid al-Shari'ah* is the need of the hour and need to extend *ijtihad* only tool of judgment for human welfare.<sup>54</sup> Muhammad Hashim Kamali declared Quran's most important purpose in the form of leadership character.

“We have not sent you (Prophet Muhammad (SAAS)) but a mercy to the world” (Surah al-Anbiya 21: 107).

The Qur'an's characterisation of leadership is

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<sup>51</sup>Mohammad Hashim Kamali; 2008, Op.Cit. 116-117

<sup>52</sup>Mohammad Hashim Kamali, *Maqasid al-Shari'ah* Made Simple, Herndon: International Institute of Islamic Thought, London, 2008, p.118

<sup>53</sup> Muhammad Khalid Masud, Op. Cit., pp.127-28

<sup>54</sup> Ibid, p.128

“A healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers (and mankind)” (Surah Yunus10: 57).

While pondering upon these verses, it becomes clear that pre-Islamic leadership was oppressive, biased and based on inhuman values which snatched the liberty and freedom of people. In these verses, Prophet Muhammad (SAAS) was guided to behave not like earlier rulers but the two utmost objectives of compassion (*rahmah*) and divine guidance (*Huda*) in the preceding verses are then authenticated by other provisions in the Qur'an and the Sunnah with a purpose to establish justice, exclude prejudice and ease suffering. *Shari'ah* is meant to empower humans to abandon the lavishness of *nafs* (self) such as unrestrained lust and inclination to evil. Instead guides humans to adopt rectitude and veracity to make them worthy to achieve the divine trust of *Khilafah*, on earth. Thus humans are delegated with the duty to establish justice and good governance in accordance with the guidelines of *Shari'ah*.<sup>55</sup>

The laws of the Qur'an and the Sunnah also seek to promote cooperation and mutual support within the family and the society at large. But any untoward situation at the family or society level needs power for a solution. In the Islamic political system, such power is known as *Shari'ah* governance which believes in divine uprightness. Justice itself is demonstration of God's sympathy (*rahmah*) manifested in the realisation of (*maslahah*) considered to be the universal value and objective of the *Shari'ah*.<sup>56</sup> To implement justice Islamic polity or *Shari'ah* governance is incumbent. Without it *Shari'ah* governance, justice to everyone or at all will not be implemented. To work for the *Shari'ah* governance, the five higher objectives of Islam will be achieved easily and *Shari'ah* governance will demarcate the line of *Dawa* work too. If such governance is based on personal greed, it will yield nothing for the general public and cannot cater to the objectives of *Shari'ah*. So, it is necessary to work for the best representation of *Shari'ah*, any able person having a hold on the *Shari'ah* at large will help to publicise the aims of Islamic polity. Shaheed Hasan al Banna eloquently said, “One does not need to seek power, instead find an able person who has the ability to implement Qur'anic plan. I consider them my soldiers, supporters and subordinates. But if such a

<sup>55</sup> Muhammad Hashim Kamali; 2008, Op. Cit. p.14

<sup>56</sup> Ibid, p.2

person is not available then work out to get a hold of the power and “ought to seize it from the hands of any government that does not carry out the commands of God.”<sup>57</sup>

Muslim scholarship has the consensus that Islam includes religion and philosophy; economics and politics; civilization, culture and history. From a progression point of view, it is both a religious faith and a social order. Islam’s religious order is intertwined with its social order. Politically it is an ideology, which governs and sums up its civilizational. According to Ziaul Haque, “Islam aims at discovering those facts and principles which governed the course of the historical development of the Ummah, guided its creative ethos and civilizational role in the past and defined the broad contours of Islamic ideology and thought.”<sup>58</sup>

*Shari’ah is the backbone of the political life of the Islamic system. Its main purpose is to implement justice and eradicate oppression. Maqasid Shari’ah is to inculcate the concept of equality which is possible through reform or tazkiyah. Tazkiyah entails growth in harmony within the tawhidic paradigm of life so that the benefits and needs of all people (in modern-day language citizens) can be preserved in an indiscriminate way. In the Islamic political system, Shari’ah signifies role of vicegerency and accountability. In modern day life, Muslim academia in particular, had left unattended the political system and its role as Maqasid Shari’ah and its constituents or peripheries like genetics, blood transfusion, economic dealings, etc. are discussed at length. Maqasid al-Shari’ah, or the higher objectives of Islam, implies ‘well-being’ of the people which is possible only through the divine guidance of a political system based on divine principles. Across the globe, democratic socialism gave humanity nothing than WW-I and WW-II and is heading towards WW-III. In divine political authority, power and legislation lie under God and humans are trustees in which all human beings are equal as citizens and their wellbeing is the duty of the vicegerent.*

## **E. Conclusion**

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<sup>57</sup>Hassan al-Banna, In Majmu’at Rasail al-Imam al-Banna (Total Collections of al-Banna’s Letters). Chief Editor Ismail Turkey, general supervisor: Jum’ah Amin Abdel Aziz Cairo: Dar al-Tawzi’ wa al-Nashr al-Islamiyyah, 2006, p.356

<sup>58</sup>Ziaul Haque, Islamic Research: Method And Scope, Source: Islamic Studies, 1976, Vol. 15, (Summer), pp.43-56

Maqasid al-Shari'ah is the objective of laws derived from fundamental sources of Islam governing Muslim's life to change the character of the people in two ways: one to reform oneself at an individual level and act as representative of religious guidance and restrict one's self from illegitimate (Munkar) activities. Another is to submit to the authority of God and obey his dictums for the welfare of society and to implement justice for the welfare of the whole of humanity. In relation to this bulk of the legal verses of the Qur'an (more than 350 verses that are political in nature) were revealed in Madinah. While discussing the role and inclusion of polity or Shari'ah governance in the Maqasid al-Shari'ah, it is necessary to consider Islamic polity as the top priority of Maqasid al-Shari'ah. It acts as a divine shield to protect all aspects of religion and provides the impetus, without discriminating on the ritual system of Islam, protection of life and property and intellect. Prioritizing the inclusion of Islamic polity/ Shari'ah governance in all aspects of life and will keep human beings safe from external atrocities or philosophies. Political power plays an important role in safeguarding the religious life and property of the people. A Maqasid approach needs to be redesigned and reoriented according to new circumstances faced by the Muslim community across the globe. Earlier it took juridical status and discussed higher issues in a philosophical sense. Inclusion/induction of new parameters in Maqasid al-Shari'ah on a priority basis needs reconciliation on Ijtihadic or Ijma level for the cultural upbringing at the national and international levels. It is obvious that the cultural and civilizational aspects of any society are intertwined with politics. In this course, the purpose of Maqasid al-Shari'ah needs to be discussed within the rationalist methodology of Ijtihad/Ijma, because a purpose is not valid unless it leads to the fulfilment of social good and avoidance of mischief at all stages. Shari'ah governance is a divine plan for human welfare that contains rules for the public good and normalised behaviour that guides the Muslim community toward prosperity. The operational aspect of Shari'ah is acceptable to all Muslims to achieve public good, like safety and security. If still, political aspects will not get space in the Maqasid al-Shari'ah, the negligence will lead to further disruption and disorder. Shari'ah in its entirety seeks to protect and promote all measures necessary for human advancement in spiritual and worldly life.

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