

The Goals of Islamic Law [Maqasid Al-Shari'ah] and its Wisdom in Mirath

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Abstract

This paper is aim to highlight the goals of Shari'a (Maqasid) meaning, the Maqasid and public interest (Masalih) and the dimation of Maqasid al-Shari'ah. The paper will also try to come up with the wisdom or goal of Maqasid in Mirath.

Introduction

In the name of Allah the Beneficent and the most Merciful, all praise are due to Almighty Allah, peace and blessing of Allah be upon His servant and the seal of the prophets Muhammad (S.A.W), his Companions, Household and those that rightly follows their ways.

This write up aim to explain the meanings of the Maqasid-al-Sahria (objectives of Islamic law) and some aspect of Maqasid al-Shari'a in Mirath. However it is limited to the facts that can be found in the Qur'an and Sunnah of the Prophet (S.A.W).

Maqasid al-shari'a this discipline is a body of knowledge that is both impactful and esteemed. It has existed in some shape or form since the time of the prophet (S.A.W) and his companions until the modern era²⁴. It ought to be said that this body of knowledge did not materialize at once. In fact, it has gone through various stages of evolution until it reached its current form as a distinct body of

²⁴. Journals Ilum.edu.my/alfiqh/index.php/al-fih/article/view/90/32.

knowledge and turned into a discipline even in an academia²⁵. Scholars started looking at this body of knowledge academically towards the beginning of the fourth century A.H and beyond. Among the pioneers in this field were: Imam of al-Haramayn al-Juwayni in his book, al-Burhan fi usul al-Fiqh, then Imam al-Ghazali in his book, al-Mustasfa fi Usul al-Fiqh, Imam al-IzbnAbd al-salam in his book, Qawa'id al-Ahkham fi Masalih al-Anam, and al-SHatibi in Al-Muwafaqat, who is considered the reference in this discipline. Then came IbnAshur and his book, Maqasid al-Shari'a al-Islamiyyah, he is considered as the leader of this discipline in the modern age²⁶. In the context of the evolution and revival of modern Islamic thought and its major Islamic disciplines, there is an increasing interest in the study of the higher objectives of Shari'ah (Maqasid al-Shari'ah) because it represents the fundamental values of Islam and its basic doctrine and legislative principles. It comprises the basic ingredients of permanency, uniformity and harmony of the revival of Islamic thought in its myriad issues and dimensions. The interest in this field continue to rise to the extent that you can coin the term Maqasidic Revival in the various Islamic discipline and thoughts²⁷.

THE MEANING OF MAQASID AL-SHARIA

Maqasid al-Shari'a is the aims or goals intened by Islamic law for the realization of the benefit to mankind.

"...say" in them is great sin, and some benefit for men, but their sin is greater than their benefit..." (Q2:219).

Maqasid al-Shari'ah is an Islamic legal doctrine together with another related classical doctrine, Maslaha (Welfare or public interest), it has come to play an increasingly prominent role in the modern times²⁸. The notion of Maqasid was first clearly articulated by al-Ghazali, who argued that Maslaha was God's general purpose in revealing the divine law, and that its specific aim was preservation of five essentials of human well-being: Religion, life, intellect,

²⁵. Ibid, 90/32.P 4.

²⁶. Ibid, 90/32 p. 5 -6.

²⁷. Ibid 90/32.P 9.

²⁸. Duderinja, A. (2014) Contemporary Muslim Reformist: An Examination, Springer.

offspring and property. The jurist of the classical era recognized Maslaha and Maqasid as important legal principles, they held different views regarding the role they should play in Islamic law²⁹ some of the jurist viewed them as auxiliary rationales constrained by scriptural source [i.e Qur'an and Sunnah]³⁰. While others regarded them as an independent source of law, whose general principles could over ride specific inferences based on the letter of scripture³¹. When the letter views was held by a minority of classical jurist, in modern times it came to be championed in different forms by prominent scholars who sought to adapt Islamic law to changing social conditions by drawing on the intellectual heritage of traditional jurisprudence. These scholars expanded the inventory of Maqasid to include such aim of Shari'ah as reform and women's right, justice and freedom and human dignity and rights.

The primary objectives of Maqasid al-Shari'ah is the realization of benefit to mankind, concerning their affairs both in this world and in the hereafter. It is generally held that Maqasid al-Shari'ah in all its branches aim at security the benefit for the people and protecting them against corruption and evil.

Maqasid al-Shari'ah explain the wisdom of rulings that enhances social cohesion, which is one of the wisdom and behind e.g charity, being good to one's neighbors and greeting people with peace.

MAQASID AND MASALIH [PUBLIC INTEREST]

The term Maqasid means purposes, objectives, principles, intents, and goal³².

Maqasid of the Islamic law are the objectives, purposes, principles behind the Islamic rulings for a number of Islamic legal theorists, it is an alternative expression to people's interest Masalih. A famous scholar Abdul-Malik al-Juwaini one of the earliest contributor in this discipline theory, use al-Maqasid and public interest [Al-Masalih Al-Ammah] interchangeably³³. (with the same meaning).

²⁹. Brown, J. (2009), Maslaha. In John L. (Ed), The Oxford Encyclopedia, Oxford University P. 3.

³⁰. Gleave, R.M (2012), Maqasid al-Shari'a, Encyclopedia of Islam. Britannica pp 7/8.

³¹. Opwis, R. (2007), The Concept of Maslaha in Classical and Cont Legal Theory Stanford University Press.

³². IbnAshur, M.T. (2006) Treatise on Maqasid al-Sharia. El Misewi, M.T. (Trans) Vol. I Int- Institute of Isl. Thought Washington, London P. 11.

³³. Rudolf J. (2001) Law as Means to an End, Husik (trans), 2nd ed. (New Jessey):, The Boston or Co.p.xxxx.

- Najmuddin at Tufi, defined Maslaha as: ‘what fulfills the purpose of the legislator.
- While al-Qaraf; linked Masalih and Maqasid by a fundamental rule that stated a purpose; Maqasid is not valid unless it leads to the fulfillment of some good i.e Maslahah or the avoidance of some mischief (Mafsadah)³⁴. Therefore, Maqasid, and Masalihi.e purposes, objectives, principles, intents, goals, in the Islamic law are there for the interest of humanity.

THE DIMENSIONS OF MAQASID

The purposes of Maqasid al-Shafi’ah themselves are classified in various ways, according to a number of dimensions that includes among others:

- a. The level of necessity (the traditional classification)
- b. Scope of rulings aiming to achieve purpose.
- c. Scope of people including purpose
- d. Level of universality of purpose.

1) (Level of Necessity), of Maqasid, the Jurist divided them into classifications of necessity, which are necessities [Daruriyat], needs [Hajiyat] and luxuries [Tahsiniyyat]. Daruriyyat (i.e Necessities) are further classified into what preserve one’s religion, soul, wealth, intellect, and leanage³⁵. Some jurists added the preservation of honour to the above five widely popular necessities. These necessities were considered essential matters for human life itself. There is also a general agreement that the preservation of these necessities is the objective behind any revealed law³⁶. Purpose at the level of needs are less essential for human encourage marriage, trade and means of transportation. Islam encourage and regulates these needs, however, the lack of any of these needs is not a matter of life and death especially at an individual levels or basis. Purposed at the level of luxuries are beautifying purpose such as using perfume, stylish clothing and beautiful homes. These are things that Islam encourage but also asserts how they should take a lower priority in one’s life.

To remedy the above short comings, modern scholarship introduced new conceptions and classification of al-Maqasid by giving consideration to new

³⁴. Al-Qarafi, S. (1999). Al-Dhakheerah. Daral-Arab, Beirut. Vol. 5 p. 478.

³⁵. Ibn al-Arabi, (ND). Al Ghazali Al-Mustapha, Vol. P. 172.

³⁶. Al-Shatib, (ND) Al-Muwataqat Vol. 3.P. 5.

dimensions: first considering the scope of rulings they cover, contemporary classifications divide Maqasid into three levels viz:

1. General Maqasid
2. Specific Maqasid
3. Partial Maqasid

1) general Maqasid: These Maqasid are observed throughout the entire body of the Islamic law, such as necessities and needs as mentioned above and newly proposed Maqasid such as justice. As he said in the glorious Qur'an "Allah command you to tender back your trust to those whom they are due. And when you judge between man and man, that you judge with". (Q4:58). And in another verses:

"We send down to thee the book in truth that you may judge between men, as guided by Allah, so be not (use) as an advocate of those who betray their trust". (Q4:105).

2) Specific Maqasid: These Maqasid are observed throughout a certain chapter of Islamic law such as welfare of children in family law:

"The mothers shall give suck to their offspring for the two whole years...." (Q4:45).

3) Partial Maqasid: These Maqasid are the "intents" behind specific script or rulings, such as the intent of discovering the trust, in seeking a certain number of witness in certain court cases, the intent of alleviating difficulty in allowing an ill and fasting person to break his/her fasting and the intent of feeding poor in banning Muslim from storing meat during eid/festival days.

THE MEANING OF MIRATH [INHERITANCE]

In Islamic jurisprudence there are two (2) words used for the law of inheritance viz; Al-Mirath and Al-Fara'idh. The latter is more frequently is a derivation from the verb 'Waratha' meaning to inherit anything. Literally it connotes the handing over of a thing from one person to another³⁷.

The word Al-Fara'idh is a plural of Al-Faradha which is also derived from the verb Faradha; literally means 'A fixed share'³⁸. In the context of law, it is a knowledge about some rules of Shari'ah which guide us who will inherit and

³⁷. Zohaili, W. (1985), Al-Fiqh, Al-Islamiy. The Mascas. P. 243.

³⁸. Mardini, M.M. (1988), Al-Rabiyyah Fi ilm Fara'idh. Damascus P. 12.

who will not and what shares will go to the heirs from the property of their deceased relatives³⁹.

The death of a person brings about transfer or handing over of most of his rights and obligations to persons who survive him. And are called Wuratha' that is heirs and representatives.

The transmissible rights include all rights to property as well as rights, connected with property, and other dependent rights, such as debts, rights to compensation e.t.c there are also the transmissible obligations which are capable of being satisfied out of the deceased's estate.

What is left after the last needs of the deceased have been satisfied namely; after the payment of funeral expenses and the discharge of his obligations and debts., is to be distributed according to the law of Mirath as defined in the Qur'anic injunctions⁴⁰.

“Allah directs you as regards your children's [inheritance]; to the male, a portion equal to that of two females; if there are only daughters, two or more, their share is two thirds of the inheritance; if there is only one (daughter), her share is a half for parents there is one sixth share of the inheritance to each...”

In Islamic law there are certain bases of inheritance, they are important elements, if any one of them is missing a given case, then there is no inheritance they are three (3)⁴¹:

1. Al-Mawarith – the deceased person.
2. Al-Warith – the heir.
3. Al-Mourooth – the estate/properties.

1. Al-Mawarith: A person who died in fact or in law and left behind some inheritable property. In the Qur'an Allah said:

“From what is left by parents and those nearest related, there is share for men and women whether the property is small or large a determinate share”⁴².

2. Al-Warith: The relatives to the deceased are entitled to get share from the deceased's property.

³⁹. Al-Sayyed, (1968), Fiqh Al-Sunnah. Kuwait, Vol. 3, P. 498.

⁴⁰. Muhammad Amin, A. (1996), Rdd Al-Muhktar, A Commentary on Durr Al-Mukhtar. Cairo pp. 535 – 537.

⁴¹. Mardini, M.M. (1988), Al-Rabiyah Fi ilm Al-Fara'idh. Damascus. P. 12.

⁴². Ibbidi (Q4:7)

“...And those nearest related there is hare for men and women...”⁴³.

3. The Maurooth: The property of the deceased person; is it also known as Al-Tarika, either it is movable or immovable. The property also include the dissimilar [Qiyami] and are not interchangeable, like land, animals, houses e.t.c.

While and those properties whose unites or parts are similar to each other and they interchangeable without much differences (Mithlihi). e.g orange, coins and books.

THE WISDOM AND MAQASID OF MIRATHS IN THE LAW OF INHERITANCE

The Islamic law of Mirath as part of the integral part of life of human being. Allah the Almighty in his infinite mercy and wisdom has prescribed in a number of verses the says of inheritances in Islam. In deed the revelations of the Mirath in the Qur’an and Hadith are privileged and honour to mankind for Allah proclaimed in the Qur’an that

“We have honoured indeed to have a man’s succession plan constructed and structured by the All-knowing Allah some several years before his creation”⁴⁴.

Allah Says

“From what is left by parents and those nearest related there is a share for men and women whether the properties be small or large...”⁴⁵

The verse above stipulates that both male and female relations of the deceased are entitled to their proportionate shares.

The science of the distribution of the estate takes prominent position in the two highest sources of Islamic law; i.e. the Qur’an and Sunnah. The Qur’an contains

⁴³. Abdullahi Y.A, The Holy Qur’an, Translation and Commentary, [Beirut, Dar al-Arabia, 1986]. (Q4:7).

⁴⁴. Ambali, M.A (2014). The Practice of Muslim Family Law In Nigeria. Prinstone and Associate Pub. Company, Lagos, P. 340.

⁴⁵. Abdullahi Y.A, The Holy Qur’an, Translation and Commentary, [Beirut, Dar al-Arabia, 1986]. (Q4:7).

about 35 verses referring to inheritance and these are known as Ayatul Al-Mawarith⁴⁶.

The Qur'anic verses of the distribution of estate are in Suratul Al-Nisa'i (Qur'an Chapter 4) verse 7 – 10 and 176 – 177 respectively. Allah the exalted apportioned the inheritance with his wisdom and his knowledge. He distributed among the relative in a better and more honest way, in conformity with his extensive comprehensive mercy and knowledge. The verses of inheritance and Ahadith of the prophet have brought forth comprehensively all possible incidences of inheritance some of these incidences are plainly clear that everyone can understand while others need to be considered and treated with care⁴⁷.

The essence of those verses are to moderate the economic differences between the haves and have not i.e to keep wealth in circulation and to encourage its distribution among many people⁴⁸.

Therefore rules relating to inheritance in Shari'ah based on the principles that the property which belongs to the deceased should devolve on those who by reason of consanguinity or marital relations have the strongest claim to be benefited by it and in proportion to the strength of such claim. The deceased may, however, leave more than one person so related to or connected with him that it would be difficult to say with regard to any one of them that his claim should all together supersede that of the others. Allah the exalted say in the glorious Qur'an;

“Of your parents and sons you do not know which of them are the nearest and of most benefit to you”⁴⁹.

Conclusively: the goals and purpose of Shari'ah has been expanded to include a wider scope of people the Community, Nationa or Humanity in general.

In Islamic law of inheritance in those cases of distribution of an estate among the heirs in such order and proportion as a most in harmony with the natural strength of their claims. Allah knows best.

⁴⁶.Hussain, A. (2005). The Islamic Law of Succession.Durussalam Riyadh P. 26.

⁴⁷. Aliyu, I, (2005), Inheritance in Islamic Law.Zazzau Ventures P. 10.

⁴⁸. Sapp, S. (1996), Views on Legacy and International Transfers, Generation San Calif, Alu Library PP. 31 -6.

⁴⁹.Abdullahi Y.A. The Holy Qur'an, Translation and Commentary, [Beirut, Dar al-Arabia, 1986]. Q2:180.

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