Maqāṣid al-Sharī'ah: An Interpretive Paradigm to Engage with Modernity

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Abstract

Maqāṣid al-Sharī'ah is the umbrella term representing the higher goals and objectives of the Sharī'ah, the Divine path decreed by the Creator for the welfare of humanity herein and hereafter. Human society is an evolving organism and subject to a continuous change so much so that it can be justifiably said that "change is the only constant." The modern society is the epitome of this change as it witnessed rapid and profound transformation drifting away radically from its past. The magnitude of change in the modern period is such that it supersedes the overall transformation in human society from its inception to the pre-modern period. The characteristic features of the modern society are designated by the term 'modernity' which, in the words of Anthony Giddens, is "the embodiment of modern society." To sustain the claim of universality of the Islamic Sharī'ah in the face of such enormous change, it becomes imperative for Muslim scholars to employ an interpretive paradigm that addresses the challenges of the present times and thereby seeks to ascertain the relevance of tradition in the age of modernity. One such interpretive paradigm is Maqāṣid al-Sharī'ah, that brings about a purposive study of the Islamic Sharī'ah thus addressing the demands of 'reason' (along with revelation) that is one of the salient features of modernity. The present paper seeks to discuss the role of Maqāṣid al-Sharī'ah as an interpretive paradigm to engage with modernity.

The concept of the 'purposes of *sharī'ah*' *(maqāṣid al-sharī'ah)* not only sustains the universality claim of Islamic law but also helps Muslims in adapting to the ever-changing circumstances. To highlight the relevance of *maqāṣid al-sharī'ah* in engaging with modernity, the definition(s) of *maqāṣid al-sharī'ah* are discussed below. It is followed by a discussion of the concept of modernity. Finally, the relationship between *maqāṣid al-sharī'ah* and modernity is highlighted.

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Defining *Maqāṣid al- Sharī'ah*

The word *maqāṣid* is the plural of *maqṣid*, derived from the Arabic trilateral root word "*qaṣada*" and conveys several meanings, including: (i) to aim at something, to come to it, to head towards it; (ii)straightness of a path as in the Qur'ānic verse, "And upon Allah is *the direction of the way*[1] (*wa'alā Allah qaṣd al-sabīl*)…." (16:09); (iii) justice and moderation as in the Qur'ānic commandment "And be thou modest in thy gait"[2] (*waqṣidfīmashyika*) (31:19) and the Prophetic narration "Be just, and you will attain the goal",[3] meaning "Be balanced and moderate." The first meaning is the most inclusive and the closest to what is actually intended by the term "*maqāṣid al-sharī'ah*" as the word "*qaṣd*", verbal noun form of "*qaṣada*", means intention *(niyyah)*, purpose, aim, end, goal, and objective.[4]

The literal meaning of the word "*sharī'ah*" is derived from its trilateral root word *shara'a* denotes clearness and exposition. It also denotes a source of water. *Shara'afī* means to begin, to start, to commence, to go into, to enter upon. But *sharra'a* has an elementary meaning of 'creating' law to enact. Thus, the word *sharī'ah* is understood as law *(qānūn)* or code. Al-*Sharī'ah al-Islāmiyyah* is translated as Islamic law or law of Islam. Therefore, *Sharī'ah* is a means of abiding by the requirements of obedience to God; it is also said that it is the path of religion.[5] Imam Feisel Abdul Rauf writes:

> The word *Sharī'ah* in Arabic is a verbal noun stemming from the root *sh.r.'*, meaning to initiate, introduce, or ordain. It refers to the sum total of God's *shar'*, His revealed law and the eternal set of values He ordained for human beings to acknowledge as the basis of their law. *Sharī'ah*, literally meaning a path leading to water, is figuratively the path trod by all humans to attain God's grace and reward in the Hereafter.[6]

The Qur'ān projects Prophet Muhammad as the testifier to the revelations received by the prophets before him. Likewise, believers are asked to have faith in all the preceding messengers as well as the revelations they received from Allah. Thus, Islamic commandments are not specific to the Prophet Muhammad and his community. Rather, they are universal commandments revealed throughout history. Thus in its widest and most inclusive sense, the term *Sharī'ah* refers to the Divine ordinances, the set of laws ordained by God the Lawgiver *(Shāri')* for all of humankind,[7] as declared in verse 42:13: He has ordained *(shara'a)* for you in the faith what He had enjoined upon Nūḥ and what We have revealed to

thee, and what We had enjoined upon Ibrāhīm and Mūsā and Īsā, saying: establish the faith, and be not divided in it.[8]

The above verse makes it evident beyond any doubt that *Sharī'ah* is "*that eternal Divine Law that carries and embodies the Divine intent for humankind.*"[9]

The term *maqāṣid al-sharī'ah* comprised of the two words *maqāṣid* and *sharī'ah* discussed above, thus, represents the things aimed at by the *sharī'ah* in all of its rulings, rather both laws as well as moral values. The term has been in vogue in Islamic literature since very early times but a precise definition of the same is lacking in the classical literature on *maqāṣid*. Nevertheless, Aḥmed al-Raysūnī argues that it was in the works (like *al-ṣalāhwamaqāṣiduhā* and *al-Hajj waAsrāruhū*) of Muḥammad ibn 'Alī al-Tirmidhī that the term *maqāṣid* was used in the technical sense for the first time. He used the terms *maqāṣid* and *'illah* in a strictly technical sense. In fact, he has written some treatises on the wisdom and logic of the acts of worship reflecting the theme of *maqāṣid*.[10] Even Shaṭibī, who is regarded as the master architect of the doctrines of *maqāṣid* did not provide a precise definition of *maqāṣid al-sharī'ah* most probably because of the fact that he wrote exclusively to other scholars rather than to laymen as is witnessed by the following statement:

> The reader should not expect to benefit from this book until he is well versed in the science of the *Sharī'ah*, its roots as well as its branches, its transmitted texts and their rational understanding. Moreover, he must not be disposed to persistent imitation and sectarian prejudice.[11]

Unlike the classical scholars (to the exclusion of Muḥammadibn 'Alī al-Tirmidhī), many modern scholars have attempted to provide precise definitions of *maqāṣid al-sharī'ah* based on their own understanding of the theme. Ibn 'Āshūr, 'Allāl al-Fāsī, Aḥmed al-Raysūnī, etc. have endeavoured to define *maqāṣid al-sharī'ah* in a technical and legal sense. In the words of Ibn 'Āshūr:

> The general objectives of Islamic legislation consist of the deeper meanings *(ma'ānī)* and inner aspects of wisdom *(ḥikam)* considered by the Lawgiver *(Shāri')* in all or most of the areas and circumstances of legislation *(aḥwāl al-tashrī')*. They are not confined to particular type of *Sharī'ah* commands. Thus, they include the general characteristics of the *Sharī'ah*, its general purpose and whatever notions contemplated by the legislation. They also include certain

meanings and notions that are present in many, though not all, of the *Sharī‘ah* commands.[12]

This definition includes only the general objectives and not the specific ones. The latter have been dealt with by Ibn ‘Āshūr in another section of his book on *Maqāṣid*. He says:

(The specific objectives) include any sensible measures considered in the institution of the *Sharī‘ah* rules governing human conduct, such as documentation *(tawthīq)* of credit in a mortgage contract, the establishment of the family in a marriage contract, and the removal of permanent harm in the legality of divorce.[13]

Thus, Ibn ‘Āshūr has defined the general and specific objectives separately and not given a single definition encompassing these both types of objectives. As for ‘Allāl al-Fāsi, the Moroccan writer, he has brought together both the general and specific objectives of Islamic Law into a clear, concise definition. He states that, "*Maqāṣid al-Sharī‘ah* means the ends of the *sharī‘ah* and the underlying mysteries which the Legislator *(Shāri‘)* has placed in each of its rulings."[14]

Aḥmed al-Raysūnī, another contemporary scholar, defines *maqāṣid al-sharī‘ah* as: "The objectives for the realization of which *sharī‘ah* has been laid down to bring about the welfare of humankind." [15] Unlike al-Fāsī, al-Raysūnī has not made a mention of the specific objectives in the above definition. However, it can be assumed that the words "welfare of humankind" are inclusive of both the general as well as the specific purposes of *Sharī‘ah*.

The foregoing definitions lead us to an understanding of *Maqāṣid al-Sharī‘ah* as the goals, purposes, intents, ends, meanings, mysteries, rationales, considered by the Lawgiver *(Shāri‘)* both generally as well as specifically, while legislating the *Sharī‘ah* that guarantee the overall welfare of humankind herein and hereafter, in both material and spiritual terms, satisfying the needs of both body and soul on individual as well as collective levels.

Conceptualizing Modernity

It is very difficult to define modernity in strict terms as it represents but the complexities of modern society. It is about everything that is characteristic of the modern societies in contrast to its preceding ones. It represents a radical departure of humanity from one historical era to another. However, it is not merely about a different time period in

history; it is simultaneously about different ideologies, different lifestyle, different culture, different means of communication and technology. Modernity emerged as a discourse as well as a movement in the West after the renaissance and enlightenment. It represents a shift from rather a revolt against the medieval religious outlook of life. It is a revolt against the medieval, faith-based and divine-centric outlook of life in support of modern,reason-based and human-centric outlook of life.In simple terms, "modernity refers to modes of social life or organisation which emerged in Europe from about the seventeenth century onwards and which subsequently became more or less worldwide in their influence."[16]

The sociologist Peter Berger has identified five defining elements of modernity, which have become classic, with his five "dilemmas of modernity"[17]: abstraction, futurity, individuation, liberation, and secularization. Like Berger, Harvey Cox has also attempted to characterize the modernity in terms of his five "pillars of modernity":[18]

i.   The emergence of sovereign national states as legally defined entities in a globalpolitical system, most of which have emerged in their present form at most 200 years ago.

ii.   Science-based technology as a principal source of images for life and its possibilities.

iii. Bureaucratic rationalism as a way of organizing and administering human thought and activity, where institutions take on their own intellectual life producing people whofeel alienated, powerless and apathetic ("I am only an employee here").

iv.   The quest for profit maximization as a means to motivate and distribute goods and services (both within capitalism and socialism) as manifested in, for example, the capitalist mode of production and marketing.

v.   Secularization and trivialization of religion and the use of the spiritual for profane purposes manifested in the removal of religion's concern with politics and economics.

The characterization of modernity by Berger and Cox provides us a good idea of conceptualizing what constitutes modernity. The dilemmas of modernity that are especially relevant when comparing Islam to modernity are futurity, liberation, individuation, and secularization. The other elements may also be troublesome from an Islamic perspective, but these four are causing the most obvious friction.[19]Futurity is in a sense blasphemy, of the perfect Islamic society as it existed under the guidance of Muhammad and the four Rightly-Guided Caliphs. Liberation is often construed as a deviation from the Islamic principle that

God is in control of everything and that He knows best. Individuation is considered contrary to the emphasis in Islamic cultures on the collective identity. Secularization is in diametrical opposition to the Islamic notion of religion as the ultimate source of all authority: God being the Supreme Ruler and man only His vicegerent, man's duties are defined accordingly.[20]

Engaging with Modernity through the Paradigm of *Maqāṣid al-Sharī'ah*

A balanced approach to modernity from an Islamic perspective lies in between the both extremes of unconditional blind acceptance and that of total negation. There is no denying the fact that modernity stands irreconcilably opposite to Islam in some aspects, say, for example, secularization. However, modernity has opened some opportunities for humanity which not only do not contradict with Islamic teachings but also can be considered as the objectives of Islam in a sense. However, these positive aspects of modernity need to be regulated from an Islamic perspective. The best example in this regard is that of science and technology. The goal of science as knowing the natural world and taming it for the welfare of humankind is in clear harmony with the Qur'anic verses that state in explicit terms that the universe and everything in it has been created for the benefit of humankind (e.g., Q, 02: 29). The Qur'anic concept of *taskhīrikā'inat* (taming the universe) is but reflected in and realized by the scientific endeavours. However, from the point of view of *Maqāṣid al-Sharī'ah*, scientific pursuit can in no way be allowed to become a pursuit of power for the benefit of an elite minority at the cost of the loss to majority. Likewise, the over-exploitation of the natural resources resulting in ecological imbalance stands opposite to the objectives of Islamic *sharī'ah*. The same approach can be applied to all the aspects of modernity. Though futurity stands opposite to the Muslim notion of regarding the Prophetic times and the two succeeding generations as the exemplary times *(khayral-qurūn)*, yet the Qur'anic notion of *iṣlāḥ* (reform),*taubah* (repentance), and the belief in hereafter *(ākhirah)* provide a sort of inspiration for the futuristic outlook. Likewise, it is all the more clear that secularism stands parallel to religion especially Islam, yet keeping in view the objective of test and trial in the creation of "life and death" provides an impetus for Muslims to live by Islam even in the shade of secularism. This is substantiated by the Qur'anic objectives of *'taysīr'*(facilitation) (Q, 02:185) and avoidance of *taklīfmālāyuṭāq* (unbearable/unmanageable responsiblity) (Q, 02:286). In the words of Larry Anthony, "Understanding modernity inlight of Islamic values is a necessary condition to make *Maqāṣid al-Sharī'ah* operational in contemporary times.

The universality of Islam makes it compatible with the main componentsof modernity, which stress the role of science and rational thought in the determination of public law."[21]

The engagement with modernity through the paradigm of *Maqāṣid al-Sharī'ah* is also reflected in the application of the latter to some of the much contested issues of modern times like human rights, women's rights, development, inter-faith dialogue, freedom, etc. It is beyond the scope of this article to discuss each issue in detail. However, the issue of human rights can best serve the concern of this paper. The compatibility of human rights and Islam is one of the much contested debates, both in Islamic and international circles. A Universal Islamic Declaration of Human Rights was announced in 1981 by a large number of scholars who represented various Islamic entities at the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Drawing on a number of Islamic scripts as testified by its references section, the Islamic Declaration essentially includes the entire list of basic rights that were mentioned in the Universal Declaration of Human Rights (UDHR),such as rights to life, freedom, equality, justice, fair trial, protection against torture,asylum, freedom of belief and speech, free association, education, and freedom ofmobility.[22] While some members of the United Nations High Commission for Human Rights (UNHCHR) have expressed their concerns on the Islamic Declaration of Human Rights taking it as a threat to the inter-cultural consensus governing the International human rights, other members have responded positively considering the motivational force it bestows on the application of human rights owing to the Divine origin of the same. The *maqāṣidī* approach supports the latter opinion besides giving due attention to the concerns of the former.[23]

Conclusion

From the above discussions, it can be concluded that *Maqāṣid al-Sharī'ah* provides a unique paradigm for engaging with modernity from an Islamic perspective. While this approach is strictly grounded in scriptural evidence, it is simultaneously potent enough to respond to the much contested issues of present times. It provides an outlook of how to deal effectively with modernity while safeguarding the tradition. It helps in adapting Islamic law to the changing times without violating its spirit. It helps Muslims in living by Islam even in the challenging times of present century without any inconvenience by facilitating things rather than complicating them. Most importantly, it helps in sustaining the claim of

universality of the Islamic *sharī'ah*. In sum, it is an effective, well-grounded and well-sustained model and paradigm for grappling with modernity from an Islamic perspective.

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