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### ***Maqāṣid Al-Sharī'ah in Classical Fiqh Literature: A Historical Approach***

#### **ABSTRACT**

Islam, for the welfare of the human beings has put countless guidelines. It has been observed that these certain aims, rules and objectives are for the assistance of people and hasn't leftward any provisions unjustified and worthless. Thus Allah's mandates and proscriptions include some interests and benefit for whole humanity. The major objective of Islamic fiqh (jurisprudence) is to provide rules whose target is to declare that all human beings are equal. Allah Almighty declared Islamic shari'ah as a basis for the betterment of the individual and whole society, to provide the rules and regulations which are planned to deliver the settlements for development and achieving perfection in the human's life in this world.<sup>1</sup> Rahmah (mercy) and huda (guidance) are the two major objectives of Islamic Shari'ah. In the Holy Quran, Allah Almighty has mentioned the purpose of Prophet Muhammad (ﷺ) in the following words, "And we have not sent you, [O Muhammad], except as a mercy to the worlds."<sup>2</sup> If people on the earth without any discrimination of race, color, age and nationality prevail the falah as the real objective then there will be no difference among societies and Sharia's main purpose of development of humanity will be achieved.<sup>3</sup> Every human being wants life to be contented and to lead a peaceful life and this can be achieved only when there is an element of unity and co-operation in the society and everyone is aware of others rights.

**Keywords:** *Maqāṣid Al-Sharī'ah, Dharūriyāt al-Khamsah, Human Welfare, Dharuriyyat, Hajiyyat and Tahsiniyyat.*

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<sup>1</sup> Adesola, D. H. "Comparative Appraisal of Value in Conventional and Islamic Jurisprudence." *Journal of Islamic Studies* 365 (2014).

<sup>2</sup> Al-Quran 21: 107

<sup>3</sup> M. U. Chapra, S. Khan, and Anas Al-Shaikh Ali, *The Islamic Vision of Development* (Islamic Research and Training Institute, Islamic Development Bank, 2008), 3.

## 1. TEXTUAL ORIGIN OF *Maqāṣid Al-Sharī'ah*

Islamic *sharī'ah* addresses for the betterment of all human beings and to make them successful in this world and in the hereafter and to provide them guidance to save them from bigger calamities; these objectives are called *maqāṣid al-sharī'ah*. Basically the word *maqāṣid* is derived from the word "*maqsid*" which means "*destination*"<sup>4</sup>, "*purpose*", "*idea*", "*objective*", "*principle*", "*goal*" and "*end*"<sup>5</sup>. Some other terms have been used in the similar meaning to *maqāṣid*; the pleasure (*husn*) and the outrageous (*qubuh*)<sup>6</sup> and *sharī'ah* is classified as injunctions given by Allah Almighty. So *maqāṣid al-sharī'ah* deals with rules, regulations, laws, beliefs and actions which are for the interest of human-being. Islam is a complete code of life and the objectives of Islamic laws are the motives which are Islamic judgments.<sup>7</sup> According to Al Izz bin Abdul Salaam:

*"Islamic shari'ah is based on maslahah, accomplishment of some good or the prevention of some mischief."*<sup>8</sup>

Islamic *sharī'ah* intends to provide ease and remove difficulties for the believers. As it comes in the Holy Quran:

يُرِيدُ اللَّهُ أَنْ يُخَفِّفَ عَنْكُمْ وَخُلِقَ الْإِنْسَانُ ضَعِيفًا (28)

*"And Allah Almighty wants to lighten for you [your difficulties]; and mankind was created weak"*.<sup>9</sup>

This concept has again been emphasized at other places as it is stated in the Holy Quran:

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمُ الْعُسْرَ

*"Allah Almighty intends for you ease and does not intend for you hardship"*.<sup>10</sup>

Islamic *sharī'ah* also safeguards people from evil and unlawful activities about which the Holy Quran says:

اتْلُ مَا أُوحِيَ إِلَيْكَ مِنَ الْكِتَابِ وَأَقِمِ الصَّلَاةَ إِنَّ الصَّلَاةَ تَنْهَى عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَلَذِكْرُ اللَّهِ أَكْبَرُ وَاللَّهُ يَعْلَمُ مَا تَصْنَعُونَ

*"And establish regular prayer: for prayer restrain from shameful and unjust deeds; and remembrance of Allah is the greater (thing in life) without doubt. And Allah knows the (deeds) that you do."*<sup>11</sup>

## 2. MAQĀṢID AL-SHARĪ'AH VIEWS BY DIFFERENT SCHOLARS

*Maqāṣid al-sharī'ah* is explained through two ways primary and secondary; primary way is explained through verses of Holy Quran and the traditions of the Holy Prophet Muhammad (ﷺ) and secondary way elaborates the work of jurists and scholars.<sup>12</sup> According to Sheikh Muhammad Abu Zahra, *sharī'ah* is "*kindness to people*" with three most significant objectives, "*development of honest individual*",

<sup>4</sup> R. Baalbaki, *Al-Mawrid: A Modern English-Arabic Dictionary* (Lebanon: 1995), 675.

<sup>5</sup> J. Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systematic Approach* (USA and UK: The International School of Islamic Thought, 2008), 6.

<sup>6</sup> M. Fevzi, "A Statistical Framework on Identification of Maqāṣid al-Sharī'ah Variables for Socio-Economic Development Index," *Journal of Business Studies Quarterly* 7, no. 1 (2015): 207-230.

<sup>7</sup> M. T. Ibn Ashur, *Ibn Ashur's Treatise on Maqāṣid al-Sharī'ah*, 1st ed. (Washington: International Institute of Islamic Thought, 2006), 98.

<sup>8</sup> Abdul Salam, *Qawaid al-Ahkam (Islamic Legal Maxims)*, 1st ed. (Dar-ul-Kutub Ilmiyah, n.d.), 9.

<sup>9</sup> Al-Quran 4: 28

<sup>10</sup> Al-Quran 2: 185

<sup>11</sup> Al-Quran 29: 45

<sup>12</sup> M. U. Chapra, S. Khan, and Anas Al-Shaikh Ali, *The Islamic Vision of Development* (Islamic Research and Training Institute, Islamic Development Bank, 2008), 5-6.

“creating fairness” and “awareness of profits and benefits”.<sup>13</sup> A prominent Muslim scholar of *fiqh*, Ibn Taimiya (661-728 A.H./1263-1328 A.D.) is of the view that Allah Almighty planned *sharī'ah* only in order to have Justice. Other scholars are of the view that its main purpose is to achieve people's gratification. Imam Al Ghazali is of the opinion that basic aim of *sharī'ah* is to take advantage of accomplishment and consideration of benefits which Allah Almighty has put on earth. These three studies on *sharī'ah* by renowned and highly intellect scholars shows harmony that without justice one cannot achieve pleasure, and justice is one of the most important and fundamental aspect which relates to all creatures on earth. *Maqāṣid al sharī'ah* (Higher Objectives of Islamic Law) contains principles and beliefs which are the strength of the *shara'i* rules. These objectives and resolutions provide principles and values which regulate and systematize justice in Islamic law.<sup>14</sup>

### **3. MAQĀṢID AL SHARĪ'AH AND CLASSICAL MUSLIM SCHOLARS**

Fifth century was known as the era of a “*philosophy of the Islamic law*”. “*Unrestricted interest*” as a part of the theory includes those things which are not mentioned in Holy Quran and this theory is the basis of “*maqasid*” in Islamic ruling. Considerable efforts are done on *maqāṣid* theory by distinguished scholars from fifth to eighth century including Abu al-Malik al-Juwaini, al-Izz Ibn Abdul-Salam, Abu Hamid al-Ghazali, Shams-ud-Din Ibn al-Qayyim, Shihab-ud-Din al-Qarafi, Abu Ishaq al-Shatibi and including many more.

Abdul Malik al-Juwaini (d.478 AH/1185 CE) was the first person who wrote about *maqāṣid al-sharī'ah* and categorized it into three dimensions *daruriyyat*, *hajiyyat* and *tahsiniyyat*. He used *maqāṣid* and public interest as an exchangeable terms<sup>15</sup> and wrote a book on *usul-ul-fiqh* named “*al-Burhan fi Usul al-Fiqh*” which is the first primary work on “levels of necessity” in which the “*maqsid*”, “*maqasid*” and “*qasid*” are frequently used.<sup>16</sup> Another book named “*Al-Ghayasi*” in which *maqāṣid al-sharī'ah* along with new *ijtihad* is discussed.<sup>17</sup> According to Molana Atiq Ahmed Bestavi:

“*Al-Ghayasi is a very good book on maqāṣid al-sharī'ah and a good source of solution of the problems which are rising in today's modern world.*”<sup>18</sup>

*Maqāṣid* are precisely classified into five categories by him, namely; provisions (*dharuuriyat*), community needs (*al-hajah al-amah*), ethical activities (*al-makrumat*), commendation (*al-mandubat*) which are not qualified to an obvious cause.<sup>19</sup> According to him, the main goal of objectives of Islamic law is related to protection of people's belief, progeny, intellect, private parts and wealth.<sup>20</sup>

After Abdul Malik al-Juwaini, his student Abu Hamid al-Ghazali (d.505 AH/1111 CE) made a noteworthy development for the formulation of *maqāṣid al-sharī'ah*

<sup>13</sup> A. M. Zahra, *Tarikj al-Madhahib al-Islamiya fi al-Siyasah wa al-Aqaid wa Tarikh al-Madhahib al-Fiqhiyah* (Cairo: Darulfukrararabi, n.d.), 291–293.

<sup>14</sup> I. N. Ahsan, *Outline of Islamic Jurisprudence* (Islamabad: Advanced Legal Studies Institute, 2010), 46.

<sup>15</sup> A. M. Juwaini, *Ghiath al-Umam fi al-Zulam* (Qatar: Wazaratal-Shu'un al-Diniyah, 1980), 253.

<sup>16</sup> op. cit. 621.

<sup>17</sup> M. N. Siddiqui, *Maqāṣid al-Sharī'ah* (Islamabad: Idara Tehkeek Islami, 2009), 3.

<sup>18</sup> M. A. Bistivi, *Maqāṣid al-Sharī'ah Asri Tanazur Mei: Maqāṣid al-Sharī'ah Taruf aur Tabdeek* (New Delhi: Ifa Publications, 2010), 39.

<sup>19</sup> A. M. Juwaini, *Al-Burhan fi Usul al-Fiqh* (Mansurah: Al-Wafa, 1998), 22, 621, 747.

<sup>20</sup> J. Auda, *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systematic Approach* (USA and UK: The International School of Islamic Thought, 2008), 17.

theory, he actually expanded / elaborated / expounded the theory of his teacher by illustrating its components meticulously. “*Al-Manhool*” and “*Al-Mustasfa Min ilm al-Usul*”<sup>21</sup> are two important works on *maqāṣid al-sharī’ah*. Al-Juwaini had structured ‘the necessities’ in “*Al-Mustasfa*” in an arranged order as life (*nafs*), faith (*deen*), offspring (*nasl*), intellect (*aql*) and wealth (*maal*).<sup>22</sup> After an explanatory detail, he concluded that the objective of *deen* is the objective of whole *sharī’ah* which includes protection of faith, life, lineage, intellect and wealth; known as *maqasid-al-khamsa*<sup>23</sup>, Abu Hamid al-Ghazali said:

“Objectives of Shariah which are faith, life, intellect and wealth are associated with the creation (*makhloq*) of Allah Almighty and everything which will protect these five things will come in the category of *maslihat*”.<sup>24</sup>

Imam al-Ghazali’s biggest achievement is of the list of *maqāṣid al-sharī’ah* which is still a source of guidance. This theory tells that *maqāṣid al-sharī’ah* was neither clearly mentioned in Holy Quran nor in *Sunnah*. *Maqāṣid al-sharī’ah* has been classified by him in five dimensions and the aim of these magnitudes is fortification of human beings from any harm and inequality. The Holy Quran and *Sunnah* has also discussed about the protection of human beings. In Holy Quran Allah Almighty says:

وَإِذْ أَخَذْنَا مِيثَاقَ بَنِي إِسْرَٰئِيلَ لَا تَعْبُدُونَ إِلَّا اللَّهَ ۖ وَبِالْوَالِدَيْنِ إِحْسَانًا وَذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَقُولُوا لِلنَّاسِ حُسْنًا وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ ثُمَّ تَوَلَّيْتُمْ إِلَّا قَلِيلًا مِّنْكُمْ وَأَنتُمْ مُّعْرِضُونَ (83)

“And [recall] when we took the covenant from the Children of Israel, [enjoining upon them], “Do not worship except Allah Almighty; and to parents do good and to relatives, orphans, and the needy. And speak to people good [words] and establish prayer and give zakat. Then you turned away, except a few of you, and you were refusing”.<sup>25</sup>

Abu Hamid al-Ghazali (d.505 AH/1111CE) explained *maqāṣid al-sharī’ah* under the title “unrestricted interests” (*al-masalih al-mursalah*) as “consideration for what is aimed at for mankind in the law.”<sup>26</sup> Through this, he explained five elements: protection of life, faith, progeny, intellect and wealth and one of the main objectives is the protection of public interest.<sup>27</sup> The terminology ‘public interest’ was also used at the time of Malik ibn Anas ibn Malik ibn Abi Amin al Asbahi also known as “Sheikh of Islam”<sup>28</sup> Nauman ibn Thabit ibn Zuta ibn Mazuban, also known as Imam Abu Hanifa presented the theory of “*istihsan*” and Imam Ahmed Ibn Hanbal presented “*istislah*”. All these terminologies offered the same notion as *maqāṣid al shariah* does.

After Imam Ghazali, Sayf al-Din al-Amids (d.631/1233) scrutinized “*maqasid*” as measurement of standard norm or superiority (*al-tarjih*) among different agreements and considering it as a class of *Maqāṣid* by giving five essentials of *maqasid*. Sultan ul Ulma Ali Ijaz ud din bin Abdul Salam (d.606 AH /1209 CE) had done a lot of work on *maqāṣid al-sharī’ah* including his famous assisting book “*Qawaid-ul-*

<sup>21</sup> Op. cit. p. 40.

<sup>22</sup> Op. cit. p. 21.

<sup>23</sup> M. A. Ghazali, *Al-Mustafa min Ilm al-Usul* (Attijartul Kubra, Egypt, 1937), 258.

<sup>24</sup> M. N. Siddiqui, *Maqāṣid al-Sharī’ah* (Islamabad: Idara Tehkeek Islami, 2009), 7.

<sup>25</sup> Al-Quran 2: 83

<sup>26</sup> M. Muslehuddin, *Philosophy of Islamic Law and the Orientalists* (Lahore: Islamic Publications Ltd., 1979), 156.

<sup>27</sup> M. N. Siddiqui, *Maqāṣid al-Sharī’ah* (Islamabad: Idara Tehkeek Islami, 2009), 6.

<sup>28</sup> A. Rahim, *Muhammadian Jurisprudence* (Lahore: P.L.D. Publishers, 1911), 166.

*Ahkam Fi-Maslih-il Inaam*". This book discusses the commandments which are given by Allah Almighty and these commandments act as guidance in benefitting the people along with their significances and positions.<sup>29</sup> Another book, titled "*Sharjatul Maroof wal-Ihwal wa Salih-ul-Aqwal wal-Amaal*" published from Yemen talks about analysis of *Sharī'ah* in the well-lit of *maqāsid al-sharī'ah*.<sup>30</sup>

Fakhar-ud-din al-Razi (d.606 AH/1209 CE) and al-Amidi (d.631 AH/1234 CE) approved the tradition of al-Ghazali in this term.<sup>31</sup> Najam-ud-din al-Tufi defined *maqāsid al-sharī'ah* as "which fulfills the reason of the law-maker."<sup>32</sup>

Shahab ud al-Qarafi (d. 1285 AH/1868 CE) extensively discussed *maqāsid al-sharī'ah* in his famous book "*al-Furuq*" in which he inter related the two terms "*maqsid*" and "*maslah*". According to him, "*A purpose (maqsid) is not applicable unless it leads to the accomplishment of some good (maslah) or the prevention of some mischief (mafsdah)*." A sixth element is also added to the existing list of necessities (which established by al-Jawinni and al-Ghazali) namely the protection of honor.

The notion of *maqāsid al-sharī'ah* is also given in the books and *fatwas* of Ibn Taymiah (d. 728 AH/1328 CE) in which a minor change is made in the order of necessities which was previously articulated by al-Ghazali. He puts protection of faith in last and positioned honor instead of lineage.<sup>33</sup>

Shams-ud-din ibn al-Qayyim (d.748 AH/1347 CE), novice of the eminent scholar Ahmad ibn Taymiah (d. 728 AH/ 1328 CE) said about *maqāsid al-sharī'ah* in the following terms:

*"The Islamic rule is all regarding knowledge and attaining happiness of people in this life and hereafter. It is regarding fairness, pity, knowledge and superior. Therefore, any judgment that changes fairness with unfairness, pity with dissimilar, general behavior with misbehavior, or knowledge with nonsense, is a judgment that does not fit into the Islamic rule and commandments, even if it is agreed to be so according to some explanation."*<sup>34</sup>

Abu Ishaq al-Shatibi (d. 790 AH/ 1388 CE) made *maqsid al-sharī'ah* as his first philosophical thought in eighth century. His concepts are alike to the concepts of al-Juwaini and al-Ghazali. He engrossed on three main dimensions of *maqāsid al-sharī'ah* which are needs, necessities and luxuries. In "*al-Muwafaqat fi Usul al-Shari'ah*", he explained the objectives of *maqāsid al-sharī'ah* in which their significance to achievement of excellence, happiness, benefit, warding off immortality, damage and defeat of the human beings have been mentioned.<sup>35</sup> Al-Shatibi completed the theory of *maqāsid* in the following three ways: 'from *unrestricted interests*' to '*fundamentals of law*', from '*wisdom behind the ruling*' to '*bases for the ruling*' and from '*uncertainty*' to '*certainty*'. He was of the view that the basic purpose of Islamic *sharī'ah* is protection of faith, life, mind, lineage and

<sup>29</sup> A. I. Salam, *Qawaid-ul-Ahkam fi Masalih-il-Inaam* (Cairo: Matabatul Istiqama, 1262), 4

<sup>30</sup> M. A. Bistivi, *Maqāsid al-Sharī'ah Asri Tanazur Mei: Maqāsid al-Sharī'ah Taruf aur Tabdeek* (New Delhi: Ifa Publications, 2010), 41.

<sup>31</sup> B. M. Ibn Al-Arabi, *Al-Mahsoul fi Usul al-Fiqh*, trans. Hussain Ali Alyadri and Saeed Foda (Amman: Dar al-Bayariq, 1999), 222.

<sup>32</sup> N. Tufi, *Al-Ta'in fi Sharh al-Arba'in* (Beirut: Al-Rayyan, 1999), 239.

<sup>33</sup> M. A. Bistivi, *Maqāsid al-Sharī'ah Asri Tanazur Mei: Maqāsid al-Sharī'ah Taruf aur Tabdeek* (New Delhi: Ifa Publications, 2010), 41.

<sup>34</sup> S. Ibn al-Qayyim, *I'lam al-Muwaqi'een* (Beirut: Dar-al-Jeel, 1973), 333.

<sup>35</sup> A. Muhammad, *Al Maqāsid al-Sharī'ah wa Asraha fil Fiqh-Islami* (Cairo: Darul Hadith, 2007), 99.

wealth but it is not mentioned in Holy Quran and *Sunnah* but after jurist's interpretation or ruling, they come to the point that Holy Quran talks about the imposing and forbidding evil, justice and equity, equality and reality, prevention of harm and support of benefit, on charity and kindness, on union and cooperation among ethics, tribal groups and nations of the world community, on consultation and government under the rule of law, mutual respect and observance of rights of all. These all things are correlated with the major objectives of *sharī'ah* and it is incumbent on every Muslim to focus and ponder over it and derive the beneficial results as al-Juwaini and Imam al-Ghazali has done.<sup>36</sup>

There was a huge gap on the working of literature of *maqāṣid al-sharī'ah* after Shatibi, and then Shah Walli Ullah (d. 1762 A.H.) made an exceptional effort on *maqāṣid al-sharī'ah* by extending the terminologies of *maslaha*, *mursalah* and *istihsan*.<sup>37</sup> After him, came Muhammad Qasim Nanotvi (d. 1880 A.H.) and Ashraf Ali Thanvi (d. 1943 A.H.), both of them extends the verdicts of Shah Walli Ullah.<sup>38</sup>

With the efforts of Muhammad al-Tahir ibn Ashur (d.1973 C.E), the Tunisian intellect, work on *maqāṣid al-sharī'ah* again started. Many other Islamic intellectuals including Imran Ahsan Khan Niyazee, Muhammad Hashim Kamali, Ahmad Reysuni, Jasser Auda, Halim Rane and Tariq Ramadan made contribution in the development of *maqāṣid* and bestowed a lot of efforts in its improvement, advancement and growth.

#### **4. DIMENSIONS OF MAQĀṢID AL-SHARĪ'AH**

*Maqāṣid al-sharī'ah* is divided in to a number of possibilities according to their dimensions. Some of them are:

- i. Level of necessity which is the recognized categorization.
- ii. Scope of decisions aiming to attain philosophies.
- iii. Scope of people encompassed of principles.
- iv. Platform of universality of the resolutions.<sup>39</sup>

Abu Hamid Muhammad ibn Muhammad al-Ghazali detailed the objectives of *Shari'ah*, approved by noticeable scholars including Ibrahim bin Mosa bin Muhammad al-Shatibi who categorized it into two types, namely *dini* or principles relating to the standards of Hereafter and *dunyawi* or principles relating to this world. Worldly principles (*dunyawi*) have been further classified by al-Shatibi into three categories:

- i. The necessities or essentials (*dharuriyat*)
- ii. The needs (*hajiyyat*)
- iii. The complementary (*tahsiniyyat*)

##### **4.1 THE ESSENTIALS OR NECESSITIES (AL-DHARURIYAT)**

*Al dharuriyat* deals with the basics or necessities or which every human being depends and without them, the entire society will be destroyed disordered and culminate with total collapse.<sup>40</sup> According to al-Shatibi:

<sup>36</sup> M. al-Shatibi Al-Ghamati, *Al-Muwafaqat fi Usul al-Shariah* (UK: Garnet Publications, 2014), 6.

<sup>37</sup> M. Baka, *Usul-ul-Fiqh and Shah Waliullah* (Idara Tehqeeqat-e-Islami, 1973), 403.

<sup>38</sup> M. A. Bistivi, *Maqāṣid al-Shari'ah Asri Tanazur Mei: Maqāṣid al-Shari'ah Taruf aur Tabdeek* (New Delhi: Ifa Publications, 2010), 43.

<sup>39</sup> J. Auda, *Maqāṣid al-Shari'ah as Philosophy of Islamic Law: A Systematic Approach* (USA and UK: The International School of Islamic Thought, 2008), 3.

<sup>40</sup> M. K. Hashim, *Al-Maqāṣid al-Shari'ah: The Objectives of Islamic Law*, *Islamic Studies* 38, no. 2 (1999): 193-208, Malaysia.

*“The initial and the significant objective of the Islamic sharī'ah is achievement of necessities, no masalih of this world and hereafter can be done without the fulfillment of the necessities and life is impossible without them.”*

Al-Shatibi has classified necessities into five categories:

- i. Protection of life
- ii. Protection of faith
- iii. Protection of progeny
- iv. Protection of intellect
- v. Protection of wealth<sup>41</sup>

All Muslim jurists emphasized on the protection and enactment of these five principles whose main purpose is to protect the society from disorders and misperception.<sup>42</sup> Thus it is the collective responsibility of all individuals and society to defend them.<sup>43</sup>

#### **4.2 THE NEEDS (HAJIYAAT)**

Needs or *hajiyyat* are the advantages whose purpose is to remove harshness and poverty, eliminate vulnerability and danger to the regular life. It fulfills the level of necessities and makes things possible in an easy way and eliminating the element, achievement of necessities is difficult.

*Hajiyyat* includes the easiness for human beings in worship (*ibadah*) including shortening of prayer, relief of the fast for the ill and the traveller, envisioned to elude hardship which has established by the laws of Islamic *shari'ah*. However, in *mu'amalat*, the *shari'ah* endorsed definite contract including business deal according to *salam*, rent and hire (*ijarah*). Whereas in the spectrum of family *shari'ah* gives permission of divorce and in society concept of *qisas* and *diyat* is existent for the well-being of the individuals.<sup>44</sup>

#### **4.3 THE COMPLEMENTARY (TAHSINIYAAT)**

*Tahsiniyyat* are lower in order than *hajiyyat* but they are important for their completion. Its main purpose is achievement of betterment and perfection in the traditions (customs) and conduct of people. Al-Shatibi defines *tahsiniyyat* as *“Adoption of good habits and avoids the things which effects mind and intellect.”*

In the arena of *ibadah*, worthy of purity, clothes and applying perfume in the Friday prayer is mentioned. In daily routine and association among people, it invokes kindness, politeness, softness (*husn-e-khulq*) and reasonable dealing (*ihsan*). Contribution in donations for the attainment of love of Allah Almighty also comes under the framework of *tahsiniyyat*.<sup>45</sup> Demonstrating the realism and applicability of the *maqāsid* with respect to wide range welfare of humanity, Muhammad Hashim Kamali said:

*“It should be clear that the categorization of masalih must not be restricted to the ahkam of the Islamic sharī'ah or to spiritual subjects unaccompanied as it is mostly a normal construct that effects to regular, common, supporting, financial and educational dealings and*

<sup>41</sup> A. Reysuni, *Muhazaraat fi Maqasid-I-Shari'ah* (Egypt: Darulislam, 2009), 156.

<sup>42</sup> I. M. Al-Shatibi, *Imam al-Shatibi's Theory of Higher Objectives and Intents of Islamic Law*, trans. Ahmed al-Reysuni (International Institute of Islamic Thought, 2005), 137.

<sup>43</sup> M. al-Shatibi Al-Ghamati, *Al-Muwafaqat fi Usul al-Shariah* (UK: Garnet Publications, 2014), 10.

<sup>44</sup> *ibid.*

<sup>45</sup> M. al-Shatibi Al-Ghamati, *Al-Muwafaqat fi Usul al-Shariah* (UK: Garnet Publications, 2014), 10.

*onward. To construct the first hospital in a city is likely to be necessary and important, but to construct second and third might be only complementary and beneficial. And then to provide each one with the newest and most well-organized fitness care conveniences may fall in the type either of the second or the third modules of benefits, depending, of course, on the common situations of each area.”<sup>46</sup>*

According to Al-Shatibi, the achievement of necessities is significant among the three dimensions. It acts as a shield for other objectives and without it remaining objectives will be impossible to achieve for example killing one person is a type of necessity which came under the protection of life and with this killing, one's life is completely lost. The second category is of the needs, objectives are attained in it along with a lot of obstacles and dilemmas. The third and last category is the category of complementary which has the highest status or values among the five objectives.

Islamic *shari'ah*, for the protection of progeny (*nasl*) commanded men and women when they look at each other should lower their gaze in order to avoid immoral or sinful acts which results in destruction of their progeny. Everyone should follow the necessities as it is over ruling the other two categories and then follow the complementary acts. Al-Shatibi said, “*Sharī'ah* (Allah Almighty) gave less importance to some objectives (*maqasid*) for the fulfillment, completion and achievement of other objectives (*maqasid*).”<sup>47</sup>

## **5. LEVELS OF NECESSITIES**

The levels of necessities are broadly categorized into five classifications, namely; life, faith, progeny, intellect and property. These classifications should be followed communally, psychologically and mentally according to their standard, order and norms and their violation will cause fragmentation of the concrete order of the society.<sup>48</sup>

### **5.1 PROTECTION OF RELIGION**

Whether in the constricted sense of faith-worship, whether generally faith, reverence, legislation, the faith and the *shari'ah*, are miracles indispensable for human life. Shatibi encompassed the worship, prayer, fasting, charity, and pilgrimage into the essentials of the religion. Islam predominant the concepts of delusory beliefs, lust and desires to be subject to counterfeiting, blunted human mind with intelligence of groundless astrology, pursuit of prognostication, ignorance and prejudice in faith. The protection of religion is an uppermost level of necessities. Through this aspect, one individual is differentiated from all other creation of this universe. It relates with the admiration and worth of what Allah Almighty bestowed upon his creation. Therefore it should be protected. *sharī'ah* has never force anyone to embrace Islam and forbids putting people in trouble in their beliefs and practices. Allah Almighty declared this action as *fitnah* in the Holy Quran and is considered as punitive as killing. So, the basic objective of Islam is

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<sup>46</sup> Adesola, D. H. “Comparative Appraisal of Value in Conventional and Islamic Jurisprudence.” *Journal of Islamic Studies* 365 (2014).

<sup>47</sup> M. al-Shatibi Al-Ghamati, *Al-Muwafaqat fi Usul al-Shariah* (UK: Garnet Publications, 2014), 10–11.

<sup>48</sup> W. B. Hallaq, *Shari'ah: Theory, Practice and Transformations* (Cambridge: Cambridge University Press, 2009), 104.



protection of people's faith and preservation of their relationship with Allah Almighty. T.S. Eliot on the emphasis of religion stated, "Without religion the whole human race would die."

## **5.2 PROTECTION OF LIFE**

Life is blessed reward of Allah Almighty to His creation. The creation of the Human Being is the unsurpassed miracle of this universe. The purpose of protection of life or self (*an-nafs*) is to protect people and humanity. The protection of the self (*an-nafs*) includes the right to life, health protection, making legitimate transactions, freedom, equality, and the right of freely exploration and assortment. "vested rights" are other rights of the people which are assimilated by their own efforts. According to Abu Zahra the protection of human life (*an-nafs*) is assurance of people's honorable life to the preservation of life.<sup>49</sup> The Islamic *sharī'ah* dignified the life of an individual as precious and valuable. As in Holy Quran, Allah Almighty says that massacring of one individual is like massacring of the entire human race and saving the life of one individual is saving entire humanity. Murdering and homicide are strictly prohibited by Islamic *sharī'ah* and cruel penalty will be given in this life and hereafter for the one follow these paths. Islamic *sharī'ah* also forbids hunting and injuring humans whether it is bodily or morally. It encourages people to survive humbly and courteously.<sup>50</sup> Chapra separated the term self-protection into fourteen subtitles which are known as encouraging moral values; dignity and self-respect, justice, security of life, property and honor, spiritual and moral uplift, good administer, self-determination, education, employment, equitable distribution of income and wealth, marriage and proper upbringing of children, mental peace and happiness, handling with crimes, fulfilling the needs and social solidarity.

## **5.3 PROTECTION OF PROGENY**

The fourth major and significant goal of Islamic *sharī'ah* is the safety of progeny for protection of life which is the reproduction of the human species. Every child has a right to grow peacefully between his or her family so it is the responsibility of parents to take care of their offspring and raise them with every possible means. In Islam, marriage is exceptionally significant and has a huge engrossment in *shari'ah*. According to Islam, *nasab* ensures of marriage contracts by affinity, alimony and procuration in *fiqh* and determination of inheritance. Islam has also raised the status of orphan in Islam, it is said that one who will look after the orphan will get the company of Prophet Muhammad (ﷺ) in Paradise and also receive highest reward in hereafter. Islam also stressed upon that does not consider your offspring as a load or burden and do not think to slaughter them with the fear of famine as it was practiced in pre-Islamic period.<sup>51</sup> The sub-factors relating to the protection of posterity are appropriate upbringing, moral and intellectual development, marriage and family integrity, clean and healthy environment, freedom from fear, conflict and insecurity.<sup>52</sup>

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<sup>49</sup> M. Fevzi, "A Statistical Framework on Identification of Maqāṣid al-Sharī'ah Variables for Socio-Economic Development Index," *Journal of Business Studies Quarterly* 7, no. 1 (2015): 207-230.

<sup>50</sup> G. Atia, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Sharī'ah—A Functional Approach* (London: The International Institute of Islamic Thought, n.d.), 118-119.

<sup>51</sup> S. S. Rizvi, *The Family Life of Islam* (Iran: World Organization of Islamic Services, 1980), 30.

<sup>52</sup> M. Fevzi, "A Statistical Framework on Identification of Maqāṣid al-Sharī'ah Variables for Socio-Economic Development Index," *Journal of Business Studies Quarterly* 7, no. 1 (2015): 207-230.

#### **5.4 PROTECTION OF INTELLECT**

The term “*aql*” in Islamic context includes both intellect and reasoning. *Aql* makes a human being aware of himself and afterwards is able to share knowledge (*al-ilm*) implying logical reasoning by induction and deduction.<sup>53</sup> Intellect is also a benediction of Allah Almighty as it differentiates human beings from other creation. The vital and essential goal of Islamic *sharī‘ah* is the protection of intellect from all the infection and syndrome. Intellect is considered as an origin of development and enhancement in the society. It promotes learning, knowledge and understanding for all. Islamic *sharī‘ah* contemplates that if the intellect is dishonored, outcome of it will be destructive and unsafe for the individuals as well as for society that’s why intoxicants are banned because it results in destruction of human intellect.

#### **5.5 PROTECTION OF WEALTH**

Wealth is an anticipated procurement and it can be accumulated (*iddikhar*) and measured (*miqdar*). Islam has given the rights to human beings to acquire property and protection of wealth too. *Sharī‘ah* gives instruction for protection of wealth and property of people. Islam strictly banned theft and one who violates the rule will be given punishment for it. Islam has placed guidelines for the property and wealth preservation and expansion.<sup>54</sup> One aspect of Islamic *sharī‘ah* is growth of wealth so that deserving people could not benefit from it and in this way wastage of property can be protected. In Islam, charity bounces its privileges to poor from the wealth of affluence people. Usury (*riba*) is also prohibited in Islam to stop the cause which results in means of wasting and only circulates in the hands of rich.

#### **6. LEVEL OF NECESSITIES AND CONTEMPORARY CONCEPT**

Contemporary scholars recognized customary and traditionally *maqasid*, irrespective of the disapproval of some jurists. The protection of progeny (offspring) is considered as one of the ultimate necessities which came underneath the objectives of Islamic law. Al-Amiri elucidated the following idea through his impulsive hard work to sum up the supposition of essential purposes and penalties will be given for breaking decorum. According to Al-Juwaini, the theory of punishment is called *masajir*; through concept of Al-Amiri and converted this concept into a ‘theory of preservation known as *ismah* which is explained by al-Juwaini as “*protection of private parts*”. The expression “*protection of progeny*” was invented by Imam Ghazali and is considered as an essential ruling of Islamic *sharī‘ah* and comes under the rank of necessity. Al-Shatibi goes with the terminology of al-Ghazali. The scholars and authors of 20<sup>th</sup> century highlighted “*protection of progeny*” into family oriented postulation, for example, Ibn Ashur ordered ‘worry for the family’ as an objective of the Islamic *sharī‘ah*. It is clear that Ibn Ashur’s contribution had widened the door for contemporary researchers to expand the *maqāṣid* supposition in innovative ways. The new awareness in neither the assumption of penalty of Al-Amiri’s nor the idea of ‘*protection*’ of Al-Ghazali reasonably adopts the thought of Ibn Ashur’s ‘*value*’ and ‘*organization*’. However, some modern researchers do not go with new ideas, such as fair dealing and freedom in *maqasid*. They all disputed upon these thoughts which are totally cohesive in the accustomed theory.<sup>55</sup>

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<sup>53</sup> Op. cit. p. 113

<sup>54</sup> Adem Esen, *Mal, Mulkiyet ve Piyasa (Goods, Property, and Market)* (Jeddah: IDB Press, 2017).

<sup>55</sup> J. Auda, *Maqāṣid al-Sharī‘ah as Philosophy of Islamic Law: A Systematic Approach* (USA and UK: The International School of Islamic Thought, 2008), 22.

'Protection of mind' which limits the intoxicants or its prevention in Islam, currently growing and developing to 'extending the systematic thoughts, travelling to seek out the information', allotment of hard technique and keeping away from intellect consume.

'Security of honor' and 'security of the soul' both terminologies by al-Shatibi came under the level of 'necessities'. These terminologies also came under al-Amiri's assumption "punishment for breaking honor" and al-Juwaini's "protection of honor". Honor (*al-ird*) persisted as the essential concept in pre-Islamic period in Arab. In many traditions of Prophet Muhammad (ﷺ), terms of life, money and respect of whole humanity is described and it is also said that they should not be violated. In recent eras, the term 'protection of honor' is gradually being replaced with the 'protection of human self-respect and dignity' and until now the 'protection of human rights' as a standard of the Islamic ruling in its own particular.<sup>56</sup>

Al-Ghazali and Al-Shatibi's philosophy of "protection of religion" is also presented in al-Amiri's supposition of punishment for giving up accurate belief. The same theory has been coined into a different concept in recent times which is related to liberty of faiths and in view of contemporary scholars, it is referred as liberty of beliefs and they give their justification according to the verse of the Holy Quran:

لَا إِكْرَاهَ فِي الدِّينِ

"There shall be no compulsion in [acceptance of] the religion".<sup>57</sup>

Al-Ghazali's theory 'safety of wealth', al-Amiri's 'punishment for wealth' and al-Juwaini's 'protection of money' had empirical progress into socio-economic terms such as 'public support and help', 'financial growth', 'food of wealth', 'safety of society,' and diminishing the dissimilarities between economic ranks.'

## **7. CONTEMPORARY SCHOLARS AND MAQĀṢID AL-SHARĪ'AH**

Contemporary scholars have put their innumerable efforts to find out the theory of *maqāṣid al-sharī'ah* (Objectives of Islamic law) in literature of *fiqh* which signifies the script, higher standards and values. These scholars present their classification on the theory of *maqāṣid al-sharī'ah* and linked it with the resolution of Holy Quran.

**7.1 Muhammad al-Ghazali (d. 1416 AH/1996 CE)** from the preceding fourteen centuries of Islamic history known for including justice and self-determination in *maqāṣid* at the necessities level and known for introducing the *maqasid*.

**7.2 Rashid Rida (d. 1354 AH/1935 CE)** discussed the *maqāṣid* aims and goals, which amalgamated, 'adaptation of pillars of Islam, awareness of Islam as a natural religion, highlighting its knowledge, consciousness, free will, autonomy, communal ,dogmatic and financial development'.<sup>58</sup>

**7.3 Al-Tahir Ibn Ashur (d. 1325 AH/1907 CE)** assessed that the collective *maqāṣid al-sharia*'s purpose is to sustain self-determination, advice, facilitation, self-mindedness, and the preservation of unpolluted natural character (*fitrah*). Standard of 'freedom' presented by Ibn Ashur including

<sup>56</sup> Y. Qaradawi, *Madkhal le-Dirasat al-Shari'ah al-Islamiyah* (Cairo: Wahba, 1997), 101.

<sup>57</sup> Al-Quran 2: 256

<sup>58</sup> M. R. Rida, *Al-Wahi al-Mohammadi: Thubut al-Nubuwwah Bil Quran* (Cairo: Mu'asasat Izziddin, n.d.), 100.

other scholars varies from the reason of freedom (*al-itq*), on which early scholars were affirmed. *Al-itq* means independence (freedom) from slavery, not liberation in the existing sense. Idea ‘will’ (*mashi’ah*), is a distinguished term that allow number of relations with modern thoughts of “freedom” and “free will”. For instance, “freedom of faith” is articulated in the Holy Quran as the ‘strength to contemplate or disbelieve and mentioned the concept of freedom in a *masi’ah* sense.<sup>59</sup>

**7.4 Muhammad al-Ghazali (d. 1416 AH/1996 CE)** refined “fairness and freedom” in *maqāṣid al-sharī’ah* at the juncture of provisions. Attainment of Muhammad al-Ghazali shows that on the basis of *maqāṣid al-sharī’ah*, he based his opinions regarding justice and equality and upon these essential elements, he based all his innovative and illustrious opinions.

**7.5 Yusuf al-Qaradawi (d. 1345 AH/1926 CE)** perceived the traditions of Holy Quran and attaining collective objectives of ‘ preservation of belief, protection of self-esteem and decency, motivate people to worship and value God, sanctity of soul, improve moral standards, foundation of families, women rights and establishing a strong Islamic state.

**7.6 Taha al-Alwani (d. 1354 AH/1935 CE)** studied the utmost and prevailing objective of the Holy Quran and informed that its basic objectives are *Tawheed* (to believe that God is one), *imran* (increasing development on the earth) and *tazkiya-nafs* (purity of the soul).<sup>60</sup>

**7.7 Al-Tirmidhi al-Hakim** who has written down “*al-Salah-wa-Maqasiduha*” related to *maqāṣid al-sharī’ah* deals with matter of wisdom and spiritual secrets behind every prayer.

**7.8 Abu-Zayd-al-Balkhi** known for the book “*al-Ibanah*” which deals with the ruling principles of Islamic Jurisprudence. He has also wrote a book entitled “*Masalih-al-Abdan-wa-al-Anfus*” in which there are clear instructions regarding Islamic practices and rulings to health; both physically and mentally.

**7.9 Al-Qaffal-al-kabir**’s oldest document on the topic of *al-maqāṣid* named “*al-Qaffal’s Mahasin al-Sharai*” found in Egyptian *Dar-al-Kutub* having familiar chapters on *fiqh*, its ruling and wisdom behind it.

**7.10 Al-Amir al-Faylasuf** known as earliest scholar of speculative classification of purposes. His book entitled “*al-i-Lam bi-Manaqib al-Islam*” completely based on criminal punishments in the Islamic law.

## **Conclusion**

Allah Almighty aims with all of His injunctions, commandments and proscriptions to encourage public interest and their protection from harm. Throughout Islamic era,

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<sup>59</sup> J. Auda, *Maqāṣid al-Sharī’ah as Philosophy of Islamic Law: A Systematic Approach* (USA and UK: The International School of Islamic Thought, 2008), 6.

<sup>60</sup> T. J. Al-Alwani, *Maqāṣid al-Sharī’ah* (Beirut: IIIT and Dar al-Hadi, 2001), 25.

Muslim scholars have recognized several new and different *maqasid*.<sup>61</sup> The *maqāṣid* are no doubt deeply rooted in the Quranic injunctions and Prophetic traditions, but they primarily cover the universal philosophy and objectives of these injunctions, frequently beyond the particularities of these texts. The *maqāṣid* assimilates a degree of understanding and versatility into the interpretation of the *sharī'ah* which is unique in many ways and rides above the variations of time and circumstance.<sup>62</sup> The objectives of Islam have a widespread nature. Islamic Intellectuals have used the theory of *maqāṣid al-sharī'ah* to preserve humankind's faith (*deen*), self (*nafs*), intellectual (*aqal*), posterity (*nasl*) and wealth (*maal*) for centuries. These notions are the foundation of the Islamic religion. The main and leading expression of *maqāṣid al-sharī'ah* was human development which aims through Islamic law.<sup>63</sup> Al-Ghazali was the first scholar who systematically dealt with *maqasid*, *masalih ash-sharī'ah* and considerate three ranks; *dharuriyyat*, *hajiyyat* and *tahsiniyyat* along with five essentials of the *shari'ah*. All these concepts whether classical or contemporary are a guiding and essential source for protection of human rights especially five basic rights which are classified by *maqāṣid al-sharī'ah* and can cope with any challenge and these dimensions are regarded as "Level of Necessity".

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<sup>61</sup> Al-Wereny, "The Objectives of Shari'ah between Tradition and Modernity: A Comparative Study," *Journal Title* 5, no. 1 (2017): 33–45.

<sup>62</sup> M. K. Hashim, *Al-Maqāṣid al-Sharī'ah: The Objectives of Islamic Law*, *Islamic Studies* 38, no. 2 (1999): 193-208, Malaysia.

<sup>63</sup> M. Fevzi, "A Statistical Framework on Identification of Maqāṣid al-Sharī'ah Variables for Socio-Economic Development Index," *Journal of Business Studies Quarterly* 7, no. 1 (2015): 207-230.