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Actualization (*Taf'īl*) of the Higher Purposes (*Maqāṣid*) of Shari'ah

INTRODUCTORY REMARKS

The higher purposes, or *maqāṣid*, of Shari'ah are applied and actualized through their means (*wasā'il*). Since the *maqāṣid* are not applied directly, they are usually a step further removed from actual practice. For the *maqāṣid* to be actualized, the first step would naturally be to identify the *maqṣad* one is having in mind. This would give rise, in turn, to a question as to how is the *maqṣad* or purpose of Shari'ah actually identified, and which method, if any, is used toward that end. The *maqāṣid* are divided into several types. According to one of its classifications, they are divided into two types: *maqāṣid* of the Lawgiver (*maqāṣid al-Shāri'*) which are mostly identified by the Shari'ah, and human purposes (*maqāṣid al-mukallaḥ*), which anyone can determine and identify for themselves. The Lawgiver's purposes are identified in the Qur'an or hadith either directly or by allusion. Sometimes the text makes numerous references to something without actually saying that it is a Lawgiver's purpose. When all such references are put together, their combined reading concurs on a certain purpose or *maqṣad*. This process is known as induction (*istiqrā'*) which is a generally accepted method for the identification of *maqāṣid*. A learned scholar of Shari'ah would know, for instance, that trustworthiness (*amānah*), truthfulness (*ṣidq*), justice, compassion, good character (*adab*, *ḥusn al-khuluq*), unity among the faithful (*waḥdah*) and God-consciousness (*taqwā*) are among the *maqāṣid* of Shari'ah even if the text does not specifically say so. *Istiqrā'* partakes in *ijtihād*, so it would be reasonable to say that *maqāṣid al-sharī'ah* are identified by the scripture or by *ijtihād*.

The human purposes do not necessarily involve a juridical methodology and approach. Human beings make numerous decisions based on purely practical purposes which may or may not relate to Shari‘ah purposes. With reference to pursuit of knowledge, for instance, the Lawgiver’s purpose of knowledge and education is knowledge of God and proper manner of worshipping Him and also to explore and understand His creation. The human purpose of education may be to earn a university degree in order to secure employment. In a similar vein, the Shari‘ah purpose of marriage is procreation of the human species, but the human purpose of the same for an elderly couple may only be to find companionship. The two classes of purposes are often interrelated: in such cases the Shari‘ah only specifies that the human purposes do not violate *maqāṣid al-sharī‘ah*. It may be helpful to illustrate in a few examples how the Shari‘ah and human purposes interact and are actualized in combination with one another:

1. Bringing of ease and removal of hardship (*taysīr, raf‘ al-ḥaraj*) is one of the recognised *maqāṣid* of Shari‘ah that characterises Islam’s approach generally but more so perhaps with reference to temporal affairs, say in education and teaching. The question of how is this to be actualized and through what means may be responded to as follows: Scholars and teachers should speak with simplicity in line with the receptivity of their audience’s level of understanding, cultural characteristics and needs. Is it mere information or also improvement of character and combating of a particular mischief? A lecture given in a village is not the same as one delivered in a metropolis, and one that is given to a group of scholars is also not the same as one that addresses the general public. A speech that seeks to rectify existing deviations should also be focused on its purpose and avoid complex theoretical preliminaries.¹ All of these may be said to be the means toward actualizing the Shari‘ah purposes of *taysīr* in the dissemination of knowledge.
2. Another recognised purpose of Shari‘ah is cooperation (*ta‘āwun*) in good works, which is grounded in both scripture and precedent and commands high merit in the Islamic order of values. This is actualized, in turn, by means, not only of helping those in need of it in time of calamity and distress, but also by means of long term measures

that sustain the effort, and widen its network through inviting others to join hands. The means (*wasīlah*) toward that *ta'āwun* may also be the establishment of philanthropic foundations, adoption of correct and better targeted policies that respond to people's needs, and also informing them of the value that Islam attaches to charitable work. As can be seen in this illustration, several means are utilised to secure and actualize the same purpose, that is, of cooperation in good works.²

3. Should our purpose be to raise public awareness of the *maqāṣid* themselves, as we think that individuals and organisations ought to be better informed of *maqāṣid* and pay greater attention to them, then we need to identify the means by which this can be effectively done. One would evidently be to engage with the media to give greater exposure about the *maqāṣid*. Another would be to identify capable persons to write not only learned essays for academic publications on *maqāṣid* but also brief, succinct and targeted pieces for print media outlets. Yet another possible means would be to hold seminars and conferences. And finally, if one were to think that the Arab countries should do better in this regard, one would need to find ways and means to engage with them in Arabic and identify areas to focus one's efforts. One may even do that in the selection of *maqāṣid* themselves, simply because *maqāṣid* occur in so many varieties. If one aims at the *darūriyyāt* category of *maqāṣid*, then which one does one take as a matter of priority and so forth.
4. With reference to Islamic banking and finance (IBF), there is a groundswell of opinion among both the Shari'ah advisors and industry professionals on the need to inject the *maqāṣid* of Shari'ah into the fabric of IBF and that doing this is necessary if one were to protect the credibility of IBF from further erosion. IBF practices are said to have moved further away from the spirit of Shari'ah by following their conventional counterparts and western banking products for a long time. IBF has furthermore followed the rules of fiqh in a formalistic way often at the expense of their purposes. IBF practitioners apply, in other words, the fiqh rules but are in disconnect with the *maqāṣid* of those rules. There is clearly a demand for a *maqāṣidī* approach to overcome the shortcomings of this *fiqhī* literalism in the IBF

practices. But when turning to the *maqāṣid* blue print, it also tends to fall short of providing the needed input in the form of pragmatic tools to rectify the aberrations, partly because the *maqāṣid* have remained somewhat too theoretical to be of much help to practitioners. Most of the *maqāṣid* are theoretical in that they do not have substantive rules of their own. Rather the *maqāṣid* can tell us how the fiqh rules should be applied, not to replace those rules. That said, one may still need to explore the resources of *maqāṣid* further to make a better appraisal of their relationships with the fiqh and *uṣūl al-fiqh*, which is what we propose to do. One obvious question would be how to identify the valid Shariʿah purpose of a fiqh rule, transaction or contract.

To identify one's purpose and specify the means to actualize it may or may not always involve recourse to Shariʿah sources, but only to rational common sense methods, which is why some scholars maintain that *maqāṣid* can be identified by the human intellect (*al-ʿaql*) and also innate human nature (*al-fiṭrah*) as we shall presently explain. When a *maqṣad* is identified, the next step would be to ascertain the suitable means for its actualization. The means that one chooses must not be disproportionate or too indirect for the purpose and that it is also permissible under Shariʿah. Both the means and ends must be lawful. For a serious discrepancy between them can lead to distortion, or manipulation through the use, for instances, of a legal trick (*ḥīlah*) to obtain an unlawful end through a seemingly lawful means.³ This would introduce complication and invoke, in turn, application of the *uṣūl al-fiqh* notion of 'blocking the means' (*sadd al-dharāʿi*). In short, actualization (*tafʿīl*) of *maqāṣid* is about identification of purposes and the means by which they are actualized.

This paper begins with the definition and meaning of *maqāṣid* and proceeds to ascertain three discernible tendencies regarding their scope: reductionist, expansionist, and the moderate approach of *wasatīyyah li-tidāl*. Then we address the question as to whether the *maqāṣid* may be recognised as a proof or source of Shariʿah in its own right. Can one, in other words, extract a ruling (*ḥukm*) of Shariʿah directly from the *maqāṣid*, or should one always follow the *uṣūl al-fiqh* approach? Responding to these questions would help the reader to

know more clearly what to expect of the *maqāṣid*. We often speak of the *maqāṣid* but when it comes to actual practice, we apply the fiqh rules. Can one just ignore the latter and refer directly to *maqāṣid*? Then we explore the relationship of *maqāṣid* to the Qur'an and hadith, and to *uṣūl al-fiqh* respectively. We also ascertain the roles respectively of the human intellect (*ʿaql*) and innate human nature (*fiṭrah*) in the identification of *maqāṣid*. Our following review of the means and actualization of *maqāṣid* elucidates this subject through several illustrations. *Maqāṣid*-based *ijtihād*, or *ijtihād maqāṣidī*, is also discussed in a succeeding section, which is followed, in turn, by a conclusion and a set of actionable recommendations.

Definition and Meaning of *Maqāṣid*

Maqāṣid is the plural of *maqṣad*, from the root word *qaṣada* (to intend), or that which one intends to reach which is usually one's objective or purpose. Muslim scholars have given different definitions to *maqāṣid*. The renowned Andalusian Ibrāhīm al-Shāṭibī (d. 790/1388) who wrote much on the *maqāṣid* did not actually define it. Commonly cited definitions of *maqāṣid* are those of Muhammad Tahir ibn Ashur (d. 1974), Muhammad al-Zuhayli, Yusuf al-Qaradawi and Ibn Bayyah, all of whom describe *maqāṣid* as the "wisdom and meaning" that underlie the rulings (*ahkām*) of the Lawgiver. Ibn Ashur defined the general objectives (*maqāṣid ʿammah*) of the Shari'ah as "the deeper meanings (*maʿānī*) and inner wisdom (*ḥikam*) that the Lawgiver has contemplated in respect of all or most of the Shari'ah ordinances."⁴ For Qaradawi, "*maqāṣid al-sharīʿah* refer to the final ends and purposes (*al-ghāyāt*) aimed at by the textual commands, prohibitions and permissibilities, and the detailed rulings (*al-ahkām al-juzʿiyyah*) seek to realise them in the life of competent individuals, families and communities of the Muslim Ummah."⁵ Simply put, *maqāṣid* is another term for the meaning and wisdom sought by the textual rulings of Shari'ah. Qaradawi's definition clearly seeks to relate the *maqāṣid* closely to the detailed textual rulings of Shari'ah in their totality. The *maqāṣid* are thus to be found in the *ahkām* and have no separate existence outside them. For Abd Allah Bin Bayyah, *maqāṣid* refer to "the spirit of