

Islamic Banking and the Application: Microscope of Maqasid e Shariah

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Abstract

This paper is an attempt to analyze the criticism leveled against Islamic banking in terms of fulfillment and protection of Maqasid or objectives. In the beginning, a brief introduction of Maqasid has been provided followed by its importance and position in Islamic principles of jurisprudence. In Islamic principles of jurisprudence, the Maqasid e Shariah are not an independent source of Shariah to use as a tool to derive the Islamic rulings or to check the status of any practice in terms of its permissibility or otherwise. Instead, the MS are the wisdoms which have been taken care of by Shariah in its rulings related to all the aspects of life. Different segments of a society have different and precise responsibilities towards fulfillment of MS and one particular segment cannot be held responsible for fulfillment of all the five objectives of Shariah. The practices of Islamic banks should be measured in terms of their full compliance with the principles of Shariah related to protection of wealth. Once the Shariah contracts are complied in letter and spirit, the MS shall be met as these contracts are prescribed by Shariah for the very purpose of fulfillment of MS. The article is concluded with recommendations on including the *Zaroorah*, *Hajah* and *Urf* in research areas of Islamic Banking.

Key words: Maqasid e Shariah, Maqasid, Islamic banking

1. Introduction

Imam Shatibi (RA) is said to be the first Islamic scholar who coined the term Maqasid e Shariah in his famous work “Muwafaqat” wherein he discussed the Maqasid in detail. However, he did not provide any precise definition of the Maqasid e Shariah. Following Imam Shatibi, a number of other Islamic jurists made the discussion of Maqasid e Shariah in their writings while discussing the Usool al Fiqh.

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Mohammad Tahir ibn e Ashur, a prominent figure, defines the Maqasid as follows in his book *Al Maqasid e Shariah Al Islamiah*:

¹ مقاصد الشريعة العامة هي المعاني والحكم الملحوظة للشارع في جميع أحوال الشريعة وأعمالها

“The Maqasid are the inner meanings and wisdoms taken into notice by Shariah in all the matters of Shariah or in most part thereof.” (Translation by author)

A similar definition has also been provided in *Maqasid e Shariah wa Makarimuh*.

² المراد بمقاصد الشريعة: الغاية منها، والأسرار التي يراد بها للشارع الحكيم عند تقريره لكل حكم من أحكامها.

“The Maqasid e Shariah are meant to be the objective of Shariah, and the wisdoms intended by Shariah for each of its commands.” (Translation by author)

Going by the definitions given above, it may be inferred that Maqasid e Shariah are the objectives and wisdoms which have been taken into account by Shariah while providing rulings and commands. This is because the Shariah is the set of divine rulings and commands announced by Allah who is *Hakeem* and each of His actions and commands have Hikmah or inner wisdom which we may sometimes understand and may not on other occasions.

قال ابن القيم: إنه سبحانه حكيم لا يفعل شيئاً عبثاً، ولا لغير معنى ومصالحته وحكمته، هي الغاية المقصودة بالفعال.

As derived from the definitions above, the principles of Shariah have to be based on wisdom for smooth functioning of societies and for this purpose, Shariah has prescribed certain rulings and contracts for social as well as financial matters complying which plays a vital role in fulfillment of MS. In this article, the importance of MS and share of economic and financial contracts in fulfilling the MS has been discussed. The basis for these contracts which is also known as the sources of Shariah have also been made part of discussion. After ascertaining the position of MS in the sources of Shariah, it has been argued that the practices of Islamic banking should be analyzed in the light of Shariah compliant financial contracts rather than in the light of MS only.

The methodology adopted in this article for analysis of the practices of Islamic banking is to review the texts of classical jurists especially the ones who are considered to be the pioneer of coining the term of MS and discussing MS in their books. It has been tried to ascertain the exact position and significance of MS in classical principles of jurisprudence or *Usool al Fiqh* after which the conclusion has been reached at in order to confirm the compliance of Islamic banking with the principles of Shariah.

1.1 Importance of Maqasid

The Maqasid and Massalihe of Shariah have been among the favorite focused areas of many Islamic scholars from Imam Ghazali to Imam Shah Wali ul Allah who have emphasized the importance of Maqasid and Masaalih of Shariah and have authored books on this. The understanding of the objectives of Shariah causes increase in peace of heart and soundness of belief in Allah and His Shariah. There is a difference between a believer who obeys a Shariah command with understanding of its Hikmah and a believer who does not know the wisdom behind the act he is doing. The former shall have more peace of mind and heart in doing the action while the later shall not have as much peace of heart as the former has. This goes with the nature and psychology of human nature; humans are more inclined towards complying with the conjunctions if they understand the wisdom of it. A person while rendering an action will be more focused on the same if he is well cognizant with the objective and wisdom of that action.¹

Highlighting the importance of Maqasid e Shariah, Imam Shatbi states as follows: “إن وضع الشرائع إنما هو لمصالح العباد في العاجل والأجل معاً” “The Shariah rulings and commands are for the well-being and benefit of mankind in this world and the hereafter” (Translation by author)

And he further adds that:

“لأننا لأعمال الشريعة ليس مقصود لذاتها، وإنما مقصودها أمور أخرى، هي معانيها والمصالح التي نشرعنا لأجلها” “The actions prescribed by Shariah are not the objective themselves, rather there are other things which are the objectives: the inner meanings of these actions and wisdoms for which the Shariah commands have been ordained and prescribed by Shariah.”³ (Translation by author)

The above statements are clear enough in the importance that Maqasid have with reference to the Shariah rulings and commands. Therefore, it is Masliha to have these objectives met and it is Mafsida to not to take care of these Maqasid.

2. Literature Review on Maqasid as the Principles of Jurisprudence

After the meaning and importance of Maqasid e Shariah have been discussed above, it seems quite relevant to discuss now the position of Maqasid in Usool ul Fiqh or the Principles of Jurisprudence in Islamic law. The Usool ul Fiqh are the set of principles which define the methodology of extracting any Shariah ruling or command from Shariah sources. These principles are the basis of Shariah and all the rulings of Shariah get their foundation stones from these principles of jurisprudence.

Imam Ghazali, in his work on principles of jurisprudence, has discussed the Maqasid e Shariah under the chapter on Istislah and has made them part of Usool Mauhooma or uncertain principles. These uncertain principles are those which don't have as much strength as other sources named Usool al Sahiha. Usool al Sahiha include the Quran, Sunnah, Ijma and Qiyas and are considered certain and agreed upon sources of Shariah. All the scholars and Islamic jurists have consensus that these Usool are authentic sources for extracting and exploring the commands of Shariah with respect to any field of life. The Usool e Mauhoom, on the other hand, are not considered as much authentic as Usool al Sahiha and don't enjoy the concurrence of all the Islamic jurists with regard to their authenticity and application. Imam Ghazali has also described the reason for not making the Maqasid part of Usool al Sahiha:

هذا منا لأصول الموهومة، إذ منظرنا أنها أصلها مسفقد أخطأ... وكما صلحت رجعتنا ليحفظ مقصود شرع يعلمونهم مقصودا بالكتاب والسنة أو لإجماع، فليس خارجا من هذه الأصول.⁴

“This is from among the uncertain rules as it is not right to consider the objectives as fifth source. And each Masliha that leads to protection of the objective of Shariah- and its being objective of Shariah is derived from Kitab, Sunnah and Ijma- then it is not out of these principles.” (Translation by author)

He further says as follows:

وتبينها أنا الاستصلاح ليس أصلا خامسا برأسه، بل من استصلح فقد شرع، كما أن من استحسن فقد شرع.⁵

“And it has become evident that Istislah is not the fifth source (of Shariah) independently but whoever does Istislah, he complies with Shariah just like the one who does Istihsan, he is considered to be complying with Shariah (Translation by author).

The above texts from the prominent Islamic scholar and advocate of Maqasid e Shariah are clear enough to provide evidence that Maqasid are not something separate from the four primary sources of Shariah and are not a fifth source to be used with as much authenticity as the four sources. Instead, Maqasid are the objectives which have been found in the entire system and framework provided by Shariah for the human beings for each field of their life. Therefore, the permissibility or impermissibility of any system can only be determined by the four sources of Shariah and it is very hard to determine the same based on the objectives of Shariah only. This is because each thing has some benefits and harms associated with it and it is Shariah that guides us and tells that the benefits of this thing overweigh the harms and vice versa. This can be understood by the

famous example of liquor which is prohibited in Islam although it has some benefits in it.

Imam Shatbi has also provided a broader outline of the areas of life connected to the objectives of life. Below is an extract of his book on the principles of Islamic jurisprudence:

فأصول العبادات أجمعها إلى حفظ الدين من جانبها والوجود كما الإيمان والنطق بالشهادتين والصلوة والزكاة والصيام والحج مما أشبه بذلك، والعبادات أجمعها إلى حفظ النفس والعقل من جانبها والوجود أيضا كتناول المأكولات والمشروبات والملبوسات والمسكنات مما أشبه بذلك، والمعاملات أجمعها إلى حفظ المال من جانبها والوجود إلى حفظ النفس والعقل أيضا كالتبذير والعبادات.⁶

“The principles of Ebadat (worships) are connected to the protection of belief like Eman and Kalima and Salat and Zakat and Hajj etc. and the rituals are linked to protect the existence and intellect like eating, drinking, dressing and residing etc. and the social connections connect with the protection of offspring and wealth and to the protection of self-existence and intellect as well through rituals.”(Translation by author)

2.1 Maqasid e Shariah and the Islamic Banking

The Islamic banking & financial system, as part of Islamic economics, has to be in line with the principles of Shariah so that it can meet the Maqasid e Shariah. However, it is important to note here that the objectives of Sharia relate to different aspects of life. For example, the objective of protection of faith is linked to the beliefs like Kalma and Salat and the social rituals are connected with protection of offspring and wealth. Similarly, the economic system is supposed to protect the objective of wealth only and not the other objectives. This is the point which is being ignored by many of the current researchers. For them, the Islamic financial and banking system should fulfill all the five objectives of Shariah from protection of faith to the protection of offspring and intellectual. Based on this understanding, a good number of researchers have proposed some indices to measure the extent of fulfillment of objectives of Shariah by Islamic banking. These indices take into account different measures taken by Islamic banks which include, for instance, spending on Qard e Hasan and trainings.

The second point is to discuss the ways by which the objectives of Shariah can be fulfilled by Islamic banks. As mentioned above, the Maqasid e Shariah are the wisdoms of Islamic practices, which in our case are the modes of deposit mobilization and modes of financings, and not the Illah which is the basis of any Islamic practice. Furthermore, it takes a good deal of efforts and time to find wisdom in any particular Islamic ruling which is why it is very difficult to find a wisdom by any person. Applying the same on Islamic banking practices and the

underlying contracts of Islamic banking products, we may say that wisdom-finding process and criticizing the practices and products of Islamic banking from the perspective of Maqasid e Shariah is very hard job to perform. Shariah has laid down some specific rules with the promise that when people comply with those rules and principles, their property, intellect, generation and society will be protected. Islam is about cardinal maxims; it never gives abstract notion without having drawn up the complete lines of action. When we abide by the principles of Shariah and follow the guidelines prescribed by Shariah in our individual and collective life; the objectives of Shariah are automatically met. As a matter of fact, MS are not some specific sets of rules or dogmas, as illustrated above, rather they are explained by the scholars as the objectives which should be achieved in order to bring peace in individual and social life. For example, if people say prayers five times a day in congregation, pay zakat and sadaqah as per the directives of Shariah, take care of their fellows, do not harm others, do not back bite them, do not involve in Riba based transactions, do not take the wealth of other people unjustly, do not commit adultery, do not drink liquor, eat halal and so on, the society would automatically be a peaceful one, leaving rights of everybody protected? Are not the instructions of Shariah insufficient to meet the objectives of Shariah?

However, the beauty of Shariah is that even if you are on lowest acceptable level of some action meeting only the required degree of action, *Wajib*, leaving the best practices, *Mustahab*, the society still becomes peaceful and the things remain in order.

We know that every individual and institution has a limited role and scope and is accountable to the extent of its capacity only; Islamic banking is excruciatingly under pressure for not fulfilling the Maqasid e Shariah (MS). Islamic banks are working in the hobbled societies where other stakeholders, policy makers, regulators and customers are less careful about Shariah compliant banking and their crimping Islamic banking operations to reach the level of best practices or *mustahab*. Once all the stakeholders are committed to do Islamic banking, we will witness a significant change in Islamic banking.

It is important that Islamic banks should be measured in terms of their compliance with the prescribed Shariah guidelines. As a business entity and commercial financial institution, it is bound to comply with all the Shariah commercial and financial laws. Like an individual, who has different capacities of father, brother, colleague, trader/employee, is liable to obey the Shariah rulings in all his capacities, Islamic bank or any other commercial entity is also liable to

obey the rules of Shariah that have been laid down for that specific capacity. All Islamic banks are, therefore, responsible to meet the Shariah guidelines in all their transactions. If an Islamic bank does not flout any Shariah financial law and is in full compliance of Shariah rulings, it is contributing towards the shared responsibility of achieving the objectives of Shariah.

An ideal Islamic society with fulfillment of the objectives of Shariah can only be developed when all the organs of that society including individuals, government, judicial system and financial system etc. are in compliance with the rules of Shariah. If we put all the responsibilities on only one organ of the society without giving much or similar attention towards other segments of the society which are equally responsible, we will not be progressing in our effort to create a happier society. Therefore, the performance of Islamic banks should be assessed by taking into consideration their compliance with the Shariah rules. When we judge the performance of other elements of the society by considering their compliance with Shariah rules, then why to create so much emphasis on vague MS with regard to Islamic banking?

3. Conclusion

It is very important to revert to the classical principles of jurisprudence before the decision on the conformity of a certain practice with the principles of Shariah is made. There should first be some set of rules or principles on the basis of which we differentiate a Sharia compliant practice from a non-Shariah compliant practice. The term Maqasid e Shariah (MS) has not been much discussed by all classical scholars. However, Imam Ghazali and Imam Shatbi have done significant work on it. This is worth noting that MS as discussed in the writings of these scholars, have not been positioned as highly as the other sources of Shariah from which we derive the permissibility or impermissibility of a financial contract. They have not declared MS as the main source of Shariah which is used to ascertain the permissibility of a financial contract or practice.

The financial contracts as derived from the main sources of Shariah and mentioned in classical Fiqh books should be given much more importance as they are the basis of conformity of certain financial contracts with the rulings of Shariah. If these contracts are executed in line with the requirements of contracts as derived from the main sources of Shariah it is difficult to say that the contracts are non-Shariah compliant only because they miss the MS. This is because MS are the wisdom which have been founded in the requirements of contracts and fulfilling these requirements leads to the fulfillment of MS automatically. So, we

don't need to segregate the MS from the requirements of Shariah compliant contracts.

In the light of the above, Islamic banks should also be judged by how best they are in terms of fulfilling the contractual obligations of Shariah contracts. They should not be analyzed by using some vague MS indexing items which are structured by the researchers and are not bedrock principles of Shariah. And by the best practices, I mean the best practices of Shariah compliant products like Ijarah and Murabaha. Best practices do not necessarily mean that we give away some amount as charity. The practice of judging Islamic banks in terms of them meeting the self-developed index items does not only create confusion among the masses regarding the conformity of Islamic banking institutions to the Shariah principles but also develops a sense of picturing MS as a separate thing from Shariah compliance of the financial contracts.

4. Recommendations

It is recommended by the researcher to undertake the research in the following:

1. A comprehensive study on the position of Maqasid e Shariah in different schools of jurisprudence.
2. The concept of Zaroora and Hajah and its application in Islamic financial system.
3. The concept of Urf and its types as mentioned in classical fiqh texts should be extended to the existing practices.
4. An extensive research is needed for more deep understanding of MS and its empowerment in fulfilling the socio-economic goals, especially the Sustainable Development Goals (SDGs).
5. A comparative study may also be done for discussing the arguments of different views on fulfillment of MS by Islamic banking industry.

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