'*Maqāṣid al-Sharīʿa* and Its Role in Shaping the Contemporary Islamic Political Thought

A Critical Analysis over an Evolving Debate

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Abstract

This paper critically assesses how Islamic scholars have been utilizing the theory of *Maqāṣid al-Sharīʿa* in responding to challengers of political modernity. After outlining the key scholarly arguments of last 150 years on the subject, I argue that both the Islamic political thought and *Maqāṣid al-Sharīʿa* as a discipline have experienced structural changes in that particular period. In this process, *Maqāṣid al-Sharīʿa* was able to unlock itself from legal (*Fiqhi)* domain whereas Islamic political thought reconciled itself with political modernity for some extent. Yet, the shaping of Islamic political thought was much influenced by the pressure of outer context rather than proper epistemic justifications. I conclude with *Maqāṣid al-Sharīʿa* and its latest development as an *'evaluative paradigm'* might has the potential to fill this gap and yet, it is too early to consolidate such an argument. The research fellows the qualitative model and its data are derived from the secondary sources such as books and articles.

Key Words: *Maqāṣid al-Sharīʿa,* Islamic Political Thought, Political Modernity

1. The Context of Study

Islamic political thought occupies the center stage of the social and academic life of the Muslim community for decades (Al-Katheeb, 2016, p.21). In that process, Islamic scholars largely relied on the discipline of *Maqāṣid al-Sharīʿa* or Higher Objectives of Islamic Shariah, as a foundational theoretical framework to deal with large differences of opinion about the crisis of political authority in modern times (Audah, 2015, p.25). This very involvement of *Maqāṣid al-Sharīʿa,* in understanding the sensitive modernist political concepts, has created an impact on itself as discipline on the one hand and provided an ample avenue for Islamic political thought to liberate itself from traditional way of thinking on the other. In this background, the objective of this paper is to understand trajectory of the interaction between *Maqāṣid al-Sharīʿa* as a discipline and the political modernity in different phases of the recent history and its implications on Islamic political thought in general. Subsequently, it tries to highlight the missing aspects which must be brought under special intellectual scrutiny for further development of the Islamic political thought based on *Maqāṣid al-Sharīʿa* paradigm. Hence, this paper is organized into five sections including the introduction part. In Section two, I present key developments in terms of interaction between

Maqāṣid al-Sharīʿa and contemporary political issues in brief and section three; i will analyze further developments with special reference to liberal political discourses which emerged in the context of post 1980s. Besides, section four will highlight the most recent discussion on the role of *Maqāṣid al-Sharīʿa* in shaping the political philosophies and its trajectories. Finally, the paper ends with an analytical conclusion. This research depends on secondary sources such as books and journal articles while following interpretative method of qualitative model in analyzing its data.

2. The Interaction of *Maqāṣid al-Sharīʿa* with Political Discourses: A General Over-View

The idea of *Maqāṣid al-Sharīʿa* can be defined simply as 'understanding higher objectives of rules and regulation of the Al-Quran and As-Sunnah in ordering the Human actions' (al-Raissoni, 2014, p.10). The theory had been considered, historically, as the branch of *'Usoolul Fiqh'* or principles of Islamic jurisprudence and later it became *'the philosophy of Islamic Jurisprudence'* itself (Kamali, 2008, p.02). It means that Islamic scholars looked upon *Maqāṣid al-Sharīʿa* as an analytical paradigm to interpret the text to derive mere a legal ruling for a particular event or action. In other words, it was considered as a purely legal norm in wider Islamic scholarship (Al-Katheeb, 2007, p. 32-33). Despite there were some notable works in the pre-modern scholarship which considered the concept of human well-being or *Maslaha,* as the essence of the Islamic political project (Sayyed,2017, p.14), *Maqāṣid al-Sharīʿa* had been largely remained in the legalistic domain. In total contrast to this classical legalistic usage of the concept, the modern Islamic thinkers, since the mid-1800s, have seen the framework as an ideal conceptual foundation in tackling the major questions of modernity which shook the Muslim world from East to West and pushed its classical scholarship into a greater dilemma. Facing the sudden shock waves of modernity, Tunisian politician and a scholar *Khiru Deen Tunisi* was the first among those who used the *Maqāṣid al-Sharīʿa* and '*Maslaha*' or the discourse public interest as a suitable platform to argue that the European political and economic systems shouldn't be seen as alien to Islamic world view and he justified it's applicability to Muslim world based on the concept of *Malasha* (al-Katheeb, 2007, p.28-30). Quickly, the Islamic scholarship did acknowledge the utility of the concept of *Maqāṣid al-Sharīʿa* to craft a middle path between challenging the western imperialism on one hand and internalizing its intellectual progressiveness and political values following the needs and wants of the Muslim world. Moving further, another Tunisian jurist Imam Muhammad Al-Tahir ibn Ashur expanded the classical classification of *Maqasid Shariah* to incorporate values of the western modernity such as human rights, freedom of speech, equality and civility into the Islamic vocabulary (ibu Ashur, 2006, 134-164, p. 238-246)..

These reformist discussions had met with a setback in front of political developments in the Muslim world from the 1940s to 1970s, which brought socialists and secular elites to power center and who perceived the state as tool to reshape its subjects according to its vision and ideological world view. Since then, the post-colonial state building discourses had become immensely ideological in the Muslim world. As a reaction, Islamic scholarship had embarked on a discourse of 'Islamic state' narrative and Islamic identity politics (Sayyed, 2000, p. 28-34). They interpreted 'state' as a tool for the 'Islamaization of community' in countering 'secularization' projects. This means that none of the above ideological groups understood the real meaning of the concept of state-building or governance in a modern

nation-state system. Rather, they all engaged with it as a mean to project their ideology and world view upon subjects by using the state power. The missing aspect in the discussion was a critical question of why we do need a state and what are its purposes? For Islamists, the state power, constitution, parliament and political parties all are vital weapons to ensure the '*Islamicness*' of the respective societies and to impose the fixed principles of Islam upon them. The point to ponder at this this phase is that the broader discourses on *Maqāṣid al-Sharīʿa* and its relationship with politics underwent sudden silence amidst the emergence of ideological battle between revivalist nature of Islamic scholarship and secular political elite. As a third phase, the idea of *Maqāṣid al-Sharīʿa* had been brought back into intellectual discourse by Political Islamists to unshackle themselves from their ideological orientation and to expose their movements to policy centered discussions in terms of governance and democracy (Rane, 2013, p.503-504).

3. *Maqāṣid al-Sharīʿa* in the Context of Liberal Political Order: A Further Note

In the post-1980s, '*Maqāṣid al-Sharīʿa* paradigm was seen, once again, as a potential theory in facing the ever-increasing pressure of liberal world order on Muslim societies. Subsequently, Islamic scholars produced influential works in understanding the liberal political values in the light of Islamic world view. In those works, Islamic scholarship accepted the existence of two separate spaces namely public life and privet life and justified it based on their analytical perspectives on Islamic thought. It is noteworthy that the separation is the cornerstone of liberal political theory. Here, Islamic scholarship defined Islamic politics and governance as regulating the public sphere per the higher values and objectives of Islam or *Maqāṣid al-Sharīʿa* (*Raissouni, 2014, p.774*). Initially, this understanding stressed that any project or proposal that will contribute to the further empowerment of the economic condition, education system, political freedom, and social demands can be designated as '*Islamic*' in the light of higher objectives of *al-Sharīʿa*. As a result, Islamic scholars had come into an understanding that '*Islamic State*' is not something that spiritual leaders or Muslim jurists make decisions in matters related to governance or to use the state power to dominate the public sphere by enforcing Islamic law. Rather, it is to maneuver the state machinery towards achieving the higher objectives of Shariah or *Maqāṣid al-Sharīʿa* in its border learning such as justice, equality, development, mutual respect, civility, human rights, freedom and social integration in a given territory. Moreover, *Islamic al-Sharīʿa* has a set of fixed rules and regulations but those are very limited and much related to personal issues. On the contrary, when it comes to governance and public affairs, the application of *al-Sharīʿa* is much depended on articulating well-being of society (*Maslaha*). In this respect, al-Ghannushi elaborated:

"It is not the duty of religion to teach us agricultural, industrial or even governing techniques, because reason is qualified to reach these truths through the accumulation of experiences. The role of religion, however, is to answer the big questions for us, those relating to our existence, origins, destiny, and the purpose for which we were created and to provide us with a system of values and principles that would guide our thinking, behavior and the regulations of the state to which we aspire" (al-Ghannushi, 2012)

This value-based approach to statecraft led the Islamic leaders to argue that western perspective on the state and its functioning does not necessarily differ from the Islamic

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perspective. More importantly, Malaysian politician Anwar Ibrahim argued that enlightenment scholar Locke's values of liberal governance such as ensuring human rights, free speech, and civil society are very close to the idea of *Maqāṣid al-Sharīʿa*. He (2006) explained:

"[T]he *Maqāṣid al-Sharīʿa* or objective of Islamic Sharia sanctifies the preservation of religion, life, intellect, family, and wealth, objectives that bear striking resemblance to Lockean ideals that would be expounded centuries later. Many scholars have further explained that laws which contravene the *Maqāṣid must* be revised or amended to bring them into line with the higher objectives and to ensure that they contribute to the safety and development of the individual and society' (p.7).

The new thinking has ended up in upholding a fresh view on what is '*Islamic*' in the sphere of politics and state-craft. It endorsed a perspective that as long as the state machinery serves the public interest and strives to produce dignified life for its community, the very process should be considered as '*Islamic*'. In addition to that, the means to achieve those objectives are also must be seen as '*Islamic*' (al-Awa, 2014, p. 14). This is a critical and radical step on part of Islamic scholarship in comparison to earlier developments where it had engaged in ex-communication with western political norms in the 1950. Nevertheless, we can sense the enthusiasm of Islamic scholarship for shaping up its outlook in line with liberal values and present itself as an acceptable player in the emerging world.

At the meantime, when a counter-question had emerged on the role of the state in promoting specific religious morality in Islamic perspective, al-Shafi argued that objectives of the existence of the Muslim Ummah are different from the objectives of the state in Islamic perspective. It means the objective of Muslim Ummah or *Maqāṣid Ummah Islamiyya* is to practice Islam and to witness the message of god in front of world society. On the other hand, the objective of the state is to ensure the public order or to avoid anarchy and to attend matters which are vital to all citizens irrespective of religion and race such as economic equality, justice, education, and development, etc. Hence, Muslims should not confuse the objectives of their existence with that is of the state. This means, promoting and protecting Islam is the obligation of Ummah and it should not be out-sourced to state machinery while its duty list has nothing not to do with religion and endorsement of certain world view upon its people. So that, Muslims can utilize the civic space of nation-state system to preach and promote and realize the objective of Islamic message through persuasion rather than trying to achieve power behind the logic of protecting the religion and to enforce a certain world view over citizenry (M.Safi, 2010, p.219-227).

4. *Maqāṣid al-Sharīʿa* and Politics: From Adaptation Scheme to Evaluative Paradigm

Departing slightly from the adoptational nature in discussing the role of *'Maqāṣid al-Sharīʿa'* in the realm of politics, Audah forwarded an argument that Islamic higher objectives or *Maqāṣid al-Sharīʿa* should be utilized not only just to understand or adopt to western political norms but also to identify its shortcomings, and to make needful changers on it philosophical and practical aspects in order to contribute for its further enhancement. Otherwise stated, *Maqāṣid al-Sharīʿa* must be seen as a theory that pushes Islamic scholarship for critical engagement with outer world and not just to adapt to the changing situations, he argues. In

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this sense, it is not possible to label a man-made political philosophy or norm as '*Islamic*' or '*un-Islamic*' by looking just at its face value and even its structural or philosophical appearance. Because, each philosophy has its own positives and negatives resulting either out of its conceptual framing or functioning process or the combination of both. As a result, theory of *Maqāṣid al-Sharīʿa* is a set of core Islamic values and objectives in order to dominate such political norms, its foundational principle by evaluating its functioning process in order to ensure up to what extent Islamic higher objectives are being achieved in a given context on the other. Due to that fact, '*being Islamic*' of political idea or theory or system does not depend only on its structural appearance and philosophical foundations rather the functioning process also to be included. It means, '*being Islamic*' is not a static idea. But, it is a fluctuating paradigm. Thus, '*Maqāṣid al-Sharīʿa*' is set of Islamic normative values that oversee man-made political philosophies in its theoretical and practical aspects in order to produce a balance sheet for its continuous development (Audah, 2015, p.65). For example, Islamic world view accepts party politics on theoretical terms. Yet, it doesn't accept ethical issues resulting out of its functioning aspects such as blind competition for power grab and deceptive nature of its members in general. As such Islamic thought promotes the democratic governance on theoretical aspect and yet, it never accept lavish expenditure on part of elite business class in manipulating politicians and increasing nature of media mafia in misleading the public opinion in the name of democratic politics, Audah argues. In his opinion, *Maqāṣid al-Sharīʿa* to be seen as the tool for constant constructive criticism for further development not merely a way-out from an increasing pressure of global changers.

Latest discussions on the topic have been trying to tackle the question of how to apply *Maqāṣid al-Sharīʿa* in the field of public policy, which is a sub discipline of political science. In her work, Basma argues that public policy is a complex field of study and Maqasid paradigm should be granted a strong stake in directing the discipline. Her proposal criticizes traditional Islamic literatures as those works were trying to deal all public issues only with the lenses of 'legal paradigm'. Therefore, it is imperative to move the *Maqāṣid al-Sharīʿa* from age old legalistic domain to more multi-disciplinary arena when it comes to policy oriented debates in the field of governance (Basma, 2018, P.26-28). Because, today's society is being shaped by different power relations that warrant us a holistic approach to handle the public domain. The application of *Maqāṣid al-Sharīʿa* in field of public policy cannot simply be understood in contemporary times as that was perceived by the classical scholars. Rather, we need to get the total picture on how the social issues are being developed and its complex relationship with economy, art and culture, environment, education and the global politics etc. From that perspective, she says, for example, that no longer we could define the pervasion of life as an objective of Shariah in a narrow sense of saying that just it means ensuring physical security for a human being against the arbitrary killing. But, in the contemporary complex world order, we need to extant the preservation of life into civil society activism, social integration, literature and environmental ethics given the significance of those aspects in ensuring the life security of humanity in terms of physical and spiritual dimensions. Moreover, in the age of systematic corruption and marginalization, we can't define the preservation the wealth as the core-objective of Shriah only just to protect the wealth of an individual from acts of theft as classical scholarship projected, in isolation of a global economic empire which directs the nation states according to its agenda and creates an immense impact on world communities in an invisible way (Basma, 2018, p. 62-75). In this sense, she (2018) put her core-argument as follows:

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'The almost complete absence of a major, coherent and modern work on the exploration of governance and public policy from scriptural sources has opened a governance vacuum in Islamic scholarship. In the absence of a well-developed alternative, scholars presenting traditional views will increasingly be called upon to fit the approach to a whole host of public concerns without the necessary level of introspection or knowledge required. Although this is eminently preferable to the uncritical importation of archaic legal rulings, the approach (as it currently stands) is far from robust as a theory of governance and indeed does not fully capture the essence of Islam. A renewed exploration of the Shari¢ah is required: one that will seek a better understanding of power relations and other human tendencies, decision-making structures, the role of the state and values including accountability, integrity and transparency, in addition to the nature of rights and freedoms. (p.93)

Thus, her message is very clear. It is that the application of *Maqāṣid al-Sharīʿa* in political and policy domain needs to be shaped after long debate engaging the experts of social sciences and the experts of contemporary world. In other words, she promotes that *Maqāṣid al-Sharīʿa* should be operationalized as an 'evaluative framework' in terms of affairs related to governance and state policy making. But, the theory is not that much of matured enough to perform such a role in the growing complex world. So that, more work needs to be done to elevate the theory in order to play a dynamic role and the very process should include not only experts of *Maqāṣid al-Sharīʿa* but also social science experts as well.

5. Analytical Conclusion

The overall evolving debate on the issue of *Maqāṣid al-Sharīʿa* and its engagement with political modernity presents us with some critical conclusions. **Firstly**, *'Maqasid Sharia'* has no longer been a part of the Islamic jurisprudence as it was perceived by the classical Islamic literature. Rather, it has been grown into a dynamic theoretical framework to face the key questions of political modernity and growing contemporary policy challenges in the light of broader Islamic world view. **Secondly**, the Islamic political scholarship has empowered itself to critically answer for the sensitive questions of how to reconcile the faith with the demand of liberal political order for some extent with the boarder support of theory of *Maqāṣid*. **Thirdly,** the overall observation of the dynamics of Islamic political thought for last hundred years gives us another useful insight on the nature of its growth and its arguments. It is that although Islamic thought succeeded in responding to emerging challenges of political modernity for the last few decades, its nature and argument pattern tells that Islamic political thought had been much shaped by those very challengers. For example, Islamic political scholarship had taken a *reformist outlook* in the early period of its interaction with political modernity in the 1800s. The very reformist nature had changed and turned into a revivalist and *confrontational outlook* in the context of the ideological battle between Islamic scholars and secular elites in the Muslim world in the 1950s and 1970s. In the cause of emerging liberal order in the post-1980s, Islamic political scholarship had taken a more *adaptational tone* in dealing with the issues. These different ups and downs highlight that it has a serious crisis in dealing with political concepts based on deep epistemological and philosophical research approach. **Fourthly**, there are no any notable contributions available still that forwarded a systemic criticism against the current political order rather all works are concerned, more or less, with reshaping the Islamic political thought according to existing political system. **Finally,** while this has been the case for last one hundred years, it is too

early to predict whether the new 'evaluative paradigm' of *Maqāṣid al-Sharīʿa* will be able to fill that gap of modern Islamic political scholarship in future.

References

Abdelgafar.B. (2018). *Public Policy beyond Traditional Jurisprudence* (London: International Institute for Islamic Thought)

Adis Duderija (ed.). (2014). *Maqasid Al Shari'a and Contemporary Muslim Reformist Thought: An Examination* (Palgrave Macmillan)

Affan M. (2016) *Al-Wahhabiyya wa Al-Ikwhan : As-Sirah hawla Mafhoomu Dawala wa Sarahiyyatu Sulta* (Beirut: Jusoor li tarjuma wan Nashir).

Ahmad I (2009). *Islamism and Democracy in India: The Transformation of Jamath E Islami Hind* (New Jersey: Princeton University Press)

Ahmad I. (2009)). Genealogy of Islamic State: Reflections of Maududi's Political Thought and Islamism. *The Journal of Royal Anthropological Institute 15,* p.145-162.

Al-Ghannushi. R. (2012, March 02). Secularism and State. Retrieved from http://imbdblog.com/?p=1742

Al-Katheeb. M. (2007). Waleefa Maqasidiyya : Mashrooeyatuha wa Ghayatuha. *Islamiyyatul Mahrifa, 12* (48), p. 09-34

Al-Katheeb. M. (2016), *Maizaku Dawala bainal Islamiyeen wal Elamanyeen.* Beirut : Husoor Litarjuma wan Nashir.

Al-Musthafah H. (2016). The Islamic State and Jihad in the Age of Modernity: An Exploration of Contemporary Concepts and Experiences. *Tabyyun 18*(05),p.145-164.

Al-Raissouni. A (2014). Muhalarath fil Maqasid Shariah, Cairo: Darul Kithab lil Nashir wal Tawzeei.

Al-Raissouni. A(Ed.) (2014). I'maalul Maqasid baina Tassayub wa Tahayubb (London: Al-Furqan Foundation for Islamic Heritage)

Audh. J. (2015). *Nahwa Tajawuzul Isthibdad wa Tahkeeku Maqsidi Shariah.* Beirut: Arab Network for Research and Publication. Enayath H. (1982). *Modern Islamic Political Thought* (London: Macmillan Press Limited).Hashim. K (2012). *Maqasid Al-Shariah, Ijtihad and Civilisational Renewal,* London: International Institute of Islamic Thought.

Ibrahim. A. (2016). Universal Values and Muslim Democracy. *Journal of Democracy 17* (03), p. 5-12

Ibu Ashur. T (2006). *Treatise on Maqasid Shariah*, (London: International Institute of Islamic Thought).

Khan M (1995). Sovereignty in Modernity and Islam. *East-West Review 1*(02),p. 43-57.

Rane. H. (2013). The Relevence of a Maqasid Approach for Political Islam Post Arab Revolutions. *Journal of Law and Religon 28* (02),p. 489-520

Safi. L. (2010). The Maqasid Approach and Rethinking Political Rights in Modern Societies. *Intellectual Discourse 18* (2), p.211-233

Salim El-Awa.M. (Ed) (2014). *Tafeelu Maqasidi Shariah fil Majalil Siyasi, (London: Al-Furqan Foundation for Islamic Heritage)*

Sayyad R. (2000). *Azamatul Fiku As-Siyasi Al-Arabi* (Beirut: Darul Fikrul Muaa'sir)

Sayyad R. (2017). *At-Tafkeer Bi Dawla wa as-Siyasa, Siyasa Sharayya fil Majlil Islami,*(Riyad: King Faisal Center for Research and Islamic Studies).

Wolf A (2017). *Political Islam in Tunisia* (New York: Oxford University Press).