

ANALYSIS OF JUSTICE THROUGH *MAQĀṢID* THEORY

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ABSTRACT

The notion of Justice (al-'Adl) is one of the basic objectives (maqāsid) of Islam and an inherent right of all human beings under the Sharī'ah to establish a just society. It exists in Islamic resources from all perspectives even in Shia theology of Islam it has been given a separate place under the basic tenets and principles of Islam (uṣūl al-dīn).

There are various Qur'ānic verses and aḥādīth explaining this very essential principle of Islam and it has been asserted that one of the basic purposes of the Divine revelation is to achieve Justice and welfare of mankind and other creatures.

It is also certain that this very essence of Sharī'ah-which is justice and welfare of earthly beings-cannot be achieved without a sincere attempt to follow the Sharī'ah in accordance with the Divine will and wisdom.

This is the reason why Maqāsid al-Sharī'ah (higher objectives of Sharī'ah) and the notion of justice have been elaborated side by side by innumerable scholars since just after the time of the Prophet ﷺ. Maqāsid al-Sharī'ah aims to promote the Sharī'ah in accordance with the Divine will of Allah and develop a strong sense of justice and society among all human beings.

In the proposed paper an attempt will be made to study the notion of justice in the light of Holy Quran and the Prophetic traditions and illustrate its relationship with the Maqāsid theory. It will also focus on analyzing the contemporary literalist groups who insist on reference to the Texts but oppose interpretations based on the objectives (maqsid). In this analysis, the paper will highlight how these contemporary literalist approaches lack the very spirit and essence of Sharī'ah in their elicitations and references and will emphasis on the need to interpret the Sharī'ah in the light of Maqāsid in order to establish an intrinsic sense of justice and equality in the society.

Focusing on textual and material resources, this study will apply the exploratory and descriptive design using the content analysis method.

KEYWORDS: Objectives (Maqāsid), Islamic Resources, Various Qur'ānic

INTRODUCTION

Islam has been sent down as a means to fulfil the purpose of human life on earth and the purpose of a human life on earth, according to Islam is to submit his obedience to the Will of Allah and promote peace, prosperity, freedom and equality for all fellow beings and other creatures through compassionate justice.

It has been narrated that a companion asked the Prophet (peace be upon him) if he could summarize Islam in a few words for him. The Prophet, in response, recited the verse, 90 of al-Nahl: "Allah commands justice, beneficence and

giving [of your wealth] to kith and kin, and He forbids indecency, evil and lawlessness.”¹

The notion of justice in Islam has been described as the basic objective and the fundamental principle of Islam when the Holy Quran states as follows: “And the Word of your Lord is fulfilled and completed in truth and in justice.”²

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The scholars of Islam and particularly those who dealt with Maqāsid al-Sharī’ah (objectives of Sharī’ah) have extensively defined and elaborated the notion of justice. They gave justice such importance that they have conferred it a separate category, known as ‘Ilm al ‘Adl.

This paper delineates the concept of justice in light of Maqāsid al-Sharī’ah. It will present some of Qur’ānic verses in detail to shed light on how Islam perceive justice in a holistic and dynamic way, taking into consideration reality and ever-changing circumstances. It will also emphasise on the need to interpret the Sharī’ah in the light of Maqāsid in order to establish an intrinsic sense of justice and equality in the society.

The Notion of Justice

Justice means fairness in a way people are dealt with or to treat people or things in a way that is fair³. According to Oxford dictionary, it refers to the quality of being fair and reasonable or conformity to truth, fact or sound reason.⁴

Justice, both from Western and Islamic perspectives, is a social concept as well as a moral virtue and attribute of human personality within or outside the social context.

In Arabic language and specifically in Quran and ḥādīth, there are two terms which have been extensively used for the notion of justice and these are al-‘adl and al-qisṭ and they jointly formulate the concept of justice.

Al-‘Adl, is lexically an abstract noun which refers to establish balance or to give others their right indiscriminately.

Al-Manawi defines al-‘adl as the middle compared to al-ifrāt (excess) and al-tafrīt (negligence) which means to deal with things in a just manner whether the matter is linked to the intellect such as the implementation of laws or related to the sense such as in the different means of measurement. He has further quoted a narration “bil `adl qāmat al-samāwāt wa al-ardh” which he explains that if any of four elements of universe would be imbalanced; out of proportion or contrary to divine wisdom the world wouldn’t be in such a just and systematized order.⁵

Al-Qisṭ: The word al-qisṭ, meaning to give someone his right completely and absolutely or to protect him from oppression, is the Arabic derivative of the Roman word ‘qisṭās’ which means balance and pair of scales. Because the scale is considered as the sign of justice, the word al-qisṭ has also been used to describe the meaning of justice and fairness. Al-

¹ Mohammad Hashim Kamali, Freedom, Equality and Justice in Islam, (Cambridge: Islamic Texts Society, 2002), 112.

² Al-Quran, 6: 115.

³ Cambridge Advanced Learner’s Dictionary, s.v “justice”

⁴ <https://en.oxforddictionaries.com/definition/justice>, s.v. “justice”

⁵ Muhammad Abd al-Ra’ūf al-Manawi, al-Tawqīf ala Muhimmāt al-Ta’rīf, (Beirut: Dar al-Fikr, 1410AH), 1:506. (Al-Maktabāh al-Shāmilah, V. 3.61)

Mutrizi defines it as to do justice and put something in order.⁶

Some scholars have used these two words interchangeably while the others have written that the term al-qisṭ only relates to legal justice while al-'adl is wider in its application and includes both legal and non-legal justice. The sources of non-legal justice may include social behaviour and conduct, customs, values, way of living, professional ethics, business practices etc.

Concept of Justice in the Sacred Sources

There are dozens of Qur'ānic verses and ḥadīths elaborating the notion of justice in Islam and its different aspects and applications.

While emphasising on the essentiality of justice in daily affairs of human beings, the Holy Quran directs believers to maintain justice and fairness in all walks of life. The holy Quran reads, "Say, My Lord advocates justice"⁷ and at another place it goes as "Allah commands justice and fair dealing."⁸

Ibn Ashur believes that the order of maintaining justice in the verse is general and covers all matters of life and all words and acts of human beings.⁹ Same view has also been held by Ibn Kathir.¹⁰

While maintaining justice in natural and social orders, the Holy Quran points out, "And the Firmament has He raised high, and He has set up the Balance (of Justice), in order that ye may not transgress (due) balance."¹¹ This has been further explained to lay the foundation of a healthy and just social order where the Quran says: "O you who believe! Stand out firmly for justice, as witnesses to Allah, even if it be against yourselves, your parents, and your relatives, or whether it is against the rich or the poor..."¹² and "O you who believe! Be steadfast for the cause of Allah and just in bearing witness. Let not a group's hostility to you cause you to deviate from justice. Be just, for it is closer to piety. Have fear of Allah; Allah is well aware of what you do."¹³ Ibn Kathir writes that every individual of this Ummah is being addressed here to maintain justice in all times and in every situation.¹⁴

Syed Quṭub expressed the same view in the verses, 151-153 of al-An'ām and writes that maintaining equality and justice by means of measurement is metaphorical to maintaining justice in all worldly affairs. There are some other commandments in these verses of 151 and 152 indicating different aspects of spiritual and material life where Allah Almighty directs people to observe justice to the best of their ability and in the very next verse of 153 Allah calls it His

⁶ Abu al-Faṭḥ Ali ibn al-Muṭriz Al-Mutrizi, al-Mughrab fi al-T'arīf al-M'urab, (Aleppo: Maktabah Usāma ibn Zaid, 1979), 2: 176. (Al-Maktabāh al-Shāmilāh, V. 3.61)

⁷ Al-Quran, 7 [al-A'rāf]: 29.

⁸ Al-Quran, 16 [al-Naḥl]: 90.

⁹ Muhammad Tahir ibn al-Ashur, al-Taḥrīr wa al-Tanwīr, (Tunisia: Dar Sehnūn li al-Nashr wa al-Tawzi', 1997), 8:87. (Al-Maktabāh al-Shāmilāh, V. 3.61.)

¹⁰ Hafiz 'Imaduddīn Abul Fidā Ibn Kathīr, Tafsīr Ibn Kathīr, Trans. Moḥammad Jūnāgarī (Lahore: Maktaba Quddūsiya, 2006), 2:254.

¹¹ Al-Qur'an, 55 [al-Raḥmān]:7-8.

¹² Al-Qur'an, 4 [al-Nisā]:135.

¹³ Al-Qur'an, 5 [al-Maida]:8.

¹⁴ Ibn Kathir, 2: 232.

Straight Path (sirat al-mustaqīm) which is the only path to be followed and rest other ways are to be left.¹⁵

Dr Asghar Ali Engineer observes that the concept of justice requires that there should not be excess even in spiritual life as for an average person is concerned.¹⁶

Prof. Kamali explaining the verse, “Surely Allah commands you to make over trusts (amānāt) to their owners and that when you judge between people you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing”,¹⁷ writes that the reference to amānāt immediately followed by a reference to justice implies that it is one of the most important of all amānāt (trusts).¹⁸

From the above accounts, it is illustrated that justice is a collective responsibility of all members of a society, community and a nation and as a matter of fact it is responsibility of all humanity. As for Muslims, since they are the first audiences of the Quran, it is obligatory upon them to maintain justice in all circumstances at all times and never be deviated from it.

The concept of justice in Islam is not limited to this world only, Quran declares justice as the basic criteria for Hereafter as well.

The Holy Quran says, “We shall maintain proper justice on the Day of Judgment. No soul will be wronged the least. For a deed even as small as a mustard seed one will duly be recompensed. We are efficient in maintaining the account¹⁹”. Al-Qasimi explains that in the Day of Judgment everyone will be requited just and fair and not a single deed will be increased or decreased from one’s book of deeds.²⁰

Ibn Kathir has narrated a ḥadīth that “The rights will be rendered back to those to whom they are due, and even the sheep that does not have horns will take revenge from the horned sheep.”²¹

Ḥaḍrat Aisha (may Allah be pleased with her) narrates that a companion came to the Prophet (peace be upon him) and said his slaves are disobedient to him. They prevaricate and deceive me and as so I scold and beat them. How will be my matter with them? The Prophet (peace be upon him) replied that on the Doomsday both parties will be treated equally. So if your scolding and beating them are found equal to their deceit and disobedience, there will be no harm to any party then and if the punishment is found less than the disobedience and deceit, you will be compensated for the rest from their deeds but if it is found that your punishing them is more than their deceit and disobedience, they will be compensated from your deeds then. Hearing this, the companion became sad and started crying. The Prophet asked him, “Don’t you have heard the verse “We shall maintain proper justice on the Day of Judgment”? The companion uttered: O Prophet of Allah!

¹⁵ Syed Qutub, *Fi Zilāl al-Qur’ān*, (Al-Maktabāh al-Shāmilāh, V. 3.61.), 3: 174.

¹⁶ Asghar Ali Engineer, *Islam: challenges in the twenty-first century*, (New Delhi: Gyan Publishing House, 2004), 259.

¹⁷ Al-Qur’an, 4 [al-Nisā]: 58.

¹⁸ Mohammad Hashim Kamali, *Freedom Equality and Justice in Islam*, (Cambridge: Islamic Texts Society, 2002), 104.

¹⁹ Al-Qur’an, 21 [al-Anbiyā]: 47.

²⁰ Jamaluddin Al-Qasmi, *Maḥāsīn al-Ta’wīl*, (Al-Maktabāh al-Shāmilāh, V. 3.61.)

²¹ Ibn Kathir, 346.

There is nothing better than to keep myself away from them. Be witness that I set them free.²²

These evidences from the Quran and Hadīth clarify that Islam presents humankind the highest and a very comprehensive concept of justice and defines it with all its requirements and conditions to be applied to establish a just and prosperous society.

The Prophet performed untiring efforts to establish a just society where there would be no excess, exploitation and oppression. He led a great revolution based on the concept of justice in all fields of life which W.C. Smith has termed the greatest and the most systematic revolution before the communist revolution in the world.²³

Scholars of Islamic Sharī'ah have put great emphasis on the notion of justice and have stressed on it to the extent that Al-Sarakhsi declares the Justice as the noblest act in Islam next to belief in oneness of Allah and prophecy of Muhammad. He writes that it is the greatest of all duties entrusted to the prophets and the strongest justification for the vicegerency of man on earth.²⁴

Abu Zahra believes that the Islamic concept of justice is absolute, comprehensive, impartial and universal. He describes a ḥadīth in which a companion asked the Prophet if he could summarize Islam in a few words for him. The Prophet recited the following verse for him in response.

“God commands justice, beneficence and giving to kith and kin and He forbids indecency, evil and lawlessness.”²⁵

Ibn Qayyim al-Jawziyyah writes that any path that leads to justice is an integral part of the religion and can never be against it. He further explains that Allah has demanded justice and, although He has not prescribed a fixed means by which it can be achieved, He neither has declared invalid any particular means or methods that can lead to justice. Therefore, all means, procedures, and methods that facilitate, refine, and advance the cause of justice, and do not violate the Islamic Law are in harmony with the Sharī'ah and are valid.²⁶

Justice and Maqāṣid al-Sharī'ah

Maqāṣid al-Sharī'ah (Higher Objectives of Sharī'ah) is conceptually very close to the concept of justice as much as that it finds its very true essence in justice. Maqasid al-Shariah consists of two words; Maqāṣid (objectives) and al-Sharī'ah (Islamic Law) and it has been defined as the purposes or goals of Sharī'ah (Islamic Law) intended by the Lawgiver for the enhancement and realization of justice and human welfare as a whole.

Ibn Ashur defines it as underlying meanings of shari'ah injunctions intended by Allah in all or most of the cases.²⁷

²² Abū 'Isā al-Tirmidhi, Sunan al-Tirmidhi (Beirut: Dar Iḥyā al-Turās al-Arabī, n.d.), 5: 320, [3165]. (Al-Maktabāh al-Shāmilāh, V. 3.61)

²³ Engineer, 259.

²⁴ Shams al-din Abu Bakr al-Sarakhsi, Uṣūl al-Sarakhsī, (Beirut: Dār al-Kitāb al-'Ilmiyyah, 1993) 2: 74. (Al-Maktabāh al-Shāmilāh, V. 3.61.)

²⁵ Al-Qur'an, 16[al-Nahl]:90.

²⁶ Ibn Qayyim al-Jawziyyah, al-Ṭuruq al-Ḥukmiyyah fi al-Siyāsah al-Shar'iyyah, ed. Mohammad Jamil al-Ghazi, (Cairo: Matba' al-Madanī, n.d.) 19. (Al-Maktabāh al-Shāmilāh, V. 3.61.)

²⁷ Mohammad al-Tahir Ibn Ashur, Ibn Ashur-Treatise on Maqasid Al-Shariah, trans. Mohamed El-Tahir El-Mesawi, (London-Washington: International Institute of Islamic Thought, 2006), 5.

Jassir Auda writes that Maqāṣid are the group of divine intents and moral concepts upon which the Islamic law is based, such as, justice, human dignity, free will, magnanimity, facilitation, and social cooperation.²⁸

It is believed that most of the injunctions of the Shari'ah have certain objectives and reasons. These objectives are rational and are easy to identify except in some injunctions related to rituals ('Ibadah) which are sometimes only known to the Creator and there is no need for human beings to go behind them.

The Primary objective of the Sharī'ah is to set the just order in this world so that the mankind as the vicegerent of Almighty Allah can freely assign his bestowed duties concerning their affairs both in this world and the Hereafter. It is generally held that the Shari'ah as a whole intends to maintain justice or secure common good for the people and protect them against evil. The Qur'an explains it in the following verse:

"We sent Our Messengers with clear evidences, and sent with them the Book and the Balance so that people would maintain justice."²⁹

Al-Shatibi asserts that primary goal of the Sharī'ah is to establish the rule of justice among people and prevent the tyranny. This is the basic objective of the Lawgiver and it can be seen in all of the detailed injunctions of the Sharī'ah.³⁰

Al-Qarafi states that an objective (Maqṣad) is only valid if it leads to justice or the avoidance of corruption.³¹

Mohammad al-Ghazali even has included justice and freedom in Maqāṣid at the necessities level.³²

Ibn Qayyim al-Jawziyyah states that justice is the supreme goal of Sharī'ah. Allah sent messengers and scriptures to establish justice among people. Any ruling that replaces justice with injustice, mercy with its opposite, common good with evil, or wisdom with triviality does not belong to the Sharī'ah even if it is claimed to be so according to some interpretation.³³

The five basic values (dharūriyyāt al-khamsah) of Maqasid theory, which are agreed unanimously to be protected at any cost, are the ultimate objectives of Sharī'ah despite that there is no specific reference to these values in the primary sources of Islam. But overall contents of the Sharī'ah and Islam's unshaken stand on justice compel scholars to treat these values as basic rights of all human beings.

When we look into categories of Maqāṣid, identified by scholars, we feel the essence of justice there also. For example, the very first category, necessities (ḍarūriyyāt) includes the first value-hifz al-dīn (protection of religion) and it is obligatory upon each Muslim to adhere to his dīn all his life both at individual and collective level. At first level, it is preserved through ibādāt and rituals such as prayer, zakāh, ṣaum etc. The intention and purpose of executing all these rituals is believed to increase the Imān, God-consciousness and fear in a person and thus will protect him from committing sins and unjust deeds.

²⁸ Jasser Auda, *Maqasid al-Shariah: An Introductory Guide*, (London-Washington: International Institute of Islamic Thought, 2008), 5.

²⁹ Al-Qur'an 57 [al-Ḥadīd]:25

³⁰ Abu Ishaq al-Shatibi, *al-Muwafaqat*, eds. Abu Ubaida Mashūr bin Hasan, (Riyadh: Dār Ibn 'Affān, 1997), 2: 269-286.

³¹ Auda, 6.

³² *ibid*, 11.

³³ Ibn Qayyim Al-Juwziyyah, *I'lām al-Muwaqqi'īn*, ed. Taha Abd al-Rauf Saad, (Beirut: Dar Al-Jil, 1973), 1, 333.

The protection of dīn at second level is meant to defend the faith. One of its various means is jihad which is to wage war against the enemies of Islam if it is demanded. At this level also one can find presence of justice as Allah commands Muslims to defend their faith but not cross the limits of justice:

“Fight for the cause of God, those who fight you, but do not transgress, for God does not love the transgressors.”³⁴

At other place the Quran guides believers:

“Allah forbids you not, with regard to those who fight you not for (your) Faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loveth those who are just.”³⁵

Another example may be taken from the very next value, ḥifz al-nafs (protection of life) of the first category and some scholars have given this value precedence over the protection of religion. Protection of life has been classified as the very basic value and the birth right of every individual by all faiths and religions. Islam also recognises it and protects it under all circumstances without any discrimination between the life of the rich and poor, between the leader and the subordinates, Muslims and non-Muslims. Life is equally important to each and it is obligatory to every individual and society to protect it. The Quran emphasises it saying:

Do not kill any person - for Allah has made life sacred- except in the course of justice. If one is killed unjustly, then we give his heir authority to enforce justice. Thus, he shall not exceed the limits in avenging the murder; he will be helped.”³⁶

These examples clearly show that the notion of justice has a significant role in the discourses of Maqāṣid theory and almost all scholars of Maqāṣid have developed their understanding of Maqāṣid laying particular stress on notion of justice.

Al-Raysuni believes that the theory of Maqāṣid suggests that maintaining justice and the objectives of the law are interlinked, and that any interpretation of Islamic laws and the principles inconsistent with the notion of justice is invalid, and that one’s understanding of the concerned texts and the conclusions drawn from them must be found on the principle that the objectives of such texts are to achieve justice and benefit.³⁷

CONCLUSIONS AND SUGGESTIONS

To sum up the discussion, it can be safely said that the Sharī‘ah was revealed to guide the human being and make him the real vicegerent of his Creator. In other words, Sharī‘ah is here to create a just society free from corruption and social destruction and this primary objective of Sharī‘ah could be achieved only when we strive to study the Sharī‘ah in a way to grasp the possible intention of the Lawgiver (Shāri‘) behind His commands and prohibitions. The analysis of justice through Maqāṣid al-Sharī‘ah is one of such approaches that could lead to gain this goal. This approach provides adequate ethical and juristic guidance to promote the order of justice in the society at ground level. This method is also significant in the way that it will immensely help to redefine and reconstruct the notion of justice and its application. It implies that the

³⁴ Al-Quran, 2 [al-Baqarah]: 190.

³⁵ Al-Qur’an, 60 [Mumtaḥinah]: 8.

³⁶ Al-Qur’an, 17 [al-Isrā]: 33.

³⁷ Ahmad Al-Raysuni, *Imam al-Shatibi’s Theory of Higher Objectives and Intents of Islamic Law*, (London-Washington: International Institute of Islamic Thought, 2005), 17.

deduction of rulings must not follow the mere literalistic approach; rather, it should seek the objectives of the Lawgiver behind the injunctions in order to promote the true sense of justice and welfare among people and prevent harm and tyranny as a whole.

The study suggests that Maqāṣid al-Sharī'ah needs to develop in a more scientific and systematic way, widen its scope, universalise the objectives and reconstruct it in a way that it would include all contemporary fatal issues which challenge the Sharī'ah and haunt humanity on the whole.

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