

ISLAMIC DIVINE LAW (SHARI'AH)

THE OBJECTIVES (MAQASID) OF THE ISLAMIC DIVINE LAW

Or

Maqasid Theory

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The Abandoned Ship as a Case Study
Why Allah Revealed a Divine Law (Shari'ah)?
The Maqasid Model of the Existential Structure
What are the Three Categories of Benefits in Islam?
Benefits and the Objectives of Shari'ah

The Maqasid Model:

-The Circle of the Essentials (Daruriyyat):

Religion,
Life,
Intellect,
Procreation,
Property

Reason and Revelation

-The Circle of the Complementarities

-The Circle of the Embellishments

General Legal Principles

Al-Ghazali on the Question of the Abandoned Ship

12.1. The Abandoned Ship as a Case Study:

Three hundred people were in a boat sailing on the sea. They realized that their safety was at risk, and the lives of the majority could only be saved by throwing 10 people overboard. Would it be morally right to kill 10 people in order to save 290?

This case was actually presented by Imam al-Ghazali (450-505 A.H./ 1058-1111 A.D.) in his book on the principles of Islamic Jurisprudence called "*al-Mustasfa Min 'Im al-Usul*."

Let us look at the objectives of Islamic Divine Law before attempting to answer this question. The justification of moral and legal actions in Islam is not based on personal reflection, or personal desire or the benefits of the majority; it is only justified by the Qur'an and Sunnah or the Islamic legislative system (Shari'ah).

Why Allah Revealed a Divine Law (Shari'ah)?

Some Muslim scholars of jurisprudence, especially Ibn Taimia (661-728 A.H./1263-1328 A.D.), said that Allah revealed such a legislative system or Shari'ah in order to achieve Justice.

Other jurists said it is for the purpose of achieving happiness. And still some others, especially al-Ghazali, said it is only for the achievement and the realization of the very benefits of man on earth.

A closer look at these three approaches to Shari'ah shows that they complement each other: happiness of mankind cannot be achieved at large without justice, and justice is one of the essential benefits and interest of people on earth.

The Maqasid Model of the Existential Structure

The Islamic Divine Law or Shari'ah was revealed for one basic universal purpose: to realize or to make real the best interests of humans on earth.

Maslaha in Arabic language, which literally translates as benefit or interest, is defined by Imam al-Ghazali as that which secures a benefit or prevents harm.¹

Human nature tends naturally to seek happiness and to live as good as possible, but this cannot be achieved unless people cooperate with each other, but cooperation is impossible unless people live a peaceful life. Peace and security cannot be achieved unless there are rules to protect the rights of all equally. However, rules and legal regulation are useless without a source of authority to enforce them and apply them equally. For the above reasons the Divine wisdom made the Islamic law or Shari'ah achieves the masalih or benefits of people in the two following ways:

First, by procuring these masalih (or by bringing them about). Since people cannot bring about the benefits of mankind equally; they discriminate against each other, they kill each other, they steal from each other, they humiliate others just because they are different in color, ethnicity, power, social status and the like. In one word they present their interest as central and others are only means to achieve their own ends. Allah is an absolute justice who legislates to mankind what is beneficial to all.

Second, the Islamic Divine Law achieves its goal by preserving or protecting these human universal benefits by setting rules and regulations with sets of prescribed punishments.

The Islamic Divine Law then has a two-fold function.

12.2. Categories of Benefits in Islam

As we just mentioned Imam al-Ghazali defined Maslaha as that which secures a benefit or prevents harm.² However, benefits mentioned in the Islamic Divine Law are of three kinds:

First: *accredited benefits* (Masalih Mu'tabarah), which are regulated by The Lawgiver in the sense that a textual authority from the divine law could be found to prove their validity.

Second: *nullified benefits* (Masalih Mulghat): there are also other kinds of benefits and interests that the Shari'ah neglected because they lead to harm and hardship (Mafsadah), such as stealing or usury.

Third: *unregulated benefits* (al-Masalih al-Mursalah), since the benefits of people can be as numerous as their public interests, we find that the divine law did not regulate a number of these benefits. So it provides no indication as to their validity. In the principles of jurisprudence these kinds of benefits are called the *unregulated benefits*, and it is left for legal scholars or jurists to work on them.

¹ Al-Ghazali (al-Mustasfa 1997): Vol.1. p. 416.

² Al-Ghazali: (1997): Vol. 1, p. 416.

Benefits and the Objectives of Shari'ah

According to Imam al-Ghazali, masalih or benefits should be harmonious and consistent with the objective (Maqasid) of the Shari'ah, since the basic purpose of legislation (tashri') is to protect the interest of people against harm.

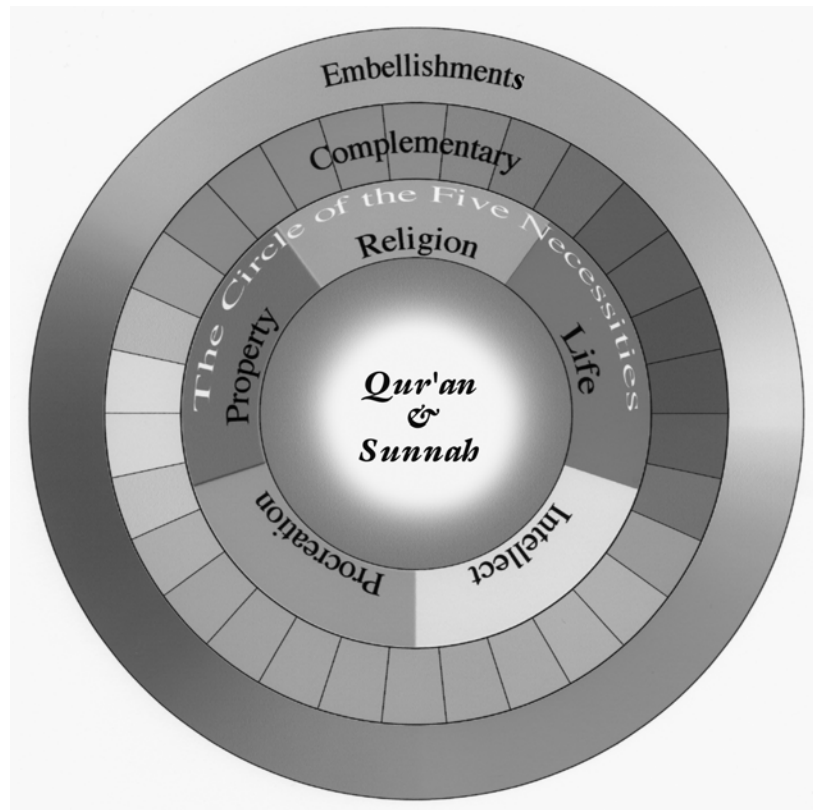
In regard to their importance and priority, benefits were divided by Muslim scholars into three kinds:

- The essentials (Da.ru.riy.yat),
- The complementary (Ha.jiy.yat), and
- The embellishments (Tah.seen.niy.yat)

In relation to the masalih and its division, the existential model will consist of four circles, three of them orbiting around the central one which represents the Islamic creed and the main source of legislation:

- The circle of the Shari'ah,
- The circle of the essentials,
- The circle of the complementarities, and
- The circle of the embellishments,

The Maqasid Model



12.3. The Maqasid Paradigm:

The following considers the objectives of the Islamic Divine Law in a concentric model (many circles with one common center).³ This model has two important characteristics:

1- The circles are not only concentric, but all of them beyond the center may also be regarded as orbiting the center -- the core. They orbit in the manner of a solar system.

2- If we consider the radiuses as representing the pull or force of gravity toward the center, then the pull of gravity will be inversely proportional to the length of the radius; the shorter the radius the greater the pull of gravity and the longer the radius the less the pull. **The First Circle:** This is the central circle. It represents the heart or the core of the Islamic culture and it is also considered as the central power of its activity and continuation. It is also the core of all other circles.

In Islamic culture this circle represents the Islamic belief especially the Creed ('*Aqidah*) as this 'Aqidah is presented in the Qur'an and the Sunnah or the tradition of the prophet. The Islamic Divine law represented in this core also emphasizes what is beneficial to all humans. It is like the supreme constitution of necessitation.

This circle is the source of legislation and practicality of preserving existence. Human beings should use their maximum rationalization to understand the wisdom and the benefits of such Divine legislation.

The Circle of the Essentials (Daruriyyat):

This circle includes five basic and universal necessities or priorities "on which the lives of people depend, and whose neglect leads to total disruption and chaos."⁴ These five necessities are:

- **Religion**
- **Life**
- **Intellect**
- **Procreation**
- **Property**

These five necessities are derived from Shari'ah as necessary and basic for human existence. Therefore, every society should preserve and protect these five necessities; otherwise human life would be harsh, brutal, poor, and miserable here and in the hereafter.

For example, in order to establish the first necessity, **religion**, all the required things that are needed as beneficial tools to establish and attain the necessity of spirituality were already contained in the divine law, such as: all the principles, the rituals, the belief in angels, messengers, the day of judgment, and so on. All these things were mentioned to serve the purpose of establishing spirituality as a necessity in the existence of humans on earth. In addition to that another set of rules exists to maintain this necessity of spirituality and to protect it against destruction.

The second necessity, **life**, is secured by obtaining lawful means of sustenance such as food, marriage, medicine, shelter, etc. The way to protect it is through the enforcement of prescribed penalties provided by the Divine Law. For example, adultery, false accusation, killing, and suicide are prohibited.

³ See Al-Allaf, Mashhad (1988): pp. 298-302.

⁴ See Kamali (1991): p.271.

According to the Islamic Divine Law life is a necessity and it is one of the top priorities that must be preserved at all costs. After all killing is prohibited in Islam, and whomever kills a person it is as if he or she has killed all humans, or the human race. Every human is a unique representative of mankind; if all people died except one, then that person is the only one who represents mankind among other existences such as animals and trees. For this importance of life Islam ranked it as a top priority to be necessarily preserved and protected. Since humans do not always respond to the rules of legislation and sometimes act against their own interests, thus the legislature made strict legislation to punish the act of killing.

The same holds true for the third necessity, **intellect**. It is necessary and essential to the existence of the human race. The benefit of reason to the human existence might be beyond reason. Thus, it is secured by lawful means of sustenance, and protected against destruction by a set of rules and punishments. For example, anything that diminishes the intellect's ability to function properly such as alcohol or any similar substance is prohibited. I will give further elaboration on intellect when I discuss reason and revelation.

In regard to **property**, which is very beneficial and necessary to the human life, divine law facilitates all lawful means for its acquisition, and secures it by defending the right of ownership through penalizing theft.

Reason and Revelation:

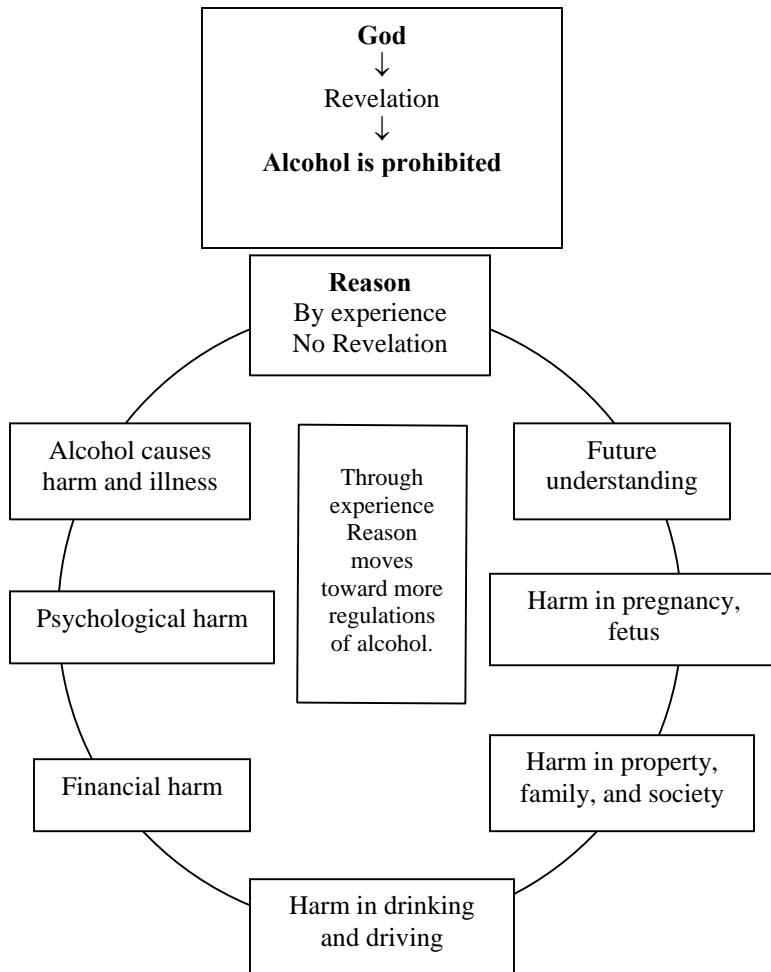
Is it possible for moral values that relied upon religion to be consistent with moral values derived from pure reasoning?

In Islamic there is no contradiction between reason and revelation, sincere and deep reasoning will definitely lead to the truth of revelation. Let us take the example of intellect:

Revelation, the Islamic Divine Law mentioned clearly that intellect is a necessity and must be preserved, since alcohol nullifies the ability of intellectualization, alcohol and any other substance similar to its effects, becomes prohibited. Now we all know that alcohol has some benefits in it, Allah –the All Knowing- mentioned in the Qur'an that alcohol has some benefits, however, it is mentioned also that the harm of alcohol overweighs its benefits, and thus it is prohibited. Its use must be prevented by a set of legislations because it inflicts harm on all: society, family, and individuals. Allah, in His absolute wisdom, legislates for human beings benefits that sometimes they can't anticipate for themselves. Since alcohol causes harm the command of prohibition was stated so clearly that no skill of interpretation or exegesis is needed.

Reason, might prefer its own way of stating benefit and harm, however, reason is limited to its methodology, which is either deductive or inductive. Since deductive reasoning can't predict the future, then inductive reasoning is what we are looking for. The golden key for knowing benefits and harm is "experience", and the only road to it is "trial and error". Society from history and experience discovered that alcohol caused harm to individuals, young and old, causing illness, and as a fruit of experience the reason started to restrict the consumption of alcohol. Going further in rationality and experience society realized that alcohol caused financial harm, by affecting both health and wealth of the society; reason sought more regulation of alcohol. Going further with rationality, reason realized that drinking and driving caused terrible damage to the life of people, property, family, and the society, thus rational legislation went further in restricting alcohol. Going further in experience being advanced more in science and medicine the harm of alcohol starts to manifest itself with more acceleration, therefore, physicians realized that pregnant women who consume alcohol are destroying their fetuses physically and mentally, and the harm inflicted on the fetus, the mother, the family, procreation, and society, therefore, more restriction is placed on alcohol. However, although the restriction of alcohol is ongoing, but not

yet in a form of prohibition as that in divine law.⁵ After all the route of reason in seeking more restrictions on consuming alcohol is continually confirming the beneficial aspect of the divine law legislation; showing no contradiction between reason and revelation in morality.



The Circle of the Complementarities:

The complementary things are matters that people need in order to remove restrictions and difficulties in applying the five necessities. In The Qur'an:

“Allah does not want to place you in a difficulty, but He wants to purify you, and to complete His favor to you, that you may be grateful.” (Qur'an, 5:6)

In another chapter we read:

“Allah intends for you ease, and He does not want to make things difficult for you.” (Qur'an, 2:185)

⁵ In 1929 alcohol was prohibited in the United States.

Thus complementary are intended to facilitate practicing and applying the necessities, therefore, a great benefit reside in them because they supplement the five essential values. However, there are two things that need to be mentioned here: first, there is no specific model for acquiring and fulfilling them, except being lawfully obtained. If food is complementary to preserving life as one of the main objectives, thus it is not necessary that it be a specific kind of food, such as fast food. In this sense diversity of cultures could be preserved too.

Language is necessary to enhance the intellect, but it is not necessary to be the English language, the native language of the culture must be preserved and protected, because language itself is culture, it is the medium through which identity can be preserved by linking the past and the present.

Second, the divine law also grants people some concessions (*rukhas*) in cases of hardship such as sickness, and traveling. Also people in other climates and cultures in which the time zone is very different; making a very long day or night, the divine law permits them to estimate what is similar to an average day time to break the fast. The same holds true for rules concerning commercial transactions.

Neglecting these complementary things will lead to hardships in life but not to chaos and collapse.

The Circle of the Embellishments:

The embellishments are intended to render human affairs or conditions more suited to the requirements of the highest standards of moral conduct. They “denote interests whose realization leads to improvement and the attainment of that which is desirable.”⁶

Thus, the observance of cleanliness in personal appearance and in spirituality, the cultivation of moral virtues, the avoidance of wastefulness in consumption, and moderation in the enforcement of penalties, fall within the scope of embellishments.⁷

⁶ Kamali, M. H. (1991): p. 272.

⁷ There are some logical implications, priorities, and characteristics for these three circles:

1- The central circle represents the source of legislation, and the source of establishing and procuring benefits.

2- The second circle is universal and dynamic; its global vitality resides in the fact that these five necessities are necessary to every single culture regardless of whether it is Islamic or not. The failure to preserve these necessities results in chaos for that culture, regardless of its identity.

3. The five necessities must be preserved according to their priorities- religion, life, intellect, procreation, and property.

4. Changing the priorities of these necessities will lead to perplexity in the moral life by changing the priorities in the standard of moral values. Thus property, or money, for example, can't be valued more than intellect or life.

5. The lower in the standard of necessities must be used to serve the higher, thus money or property should be used to serve intellect or life for example.

6. The third and fourth circles are the most lenient toward diversity. They are open to interaction with other cultures. Both circles keep the uniqueness of other cultures to be used and enhanced; the ways of gaining property are left to the economic system of that country on condition that it does not harm the property of others or put them at risk of harm. Second, it must be obtained by lawful means, of course. The tradition of the cultures culinary, and so on.

7. The circles themselves must be applied in their logical order and priority. Embellishments shouldn't be achieved before necessities.

8. These circles complement each other.

General Legal Principles:

From thinking about these benefits a systematic set of legal rules and principles being deduced, such as:

- 1- Harm is removed.
- 2- Public harm or loss is averted by the private assumption of loss.
- 3- The greater of two harms is averted by assumption of the lesser.
- 4- Averting harm is to be preferred over procuring benefits.
- 5- Cases of necessity make permissible what is normally forbidden or restricted.
- 6- Necessity is determined by the particular circumstances.
- 7- Hardship secures lenience.
- 8- It is not permissible to do what will harm one's self.

12.4. Al-Ghazali and the Question about the Abandoned Ship

According to al-Ghazali, and on the basis of Shari'ah, it is morally wrong to kill some people in order to save others. Why?

Al-Ghazali gave three reasons against the justification of killing in this case of the abandoned ship:

1. **Universality:** the benefit of people, in this case the majority, is not a universal benefit, it is only the interest of of small community who are going to use others as means to their end.
2. **Necessity:** the benefit of those people on the boat is not necessary to a degree to break another necessity and kill humans.
3. **Certainty:** we are not certain that killing those people is going to save the rest. What if they killed them and after that they faced another problem at sea, should they kill another 10 people to save the rest? This is morally unjustifiable and becomes out of control.

In Islam the life of every single human is unique and precious; it is one of the five necessities and must be preserved and protected. Allah commanded Muslims in the Qur'an that killing is prohibited, and to kill one soul is as if you killed the entire human race and to save one soul is as if you saved the entire human race.

From the above discussion we can easily conclude two moral rules in the realm of Islamic ethics:

First: The consequences, no matter how good, and no matter how much, do not justify any immoral act.

Second: The ends, no matter how noble, do not justify the means.

For more details please see *Mirror of Realization* by Mashhad Al-Allaf