Ijtihād al-Maqāṣidī or Purposive Interpretation:
A Comparative analysis in Modern Context

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The present article presents a comparative analysis of contemporary legal theory of purposive interpretation in English law and *ijtihād al-maqāṣidī* in Islamic law. This article explores the fact that *ijtihād al-maqāṣidī* is an everlasting approach and is the most concerned issue of statutory interpretation of the modern world. In this context it has been argued that the whole policy of Sharīʿah is based on the interest of human being and aims to remove hardship from them and to provide them ease. Purposive interpretation or *ijtihād al-maqāṣidī* aims to interpret law in the light of its objective and is able to solve the contemporary issues of Ummah. This study attempts to explore that unlike English-Common law system where discussion over purposive interpretation is a recent development, the whole system of Islamic interpretation is based on the objectives of Sharīʿah. It discusses the rich heritage of Sharīʿah in order to implement and suggests that contemporary issues of Ummah should be solved in the light of the objectives of Sharīʿah. At the end a concluding paragraph has been inserted to draw some conclusions.

Statement of the Problem

Among the many wrong and biased allegations against Islamic law, the most pernicious is the claim that Islamic legal theories are incapable to understand and to interpret law in the light of its objective and public interest. In fact, now a day a clash seems to arise between inherited principles of Islam and practical situation of Islamic law and so called legal theory which considers that Islamic law is divine law and cannot be changed with the changes of time and needs of people. However, unlike past, Islāmic law seems to be out-mode and impractical in discharging its function in this modern and updated society due to ignorance and negligence of past legacy of Islamic legal theories like *ijtihād al-maqāṣidī* by the contemporary Muslim scholars who are trying to live at the age of their predecessors. Unfortunately, blind adherence towards *taqlīd* trapped the whole legal system whether administrative policy of Muslim states or interpretive policy of the courts and juristic opinion. Lack of thorough study of Islāmic legal theory and apprehension to a particular *madhhab* has made Islāmic law retard and rigid. In this context an attempt has been made to prove that Islamic law has deep concerned with the development of

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a strong prosperous society and ensures its interests in every field of life mundane or spiritual.

Methodology

This paper adopted a descriptive style and presented a critical and comparative analysis of the role of *ijtihād al-maqāṣidī* or purposive interpretation in the development of law. The research methodology of this paper relies upon documents such as books, journals, official records, net and as well as on personal observation. The method of data collection is based on the study of primary and secondary sources and then on contemporary legal theories of interpretation in the light of modern context. This paper is divided in to three major sections: Section one treats with *ijtihād al-maqāṣidī* in Islamic legal system; section two throws light on the contemporary legal theory of purposive interpretation which has been suggested to adopt by English Courts during the process of interpretation rather than strict literal rule or precedent; section three highlights and points out some significant of purposive interpretation in the light of contemporary issues. At the end some recommendations and suggestions are given to solve the problems of Ummah through purposive interpretation.

Introduction

Islāmic system of interpretation has its roots in the divine provisions of Qurʾān and Sunnah. It is not an isolated, secluded and beyond logic or based on some rigid and outmoded interpretive modes which cannot be modified, re-evaluated or changed in the light of the contemporary needs of Ummah rather it has a wonderful capacity to accommodate progressive changes of a society. From this perspective *ijtihād al-maqāṣidī* is based on the assumption that most of the Qurʾānic legal texts are consisted of ambiguous and vague words the literal interpretation of which may lead some ambiguity and absurdity in the way of the policy of Sharīʿah which is based on the interest of human being, so in order to avoid unfair and hard result the wordings of the text should be constructed according to the spirit and purpose of the text. The theory of *ijtihād al-maqāṣidī* or purposive interpretation contends that every text of Sharīʿah has an object behind it in the form of hidden meaning and wisdom intended by the Law-giver which can be determined in all of the circumstances to which the law applies.

The logic behind this approach is that the law in any legal system is framed and designed to enhance the scope of justice and public interest not to frustrate it. The law in any legal system is designed and framed with the policy that it may change with the changes of time and social needs and accordingly the system of interpretation. The prime concern of statutory interpretation in modern context should be to arrive at the purpose and spirit of the text not to derive literal meaning. Construction by way of *Ijtihād al-maqāṣidī* takes account not only of the words of the text according to its ordinary meaning but also the surrounding words and the context of the text. It is the duty of the court or a jurist to understand and to interpret creatively in the light of its object to meet the ends of Sharī'ah. The text must be interpreted to advance the objectives of Sharī'ah not to defeat them.

Development of *ijtihād al-maqāṣidī*

In Islāmic legal system, the first who dealt with purposive interpretation under the discussion of objectives of legal texts of Sharī'ah was al-Tirmidhī[1] during the era of 3rd century of Hijrah. The word purpose to find out a particular object or wisdom behind an enactment was firstly used by him in his writings during the process of interpretation or ijtihād. In his book *Al-Ṣalāt wa Maqāṣidihāh*, he discussed certain objectives of the obligations of ṣalāt, fasting of Ramaḍān, and jihād which might be intended by the Law-giver. He thus contended that behind every issue relating to *'Ibādāt* or *mu'āmlāt* an objective (*ḥikmah*) and secret is intended by the Law-giver and to achieve it should be the prime focus of an interpreter.[2] But this approach was not taken into consideration by the traditional jurists rather they emphasized to solve new problems of Ummah by way of analogy and public interest. In later century, Al-Shāshi[3] discussed on the topic and insisted to find out the objective of every enactment to arrive at true and just result. He contended that when a jurist finds out relevant *'illah* or characteristic of a text he must follow that to derive law of obligation. For instance, when someone gives money to a poor person, it is assumed that he gave him money to discharge his need and that the object behind this charity is to get reward. So it is necessary to locate object of each text intended by the Law-giver to achieve.[4]

Among the Shāfiʿī jurists, Imām al-Ḥaramayn discussed *maqāṣid* as independent source of ijtihād and divided them into different categories according to their legal strength and scope. He established certain objectives under the category of the dire-necessities of human kind and put others in the categories of needs and complements. He interpreted certain detailed rules of Sharīʿah on the basis of purposive approach. He then discussed ways to protect these objectives according to their strength and grading. He declared that every *ḥukm* whether of *ʿIbādāt* or *muʿāmlāt* is based on some purpose and he who does not admit the notion of purpose regarding the obligations and prohibitions has no capacity to perform the task of ijtihād or interpretation.[5] Among the jurists of 13th century (660 A.H) ʿIzz al-Dīn ʿAbd al-Salām[6] dealt with the subject in great detail and wrote an independent book *Qawāʾid al-Aḥkām fi Maṣāleḥ al-Ānām*. In his work he characterized each of the *maqāṣid* and addressed the various aspects of the *maqāṣid* especially in relationship to *ʿillah* and *maṣlaḥah*. He defined maṣlaḥah in the meaning of pleasure (*ladhdhah*) and happiness (*farah*). He contended that Sharīʿah aims to provide benefits to people and to secure them by establishing preventive measures against each maqṣad. He observed that the whole policy of Islāmic law dealt with obligations, prohibitions and permissions is based on the notion of securing benefits of the people in this world and the hereafter because God is indifferent of the worship and loyalty and disobedience and disloyalty of the people. Whatsoever has been prescribed by Him only for the benefits of people to provide them ease and to remove harm from them.[7] He divided the objectives in to two types: Dunyawiyyah or worldly Masaleh which can be perceived by reason; and interest of hereafter which can be known only by revelation or traditions. He then discussed these objectives in the parameter of high and low levels according to the approach of people to them. The lowest level is that which is common to all. The higher level of maṣlaḥah is conceivable only by the wise people (*azkiyā*) and the highest level is peculiar to the friends of God alone (awliyāʾ Allāh) who prefer the interest of hereafter over the worldly interests.[8] [9]

Imām Ghazālī has a considerable contribution in the development of objectives and their completeness. First, he followed the style of his teacher Imām al-Ḥaramayn and then he compiled an independent book on the objectives of Sharīʿahnamed

as Al-Musṭaṣfā". In his writing he added certain complements (mukammilāt) to the objectives. He also presented certain arguments from Qurʾān and Sunnah in favour of these objectives. He divided maṣlaḥah into three types and prescribed certain conditions to apply them. He then categorized them based on their legal strength and necessity of human being. He also discussed legal maxims based on the objectives of Sharīʿah and divided them into general and specific types. In his process of interpretation, he preferred general objectives of Sharīʿah over its specific objectives and declared that public interest will be preferred over the interest of an individual or group of individuals.[10]

Al-Shāṭibī was a renowned Mālikī jurist of the 14th century who examined the rapid changes in the political, social and economical fields of life and the challenges of changed scenario and realized that the problems arising from these changes could not be solved by way of deductive mode of qiyās. Consequently, a principle more comprehensive than qiyās was required. He made a thorough study of the rule of Istiṣlāḥ and established a more effective principle of objective or purpose of law derived through inductive mode.[11] He studied Islāmic legal texts from a different perspective and derived certain objectives behind criminal laws of Islām and discussed *ḥudūd* penalties of Sharīʿah by way of purposive approach. He pointed out five major purposes behind the *ḥudūd* penalties which are intended by the Law-giver to achieve and upon which the whole system of administration and justice is dependent. He explained these objectives clearly and linked them with the rules expounded by the theorists. He discussed the sources of law in the light of these objectives and ends of laws. He though confined himself to the field of *ḥudūd* penalties and constructed them by way of purposive interpretation yet he was a great jurist of his time and presented a distinct methodology of interpretation of Islāmic legal texts among his contemporaries.[12] It is this reasons that al-Shāṭibī declared that one of two fundamental factors of *ijtihād* is the understanding of the purposes of Sharīʿah which are based on the determination of Law-giver Himself and which may or may not agree with the goals determined by the human reason. He observed that the purposes of Islāmic legal system have been determined from the texts through a process of induction rather than through deduction. The second factor is the understanding of Arabic language, *aḥkām* al-Qurʾān and Sunnah, knowledge of

different sources of Islāmic law and differences of Muslim jurists. He declared that when a Muslim get capability to understand the intention of Law-giver in any legal text of Sharī'ah and in every faculty of Sharī'ah, he becomes able to be a vicegerent of the Holy Prophet (pbuh) in education and in issuing a judgment or fatwā.[13] He thus founded a new mode to understand the legal texts of Qurʾān and Sunnah and to interpret them in the light of their objectives. He presented a modern concept of Islāmic law in the light of *maṣlaḥah* and objectives of Sharī'ah. He contended that legal texts of Qurʾān and Sunnah must be constructed according to their objectives intended by the Law-giver. He made it clear that every text of Sharī'ah consists of a task to act upon, an aim to recognize, a reason for enactment, and lastly, an intention to discover. It is duty of interpreter to understand legal texts of Qurʾān and Sunnah in the light of these characteristics to achieve benefits to human being or to remove harm from them. These objectives sometimes are so clear to conceive by a reading of the explicit legal texts of Qurʾān and sometimes are hidden in the implied meaning or inferences of the texts and can be derived through a deep study of these texts by way of construction. In this way through re-evaluation and re-examination of an existing law it becomes possible to arrive at the intent which it aims to fulfill and to make the benefits clear which it aims to achieve and to remove harms for which it is so designed. He thus invited all the jurists to a sound and well-founded understanding of the Qurʾān and Sunnah in the light of their objectives instead of their literal or grammatical meanings.[14]

Al-Shāṭibī adopted inductive method to understand the Qurʾānic legal texts. He discussed objectives as a branch and part of jurisprudence and wrote *Al-Muwāfaqāt*. He discussed objectives in the light of wisdom and ijtihād and discussed certain causes and reasons to elaborate these objectives. Al-Shāṭibī defines the term *'illah* in the meaning of benefit which a law aims to achieve or the harm which it aims to remove. He also used the terms wisdom or *ḥikmah* synonymously with the term intention or *qaṣd*.[15] In this way, Imām al-Shāṭibī developed theory of purposive interpretation and has been considered as father of this discipline who focused on the study of higher objectives of Sharī'ah. He not only developed the concept of maṣlaḥah as the basis of rationality and extendibility of Islāmic law to the changing circumstances but also presented it

as a fundamental principle for the universality and certainty of Islāmic law.[16]

Among the contemporaries of Imām Shāṭibī were Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah who emphasized on the objectives of Sharī'ah and their importance in their process of interpretation. Ibn Qayyim was more concerned with the causes and wisdom of the laws of Sharī'ah and focused on the derivation of laws by way of public interest in the light of the objectives of Sharī'ah. But these jurists brought into consideration the objectives prescribed and identified by al- Shāṭibī and did not add them or derived more objectives from the legal texts of Sharī'ah.[17] This was al- Qarāfī who added a sixth objective that is the protection of honour deducted from the *ḥudūd* punishment prescribed for false accusation of adultery (*qadhf*).[18]

During the 18th century, Shāh Wali Allāh was that great scholar who worked for the renaissance of purposive approach of interpretation and drew the intention of Muslim jurists towards the objectives of Sharī'ah. He invited the contemporary jurists to the reconstruction of Islāmic legal texts in the light of their objectives. He defined objectives as hidden or secret meanings of the texts depend upon the wisdom of *aḥkām* and related to the particulars of human conduct and their consequences. For him there is dire need to understand the Qurʾānic legal texts in the light of their objectives and to allow interest based interpretation to arrive at true and just meaning of these texts.[19] The theory of purposive interpretation remained neglected by the Muslim jurists until the 19th century when the legal theories of al- Shāṭibī, Ibn Qayyim, Shāh Wali Allāh and others were revised and considered by the contemporary jurists as a source of interpretation and as a unique contribution in the philosophy of Islāmic law.

Among the modern jurists Muhammad ʿAbduh (d.1905) and Rashīd Riḍā (d.1935) founded their legal theory of interpretation on the basis of the objectives of Sharī'ah. The more effective theory of interpretation was presented by Muḥammad ʿAbduh whose commentary on the Qurʾān became very famous and well accepted by the modern jurists. Tāhir bin Āshūr contributed in the development of purposive interpretation by his writings. He observed that Islāmic law contains certain purposes of general nature having universal application and are demanded in each time by each generation. Theses purposes have been derived

from the foundational principles of Sharī'ah and cannot be modified or changed. Then Sharī'ah is consisted of specific objectives hidden in the meaning of the texts intended by the Law-giver to achieve for the benefit of human being related to their conduct. The general purposes which Islāmic law aims are: The preservation of order; achievements of benefits; prevention of harms; set-up of equality among people; and enabling the Ummah to become powerful, confident and respected. The specific objectives are those which are intended by the Law-giver for the benefit of human being through their private conduct which may be different from time to time. The specific objectives intended by the Law-giver may be divided into many types and some of them are as under: Intention relating to the conducts of family matters; fiscal issues; Judicail matters and court proceeding; civil and as well as criminal issues.[20]

Classification of maqāṣid

Among the Muslim jurists who emphasized on the study of purposes of Sharī'ah, Imām al-Ḥaramayn was the first who discussed and classified *maqāṣid* into different kinds based on the strength of their effects and discussed some *maqāṣid al-ḍarūriyyah* and the ways to protect them.[21] Imām Ghazāli however, classified *maqāṣid* into two types: *Maqāṣid* relating to the world hereafter (*ukhrawī*); and the *maqāṣid* related to this world (*dunyawī*).[22] Al-Shāṭibī divided the objectives into two types: Objectives based on the intent of Law-giver. Under this kind he defined *maṣlaḥah* and its relativity to Islāmic law; and the objectives based on the intent of *mukallaf* or subject. For instance, necessary objectives which have been designed to remove certain harms from people; the object that the wording of Qur'ān should be understood in their manifest and according to their inferences and implications in the light of the customs and usages of Arab; the object that obligations and prohibitions of Sharī'ah should be understood in the light of their objects and demands; and lastly, the object to make the people bound to abide by *aḥkām al-Sharī'ah*. This type of objectives includes rights of Allāh and rights of people.[23]

Al-Shāṭibī then explained that Sharī'ah has arranged to protect these objectives either by positive commands or by negative provisions to preserve the existence of maṣlaḥah to secure the interest of people and to remove harms from them. In this respect,

he divided the fundamental objectives regarding their effects on the life of people into three types which is declared the most important division of *maqāṣid*. There are some fundamental purposes upon which the whole structure of life (both aspects worldly and the hereafter) is dependent. These *maqāṣid* have been declared as *maqāṣid ḍarūriyyah* and have their origin in the criminal laws of Islam established by the Law-Giver like murder, theft, fornication, drinking of wine etc. *Maqāṣid ḍarūriyyah* are those *maqāṣid* which are necessary to sustain the life of people in the manners that if they are not available their life may cause destruct and fall in danger which may lead to chaos and disturbance in the society. These are the minimum requirements to maintain the life and law and order in a society. These necessary objects are five in number and include protection of Dīn, life, progeny, intellect and wealth. He has in fact derived these objects through a process of induction (*istiqrā'*) from the fundamental principles relating to *ḥudūd* penalties. Each of the punishment aims to secure a fundamental right of an individual. Each of them has dual functions to perform. On the one hand, it guarantees the security of the fundamental rights of individual and on the other it prevents others to infringe his right through prescribed punishment. For instance, God has preserved (*Ibqā'*) the life of people by declaring murder prohibited: "It is not for a believer to kill a believer except by mistake."[24] But He did not confine to the preservation of life only rather established a principle of retaliation to secure it and to prevent the murderer from repetition of such crime and to warn others not to commit alike. It is stated in the Qurʾān: "O you believe! *qiṣāṣ* is prescribed for you in case of murder."[25] In another verse, the law-giver himself explained the *ḥikmah* or interest behind such prescription. It is stated in the Qurʾān: "And there is life for you in the law of retaliation (al-*qiṣāṣ*)."[26] Similarly, Sharīʿah has been arranged to preserve the intellect of people by declaring wine prohibited and as well as prescribed a punishment to prevent the convict from repetition and to warn the people against it.[27]

Then Sharīʿah did not intend to put down its belivers into a miserable and depressed state by achieving only basic necessities for the purpose of maintenance of their life rather encouraged them to make their life easier and more comfortable and provided certain exceptional rules to set an example for leisure rulings related to the

conduct of people. To achieve this purpose *ḍarūriyyāt* are made to be supported by *ḥājāt* (needs) and *tahsīnāt* (luxuries). Ḥājāt means to make the life of people easier in case of some difficulty arising due to some external cause or reason. For this the *rukhaṣ* or exceptions have been prescribed by the Law-giver to provide ease to people in cases which cause hardships them such as journey which causes hardship for them in searching of water, direction of qiblah and rest etc, so the Law-giver made their journey easier by providing them *rukhsah* in ṣalāt by making it permissible to shorten prayer or to make tayammum and to leave fast during journey.[28] All these exceptions and facilities have been provided by the Law-giver for the purpose of making the life of people happier and easier. Tahsīnāt are those facilities which make the life luxurious. As Sharīʿah did not aim to prevent its belivers from enjoying and gratifying this world so people are allowed to work, to progress and to achieve the glory of life. Maqāṣid *taḥsīniyyah* leads to that glory of life which makes the life most comfortable, easiest and luxurious. When people started to enjoy all basic necessities and needs in order to smooth their lives in easy manners, the luxury stage started and what is acquired by them in order to beautify their lives and conduct will be part of *taḥsīnāt*.[29] The Holy prophet once said: "Verily! Allāh is beautiful and loves beauty."[30] The example of this type of objectives is cleanness and *satr* during *ʿibādāt* and antiquates and table manners in *ʿĀdāt* and in business transactions the manners not to sale any prohibited thing. In case of contradiction among these purposes, the *ḍarūriyyāt* will prevail over other two. In case where there is clash between *ḥājāt* and *tahsīnāt, ḥājāt* will be preferred over *tahsīnāt*.[31]

Validity of Ijtihād al-maqāṣidī

The Muslim jurists argued with the texts of Qurʾān and Sunnah for the existence of purpose behind every legal text. For example the verse: "And I have sent you O Muhammad) not but as a mercy the mankind (all the existed creatures)."[32] In this text God has described the objective of prophet hood is mercy to all the creatures of the world. The ḥadīth "lā ḍarar walā ḍirār"[33] is a general rule related to the purposes of Sharīʿah and leads that Islam does not allow causing harm to people. Similarly each specific and detailed rule is based on some object. For instance, the text: "Fasting has been made obligatory for you . . . So that you may

become pious."[34] This text shows that the purpose behind the obligation of fasting is to overcome the evils of *nafs* so that the people become pious.[35] Then later jurists also argued that there is ijmā᾿ on the validity of consideration of objectives during the process of interpretation.[36] In case of contradiction between benefit and harm, the interpreter has to remove harm. But in case where it is impossible to achieve benefit and to remove harm, then interpreter has to see whether harm is greater than benefit or not? If harm is greater than benefit then harm must be removed whether it destroys the benefit. For instance, God declared wine prohibited although it has certain benefits but its harms are greater than its benefits so it is declared as haram.[37]

Contemporary theory of ijtihād al-maqāṣidī

The modern theory of *Ijtihād al-maqāṣidī* or purposive interpretation leads that not only *ḥudūd* penalties but all the legal texts of Sharī῾ah are based on certain objectives the derivation of which is primary task of a modern jurist. In interpreting a text, the interpreter learns about the objective not only from the wording and the inferences of the text but from the implied meaning and surrounding texts and circumstances. In this process he may go beyond the restrictions of the apparent meaning of the wording. The future scope of purposive interpretation is very bright and the contemporary Muslim scholars are concerned regarding the solution of contemporary issues of Ummah in the light of the objectives of legal texts. Among the contemporary Muslim scholars who seek to exercise purposive interpretation is Yūsuf al-Qaraḍāwī[38]. He is a well known jurist of contemporary Muslim world and issued many f*atāwā* in the light of the objectives of legal texts of Sharī῾ah. In his process of interpretation he prefers objectives of text   over its manifest meaning. He described that Allāh Almighty revealed Qur᾿ān and sent down His messenger to achieve certain objectives. These are the objectives for which He prescribed many legal rules. So the prime focus of Sharī῾ah is to gain benefits for the people whether material or spiritual, public or private.[39]

He maintained that each text of Sharī῾ah has certain objective for which the text so designed. The function of the jurist is to understand the texts in the light of its secrets and logic (῾*illah*) and in the context of other related texts. He insists to create a

balance between fundamental teachings of Islām and modern contemporary needs of people.[40] He is in favour of moderate and flexible interpretation of legal texts in the light of their objectives and changed circumstances of people. For example, on the issue of singing whether it is prohibited or permissible, he contended that not all kinds of singing are permissible. Rather, some of them are permissible and others prohibited but the permissible song should comply with the Islāmic teachings and ethics. He argued with the *fatāwā* of many traditional jurists who declared singing permissible. In addition to this, the people of Medīna, who were very pious and God-fearing, the Zāhiriyyah, who were very literal regarding the textual proofs, and the Ṣūfīs, who were very strict and rigid, were all quoted to have declared the permissibility of singing. He states that Islām has declared excessiveness as prohibited in everything. The same goes for excessiveness in leisure and recreation even though these things are permissible. Then he prescribed certain condition for listening songs like it must be within the limits of Sharī'ah; it must not seditious; and it should not be accompanied with something that is prohibited such as alcohol, nakedness, mixing of men with women that common in pubs and nightclubs, etc. He also warns his contemporaries not to declare everything *ḥarām* without reasonable research over the issue. For this he based his opinion on the legal text of Qur'ān: "Say! What provisions Allāh has sent down to you! And you have made of it lawful and unlawful." Say! Has Allāh permitted you (to do so), or do you invent a lie against Allāh."[41] He addresses all his contemporaries to avoid using the word *ḥarām* frequently in their writings and *fatāwā* that they should observe that Allāh is watching over them in all that they say or do. They should also know that this word *ḥarām* is very dangerous. It means that Allāh's Punishment is due on a certain act or saying, and should not be based upon guessing, whims, weak ḥadīth, not even through an old book. It has to be supported by a clear, well-established text or valid consensus. If these last two are not found, then one should decide the given act or saying to the original rule: permissibility governing things.[42]

So far as concerned the concept and development of purposive interpretation in English-European law, the word purpose denotes a reason for which some thing is existed. [43] *Technically, it is defined as a process which aims to promote the remedy intended*

by the Parliament to cure a mischief existed in the text.[44] The historical source of purposive interpretation is found in the mischief rule established in Heydon's case. The phrase "purposive interpretation" is a modern version of the mischief rule set up in Heydon's case. The reference of 'purposive interpretation' has been made to the 'rule of effectiveness' (regle de l'effet utile), a concept borrowed from international law. According to this rule preference should be given to the construction which gives the rule full effect and maximum practical value.[45] The general rule is that if the provisions of an enactment are express, clear, and unambiguous cannot be curtailed or extended on the basis of purposive interpretation but if the object or meaning of certain provisions is not clear then it is perfectly legitimate to recourse to purposive interpretation and the Court can take aid by preamble to ascertain the objects of the astute. In another case, Stock v. Frank Jones Ltd (1978), it was declared that while it is new fashionable to talk of the purposive construction of a statute, the need for such a construction has been recognized since the 17th century.[46]

The need for purposive interpretation felt seriously during the mid of the 20th century when many serious problems occurred due to the application of strict traditional rules of interpretation which became incapable to face the challenges of the changed scenario. It was at the end of 1960s and at the beginning of 1980s that this approach appeared simultaneously in American, English, Canadian, Australian and Newzealand common law and developed primarily in the context of statutory interpretation. The modern thinking is that the purpose of legal interpretation is to achieve the purpose of a legal text.[47] The legal philosophers and judges of the modern era rejected not only the static rule of literal interpretation but also the traditional rules for purpose of statutory interpretation to solve contemporary issues of nations. This changed trend was based on the argument that the purpose of legislation can be drawn easily by considering the generality of legal text and not by a specific mode of intentionalism. Consequently, the trend of interpretation started to shift from traditional interpretation to the modern approach.[48] The comparatively advance theory of purposive interpretation is based on two components of a legal text. This theory leads that purposive interpretation is based on three components: The language or semantic component; the purpose; and the discretion. This approach of interpretation is

based on the presumption that purpose is a combination of both subjective and objective elements of a text. Subjective element includes subjective purpose, author's intention and subjective theology, while objective element consisted of objective intent, intent of reasonable author and fundamental values of legal system. Through purposive interpretation both elements work together simultaneously rather than in different places.[49]

The influence of purposive interpretation in English legal system may also be found in the provisions of human rights and fundamental rights of European Convention being a member of European Community by becoming a party to the European Convention. The use of purposive interpretation has become popular in England; however, the British system of purposive construction is less liberal than the continental. The British concept of purposive construction is far more literalist than the European variety and permits the strained construction only in rare cases. The British courts do not permit a wholesale jettison of the grammatical meaning. Since the purpose is mainly to be gathered from the language used, it must by definition broadly conform to that language.[50]

Unlike English law, the European version of purposive interpretation is similar to Islamic concept of purposive interpretation according to which the judges/ jurists do not need to interpret a text according to its literal or grammatical meaning. They should interpret law according to its design or purpose behind it. In James Buchanan and Co. Ltd. V. Babco Forwarding and Shipping Ltd (1977), it was described by Lord Denning that purposive approach of European judges was no more than a schematic and teleological method of interpretation. When they come upon a situation which is to their minds within the spirits but not the letter –of the legislation, they solve the problem by looking at the design and purpose of the legislature-at the effect it was sought to achieve. This means they fill in gaps quite unashamedly, without hesitation. The judges are concerned simply the sensible way of dealing with the situation so as to give effect to the presumed purpose of legislation and lay down the law accordingly.[51] In contemporary period European Community Court gives much importance to the purposive interpretation due to several reasons. The policy of the Community Court is to go back to the spirit, general scheme and the objectives of the treaty during

the process of interpretation.[52] The purposive construction can be applied under different circumstances:

(i) Where a literal construction leads to some inconveniency, unjust result, and some absurdity;

(ii) Where the objects of the statute or act may be defeated by literal interpretation of the enactment;

(iii) Where the traditional interpretation frustrates and abuses the purpose of legislation as a whole rather than to expound it;

(iv) In case where two constructions of a provision are possible, the court will adopt that construction which is more compatible with the object of statute;

(v) Purposive construction may be applied to penal statutes to avoid a lacuna and to suppress the mischief and advance the remedy;

(vi) Purposive interpretation may be applied to differentiate the intent of legislature behind an enactment or text in different cases according to its significance and wattage. Through purposive interpretation an interpreter gives this intent or object of the text a status based on its significance or weight. The significance varies from text to text and from type to type of a text. For example, in a will, subjective intent is weighted so heavily as to be the determining factor, whereas in a constitution, the intent of the legal system gets importance. In a contract, the intention of the parties is in concern but the intention of the system is also given weight. In a statute, the legislative intent and the systemic intention are both significant as well as the types of legislation are also given wattage, e.g., old, new, specialized, and general etc.[53] In all these circumstances the concern of the court is not to interpret words in their ordinary and grammatical meaning but to consider the very purpose and objectives of legislation. The only condition is that such construction should not go beyond the scope of the provisions of the Act.

Importance of Ijtihād al-maqāṣidī

The theory of *ijtihād al-maqāṣidī* or purposive interpretation has gained much importance among the contemporary jurists of all over the world whether of English- European legal system or of Islāmic legal system. The notion that each legal text contains a specific object intended by the law-giver to achieve has become a principal theme behind statutory interpretation. Purposive

interpretation has a wider scope to interpret and construct existing laws to remove the rigidity and complexity of law and to make it flexible. The reason is that purpose or object has definite nature and can express the true intention of law-giver behind an enactment. The modern Muslim scholars are deeply concerned to utilize the purpose of each and every legal text in their process of interpretation. For instance it is considered by the contemporary scholars that educating the individual (*tahdhībal-farḍ*) is an important objective of the Sharīʿah so much so that it comes, in order of priority, even before justice and *maṣlaḥah.* For these are both socially-oriented values which acquire much of their meaning in the context of social relations, whereas *tahdhībal-farḍ* seeks to make every individual a trustworthy agent and carrier of the values of the Sharīʿah, and it is through educating the individual that the Sharīʿah seeks to realize most of its social objectives.[54] In this and the same cases, renaissance of purposive interpretation can helps the interpreters of Muslim world in many aspects as:

(i) Divine provisions of Islamic Constitutions always intend to fulfill the conditions of progressive and changing societies but in fact secondary legislation cannot keep pace with the progressive societies of modern world. In such circumstances, purposive interpretation helps the interpreter to construct law according to needs of time and people;

(i) Purposive approach guides the interpreter to reform and to develop his way of thinking and to interpret the law in the light of its object intended and ascertained by Sharīʿah rather to confine to the literal meaning;

(ii) It provides help to re-evaluate and re-examine the existing interpretation in the light of the objectives of Sharīʿah to accommodate new changes of the society. It makes sure that every legal text of Qurʾān and Sunnah reflects the culture and social environment of Arab society so it should be interpreted accordingly;

(iii) Purposive interpretation helps the interpreter to understand the fact that Qurʾānic legal text revealed to reform and to moderate existing legal structure based on the culture and social norms of Arab society and supported and acknowledged many existed rules. In this way Sharīʿah makes it clear that Law-giver intended to maintain the prevailing good manners necessary for the progress and development of societies. But revelation has been discontinued

and terminated, so to keep pace with the progressive societies of modern world legal texts of Qurʾān and Sunnah should be re-interpreted in the light of their objectives intended by Law-giver;

(v) In case of contradiction between literal interpretation of a related text and the contextual meaning, the purposive interpretation replaces the strict literal meaning into flexible interpretation. It is a dynamic substitute of literal interpretation because it permits a text to go forward to meet new troubles of the people and it guarantees legality of original legislative intent by looking at its object;

(vi) The purposive interpretation helps an interpreter to establish a strong relationship between textual and contextual interpretations by considering both in his process of interpretation. With the help of purposive interpretation the interpreter first finds out the true intent or object behind a legal text and then evaluates it in the light of the prevailing circumstances to whom it addressed and finally applies it to the relevant current situation brought before him for solution;

(vii) Purposive interpretation helps to determine the meaning of ambiguous legal texts arising from the ambiguity and absurdity of the language of the texts. It helps to remove doubt creating by the wording of the text and to harmonize it to the objectives of revelation;

(viii) Purposive interpretation helps to establish a general policy to evaluate different rules and modes of interpretation;

(ix) Purposive interpretation demands concentration to both apparent meaning and as well as to the intent of Law-Giver. A jurist interprets a text according to its purpose and within the context of all related texts by looking into the spirit of Sharīʿah (legal system) and thus becomes successful in his efforts of interpreting a law according to the true intent of Law-Giver.

The purposive interpretation creates a general framework for the principles of interpretation. It may carve out an interpretive space which can be filled in parts through different ways. Thus generality of purposive interpretation is a blessing for modern legal system of the world and different legal systems may adopt different ways of purposive interpretation

Conclusion:

To conclude this discussion, purposive interpretation is unique for its worldwide recognition and abandon of it has been resulted in the stagnation of Islāmic law. Muslim states are suffering from many serious issues regarding their internal and external administrative policies due to stagnation of Islāmic law. Most of them have been adopted foreign laws to keep pace with modern and progressive societies.

It also appears that although purposive approach a quiet fresh innovation in the interpretive system of modern developed countries like American, England, Canada, Australia and Newzealand etc., yet they are more vigilant and conscious than Muslims to adopt any mode or technique which may remove hardship from their people and provide them ease, so is the case of purposive approach which was appeared simultaneously at the beginning of 1980s and adopted by them in the context of statutory interpretation. The legal philosophers and judges of the modern era rejected not only the static rule of literal interpretation but also the traditional rules for purpose of statutory interpretation to solve contemporary issues of nations. This changed trend was based on the argument that the purpose of legislation can be drawn easily by considering the generality of legal text and not by a specific mode of intentionalism. Consequently, the trend of interpretation started to shift from traditional interpretation to the modern approach. The application of objective interpretation has become an unavoidable for the reinstatement of indisputable role of Islāmic law in the progress of Muslim societies. Maqṣad is based on the direct intent of Law-giver behind each legal text of Qurʾān and is derived through inductive process. Maqṣad is a definite and certain rule and is valid source of interpretation which must not be ignored by the contemporary Muslim scholars in the light of modern context.

NOTES & REFERENCES

[1] Muḥammad bin ʿAlī bin Ḥasan al-Tirmidhī born at Tirmidh. He was a *muḥadīth* and Uṣūlī. He compiled aḥādīth known as Sunan al-Tirmidhī. He wrote about prayer and its objectives and died in 258 century of Hijrah. See, Abū ʿAbd al-Rahmān Salmī, *Ṭabqāt al-Sufiyyah* (Cairo: Maktabah al-khanjī, 1986), 3:217.

[2] Husnī Zaydān, *Sharah al-Ṣalāt wa Maqāṣidihāh* edt. (Beirut: Dār Iḥyāʾal-ʿUlūm, 1991), 2:109.

[3] Ahmad bin Muḥammad bin Ishāq, al-Shāshī was a jurist of Baghdad and a Hanafī scholar. He was expertise of Uṣūl and wrote Uṣūl al-Shāshī. He was died in 344A.H. See, Naṣr Allāh al-Qarshī, Jawāhir al-Maḍīʿah, 1:262.

[4] Al- Shāshī, *Uṣūl al-Shāshī* (Beirut: Dār al-Kutab al-ʿArabiyyah, n. d.), 336.

[5] Imām al-Ḥaramayn, al-Juwaynī, *Kitāb al-Burhān*, (Damishq: Dār al-Ṭabaʿ li al-Nashr, 1384 A.H),   2: 1200-1209.

[6] ʿIzz al-Dīn 'Abd al-Salām was born in 575 A.H and died in 660 A.H. (1262 A.D.) He was Shāfi~ī jurist and inclined to taṣawuff. He was expert in Arabic and Islamic jurisprudence and got status of mujtahid. In his writings are: Qawāʾid al-Aḥkām fī Maṣāleh al-Ānām; and Qawāʾid al-Ṣughrā. See, Ibn ʿAmmād al-Ḥanbalī, *Shadhrāt al-Dhahāb fī Akhbār min Dhahāb*, ed. ʿAbd al-Qādir (Damishq: Dar Ibn Kathīr, 1988), 7:522.

[7] 'Izz bin Abd al-Salām, *Qawāʾid al-Aḥkām fī Maṣāleh al-Ānām*, 'Abdul Ghani, edt. (Damishq: Dār al-Taba' li al-Nashr wa al-Tawzi', 1992),30-43.

[8] Ibid., 24. Imām Muslim, *Ṣaḥīḥ al-Muslim*

[9] Sayf al-Dīn, Abū al-Husayn, al-Āmidī, *Al-Ahkām fī Uṣūl al-Ahkām* (Misr: Mu'assisat al- Ḥalbī , 1967),1:8; al-Qarāfī , Kitāb Anwār al-burūq fī Anwāʿ al-Furūq fī Usūl al-Fiqh,* vol.4   1:205; Masʿūd bin ʿUmar bin ʿAbd Allāh , al-Taftāzānī, *Al-Talwīh fī Kashf al-Haqā'iq al-Tanqīh* (Misr: Dār al-Kutab al-Arabiyyah, 1327 A.H.),1:5.

[10] Muḥammad bin Muḥammad, al- Ghazālī, *Al-Mustaṣfā* (Egypt: Al-Maṭbaʿ al-Amīriyyah, 1326 A.H), 1:300-313.

[11] Muḥammad Khalid Mas'ud, Shāṭibī's Philosophy of Islāmic Law (Islāmabad: Islāmic Research Institute, 1995), 253.

[12] Al-Shāṭibī, *Al-Muwafaqat fī Uṣūl al-Aḥkām* (Beirut, Dār al-Maʿārif, 1389A.H),1:243.

[13] Ibid., 4:56.

[14] Aḥmad al-Raʾīsūnī, *Naẓriyyah al-Maqāṣid 'inda al-Shāṭibī*, (n. p: Maʿhad al-ʿIlmī li al-Fikr al- Islāmī, 1995), 16-18.

[15] Ibid.

[16] Khālid Mas'ud,*Shatibi's Philosophy of Islāmic Law*, viii.

[17] Ibn Qayyim, *Iʿlām al-Mawaqqiʿīn ʿan Rabb al-ʿĀlamīn* ed. Muḥayy al-Dīn, 4 vol.(Miṣr: Matbaʿah al-Saʿādah, 1955),1:34.

[18] Shihāb al-Dīn al-Qarāfī, *Sharah Tanqīḥ al-Fuṣūl* (Beirut: Dār al-Maʿarifah, 1387 A.H.), 345.

[19] Shāh Walī Allāh, *Ḥujjah Allāh al-Bālighah* (Delhi: Fārūqī, 1893),1:21.

[20] Tāhir bin ʿĀshūr, *Maqāṣid al-Sharīʿah al-Islāmiyyah,* ed. Muḥammad Tāhir (Beirut: Dār al-Baṣāʾir lil Intāj al-ʿIlmī, 1988), 173.

[21] Al-Ḥaramayn, *Al-Burhān*, 2:1150.

[22] Al-Ghazālī, *Al-Mustaṣfā*, 1:234-288.

[23]   Al-Shāṭibī, *Al-Muwafaqāt*,1:135; Aḥmad al-Raʾīsūnī, *Naẓriyyah al-Maqāṣid 'inda al-Shāṭibī*, 21.

[24] The Qurʾān: 4: 92.

[25] The Qurʾān: 2: 178.

[26] The Qurʾān: 2: 179.

[27] Al-Shāṭibī, *Al-Muwāfaqāt*, 2:9-12.

[28] Ibid., 1:301.

[29] Al- Ghazālī, *Al-Mustaṣfā*,1: 290; Ṭāhir bin ʿĀshūr, *Maqāṣid al-Sharīʿah al-Islāmiyyah*, 215.

[30] Imām Muslim, *Ṣaḥīḥ al-Muslim*, Kitāb al-Īmān (n. p: Tabaʾh Dār al-Shaʾb, 1389A.H), 2:276.

[31] Al-Shāṭibī, *Al-Muwāfaqāt*, 2:12.

[32] The Qurʾān: 21:105.

[33] Ibn Mājah, *Sunan Ibn Mājah*, Kitāb al-Aḥkām (Misr: Dār Iḥyā al-Kutub, 1988),3:105.

[34] The Qurʾān: 2:183.

[35] See for detail, Shāh Walī Allāh, *Ḥujjah Allāh al-Bālighah*, 1:26-32.

[36] Al-Āmidī, *Al-Aḥkām fī Uṣūl al-Aḥkām*,3:262.

[37] 'Izz bin ʿAbd al-Salām, *Qawāʾid al-Aḥkām fī Maṣāleh al-Ānām,*145.

[38] Yūsuf ʿAbd Allāh al-Qarḍāwī was born in 1926 at Egypt and memorized Qurʾān in his childhood. He got his PhD degree from Al-Azhar in Sharīʿah. He is well known for his liberal interpretation. He has launched his own web-site and is heavily involved with Islām Online. See, Iʾṣām Tilmiyyah, *Yūsuf al-Qarḍāwī Faqīh al-Daʿāt wa Daʿwāt al-Fuqahāʾ* (Damishq: Dār al-Qalam, 2001), iii.

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[49] Barak, *Purposive Interpretation in Law*, 88.

[50] Eskridge, *Dynamic Statutory Interpretation,*45.

[51] William N. Eskridge, Jr., *Dynamic Statutory Interpretation* (India: Universal Law Publishing Ltd, 2000),46; Bennion, *Statutory Interpretation*, 674.

[52] Ibid., 270-276.

[53] Ibid.

[54] Kamālī, "Purposes of Islāmic Law," An article, see, www.Islamonline