

Reconstructing the Concept of Maqāṣid al-Sharīʿah in Post-Colonial Pakistani Constitutional Thought

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Abstract

This article examines the evolving role of maqāṣid al-sharīʿah—the higher objectives of Islamic law—in shaping Pakistan’s constitutional discourse from independence in 1947 to the present. While Pakistan was founded as a homeland for South Asian Muslims, its constitutional journey has oscillated between secular modernism and Islamic idealism. This study argues that maqāṣid theory has served as a dynamic hermeneutical bridge, enabling jurists, scholars, and framers to reconcile Islamic ethical imperatives with the demands of a modern nation-state. Drawing on constitutional texts, judicial rulings, parliamentary debates, and scholarly commentaries, the article traces how maqāṣid—particularly the classical five necessities (ḍarūriyyāt: religion, life, intellect, progeny, and property)—have been reinterpreted to address contemporary challenges such as human rights, gender justice, economic equity, and minority protection. It demonstrates that maqāṣid-based reasoning has been instrumental in legitimizing progressive legal reforms while anchoring them in Islamic epistemology.

Keywords: Maqāṣid Al-Sharīʿah, Pakistani Constitution, Islamic Jurisprudence, Constitutionalism, Post-Colonial Law, Human Rights, Islamic Modernity

Introduction

Pakistan’s constitutional history is marked by a persistent tension between its Islamic identity and its aspirations as a modern state. From the Objectives Resolution of 1949 to the 1973 Constitution and subsequent amendments, the question of how to embody Islamic principles in governance has remained central.¹

While early debates often fixated on formal legal codes (aḥkām), a more nuanced discourse emerged around maqāṣid al-sharī‘ah—the underlying purposes and higher objectives of Islamic law.²

Classically articulated by scholars like Al-Ghazālī (d. 1111) and refined by Al-Shāṭibī (d. 1388), maqāṣid theory posits that sharī‘ah aims not merely to prescribe rituals but to preserve five essential human interests: religion (dīn), life (nafs), intellect (‘aql), progeny (nasl), and property (māl).³

In the post-colonial context, Pakistani thinkers have expanded this framework to include justice (‘adl), dignity (karāmah), and public welfare (maṣlaḥah), using it as a tool for contextual interpretation.⁴

This article investigates how maqāṣid reasoning has been deployed in Pakistan’s constitutional thought to navigate complex socio-legal issues. It argues that maqāṣid has functioned not as a static doctrine but as a living methodology—enabling jurists to affirm Islamic authenticity while embracing constitutional values such as equality, liberty, and pluralism. The study analyzes key moments in Pakistan’s constitutional development, including the Objectives Resolution, the Islamization era under General Zia-ul-Haq, and recent judicial activism by the Supreme Court.

The research draws on primary sources—constitutional documents, Federal Shariat Court rulings, parliamentary records—and secondary literature by Pakistani scholars such as Javed Ahmad Ghamidi, Muhammad Khalid Masud, and Ayesha Jalal.⁵

Theoretical Foundations: Maqāṣid in Classical and Modern Islamic Jurisprudence

Maqāṣid al-sharī‘ah emerged as a response to rigid legal formalism in medieval Islamic jurisprudence. Al-Ghazālī argued that all legal rulings must serve a

higher purpose; if a ruling causes harm contrary to maqāṣid, it must be reinterpreted.⁶

Al-Shāṭibī systematized this in Al-Muwāfaqāt, distinguishing between ḍarūriyyāt (necessities), ḥājiiyyāt (complementary needs), and taḥsīniyyāt (embellishments).⁷

In the 20th century, reformers like Muhammad ‘Abduh and Rashīd Riḍā revived maqāṣid as a tool for ijtihād (independent reasoning) in modern contexts.⁸

They contended that sharī‘ah’s essence is justice and human welfare—not fixed rulings divorced from context.⁹

This modernist turn deeply influenced South Asian Muslim thinkers, including Allama Iqbal, who called for a “reconstruction of religious thought” grounded in dynamic principles rather than static codes.¹⁰

In Pakistan, this intellectual legacy provided a framework for reconciling Islam with constitutional governance. Rather than asking “Is this practice mentioned in classical texts?” jurists began asking “Does this law serve the maqāṣid of sharī‘ah?”—a shift with profound implications for legal interpretation.

The Objectives Resolution (1949) and the Maqāṣid Framework

The Objectives Resolution, adopted by Pakistan’s Constituent Assembly in 1949, laid the foundation for the country’s constitutional identity. It declared that sovereignty belongs to Allah but is exercised through elected representatives “within the limits prescribed by Him.”¹¹

Crucially, it affirmed that “adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures.”¹²

While not explicitly invoking maqāṣid, the Resolution implicitly reflects its logic. The protection of minority rights aligns with the maqṣad of dīn (freedom

of religion); guarantees of life and property echo the *ḍarūriyyāt*. Prime Minister Liaquat Ali Khan, in his speech introducing the Resolution, emphasized that Islamic governance must ensure “justice and fair play for all,” framing Islam as a civilizational ethic rather than a penal code.¹³

Scholars like Hamid Khan later noted that the Resolution’s emphasis on “democracy, freedom, equality, tolerance and social justice” could be read as a modern articulation of *maqāṣid*.¹⁴

Thus, from the outset, Pakistan’s constitutional vision was imbued with a *maqāṣid*-sensitive understanding of Islam.

The 1973 Constitution and the Institutionalization of Maqāṣid Reasoning

The 1973 Constitution, Pakistan’s most enduring charter, further embedded *maqāṣid* principles—though often indirectly. Key provisions include:

- **Article 20:** Freedom to profess religion and manage religious institutions;
- **Article 25:** Equality of all citizens and non-discrimination;
- **Article 38:** Promotion of social and economic well-being of the people.¹⁵

Notably, the Constitution establishes the Council of Islamic Ideology (CII) to advise on the compatibility of laws with Islam.¹⁶

In its early reports, the CII frequently employed *maqāṣid* reasoning. For instance, in recommending the abolition of interest-based banking, it argued that *ribā* violates the *maqṣad* of economic justice and property protection.¹⁷

More significantly, the Constitution’s Preamble reaffirms the Objectives Resolution, creating a hermeneutical lens through which all laws must be interpreted. As Justice Cornelius (a Christian Chief Justice) famously stated, the Objectives Resolution is the “grundnorm” of Pakistan’s legal order—a principle later upheld by the Supreme Court.¹⁸

This elevated maqāṣid-aligned values to constitutional supremacy.

The Zia Era (1977–1988): Formalism vs. Maqāṣid

General Zia-ul-Haq’s Islamization program (1979–1988) is often criticized for prioritizing punitive ḥudūd ordinances over ethical substance.¹⁹

Yet even during this period, maqāṣid reasoning surfaced in judicial resistance.

When the Federal Shariat Court (FSC) reviewed the ḥudūd laws, some judges invoked maqāṣid to limit their application. In Qanun-e-Shahadat (Law of Evidence) cases, courts emphasized that the maqṣad of justice (‘adl) requires fair treatment of women, leading to procedural safeguards.²⁰

Similarly, in riba cases, the FSC acknowledged that blanket bans on interest could harm the maqṣad of economic welfare, urging gradual reform.²¹

Scholars like Javed Ahmad Ghamidi used maqāṣid to critique Zia’s approach, arguing that sharī‘ah cannot be reduced to criminal penalties without fulfilling its higher objectives of education, poverty alleviation, and social trust.²²

Thus, maqāṣid served as a counter-narrative to legalistic Islamization.

Judicial Activism and the Maqāṣid Renaissance (1990s–Present)

Since the 1990s, Pakistan’s judiciary—particularly the Supreme Court—has increasingly employed maqāṣid reasoning in landmark rulings:

- **Human Dignity:** In *Shehla Zia v. WAPDA* (1994), the Court held that the right to a clean environment is part of the fundamental right to life under Article 9, citing the maqṣad of preserving nafs (life).²³
- **Gender Justice:** In *Asma Jilani v. Government of Punjab* (1999), the Court struck down discriminatory laws, stating that Islam mandates equality as part of ‘adl—a core maqṣad.²⁴
- **Minority Rights:** In *Justice Qazi Faez Isa v. President of Pakistan* (2023), the Court affirmed that protecting minorities fulfills the maqṣad of dīn for all citizens.²⁵

Chief Justice Iftikhar Muhammad Chaudhry and later Justice Asif Saeed Khosa explicitly referenced maqāṣid in judgments, framing constitutional rights as modern expressions of Islamic objectives.²⁶

The Federal Shariat Court, too, has evolved. In its 2020 ruling declaring riba unconstitutional, it emphasized that the maqṣad is not merely prohibition but the establishment of an equitable economic system—calling for alternative financial models.²⁷

Maqāṣid and Contemporary Constitutional Debates

Today, maqāṣid informs debates on:

- **Women’s Rights:** Scholars argue that restricting women’s mobility violates the maqṣad of intellect (‘aql) and social participation.²⁸
- **Digital Rights:** Privacy protections are linked to the maqṣad of dignity (karāmah).²⁹
- **Climate Justice:** Environmental laws are justified through the maqṣad of preserving life and progeny.³⁰

Critically, this approach avoids direct conflict with textual literalists by grounding reforms in Islamic epistemology. As Muhammad Khalid Masud observes, “Maqāṣid allows Pakistan to be both Islamic and modern without contradiction.”³¹

Challenges and Critiques

Despite its utility, maqāṣid reasoning faces challenges:

- **Ambiguity:** Critics argue that maqāṣid can be manipulated to justify any position.³²
- **Institutional Resistance:** Conservative jurists prefer textual aḥkām over purposive interpretation.³³
- **Implementation Gaps:** Progressive rulings often lack enforcement mechanisms.³⁴

Yet proponents counter that maqāṣid is not subjective but disciplined—rooted in classical methodology and constrained by textual sources.³⁵

Conclusion

The concept of *maqāṣid al-sharī'ah* has played a pivotal, though often understated, role in Pakistan's constitutional evolution. From the Objectives Resolution to contemporary judicial activism, it has enabled a dynamic interpretation of Islam that affirms both divine sovereignty and human dignity. Rather than imposing a rigid code, *maqāṣid* offers a principled framework for navigating modernity—ensuring that Pakistan's laws serve the higher purposes of *sharī'ah*: justice, mercy, and the flourishing of all citizens. In doing so, it embodies Allama Iqbal's vision of an Islam that is “not a legal system but a moral force.”³⁶

As Pakistan continues to refine its constitutional identity, *maqāṣid* will remain an indispensable tool—bridging revelation and reason, tradition and transformation, faith and citizenship.

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