

THE PURPOSES OF THE SHARI'AH (MAQASID AL-SHARI'AH) AND WAQF

Anis Pattanaprichawong

Princess of Naradhiwas University

anis_10104@yahoo.com

Abstract: This research examines the issue of substitution of waqf in the light of the Maqasid of the Shari'ah. The results of this research point to Waqf management from Maqasid al Shari'ah Perspective. Almost all the fundamental aspects of Maqasid are related to waqf management directly or indirectly, But Waqf management is directly associated with the preservation of religion alongside the property Waqf management in the light of maqasid al shariah basically includes the preservation of property: (1) Protecting Waqf property from harm and destruction (2) Preservation of Waqf from illegal occupation (3) To get the Waqf administration free from corruption (4) To ensure the transparency and accountability (5) Accomplishment as per agreement

Keywords: *Shari'ah, Maqasid al-shari'ah, Waqf.*

Introduction

During the glorious days of Islam, waqf (Islamic endowment) played considerable part in socio-educational, cultural and life-saving aspects of the Muslims. Early Muslims gifted with divine bounties were sensitive towards the plight of their downtrodden brothers and sisters in Islam. They dedicated numerous properties to uplift the lots of the unfortunate among them aside from parting with their wealth for other religious institutions, such as zakah and cemeteries. However, today waqf, by and large, is understood as a dedication made for purely religious causes. To us this narrow understanding of philanthropic endowment (waqf khairi) is symptomatic of the larger ritualization of Islam and its institutions as whole. To remedy the situation, we propose that there is a need to move beyond the literal understanding of the waqf.

The Purposes of the Shari'ah (maqasid al-shari'ah)

Every law is oriented towards certain purposes. The Shari'ah, being a divinely inspired code for human conduct, also has its own aims and objectives. Its primary goal is to free man from the grips of his own whims and fancies so that he may become a true servant of God. As we read in the Qur'an (Al-Jathiyah, 18) "Then we put thee in the right way of religion: so follow thou that way and follow not the desires of those who know not.

Muhammad al-Zuhayli¹ (2006, P.8) To enable man to serve Him, God has designed His laws to secure man's interest and safeguard his well-being (maslahah)

¹ Muhammad al-Zuhayli, *Maqasid Al-Shari'ah I* (Damascus: Dar al-Maktab, 1998), P 8.

both in this world and the hereafter—a thesis which was developed by great thinkers like Imam al-Juwayni, Imam al-Ghazali, al-‘izz ibn ‘Abd al-Salam, al-Shatibi, Tahir Ibn ‘Ashur, and some contemporaries like al-Fasi and al-Raysuni, to name a few. The discourse on maqasid marks a significant departure from traditional literal approach to ijihad. This obtains through a purposive interpretation of the Shari‘ah rules, by way of istiqla (inductive reasoning) in Islamic jurisprudence.

The definition of Maqasid al-Shari‘ah

Nur al-Din ibn Mukhtar al-Khadimi² Maqasid al-Shariah is a composite of two words: maqasid and al-Shari‘ah. Maqasid is the plural of maqsad. Literally, it means intent, objective, purpose, aim, and end-goal. Technically, it signifies the stated purposes of the Shari‘ah for the realization of Allah’s servants’ interest (masalih al-‘ibad). Shari‘ah signifies the sum total of laws and principles that are ordained by Allah and promulgated through his Prophet to mankind.

The definition of Constitutes Human Interest (maslahah)

Imran Ahsan Khan Nyazee³ state that according to al-Ghazali, human maslahah has two-faces:

- Dini (promotion and preservation of religious values) or the human interest in the hereafter and,
- Duniawi or human interest pertaining to this world. These worldly purposes in turn include, the preservation of life, posterity /progeny (al-nasl aw al-nasab) or family values, intellect, and wealth.

The two types described above ultimately yield five major purposes of the Shari‘ah namely religion, life, progeny, intellect, and wealth. They are called the five basic principles (kulliyat al-Khams.)

The Classification

Al-Shatibi (2001, P.10-11) said the human interest in order of priority has been classified into three broad categories. They are:

1. Necessities (daruriyyat), consisting of religion, life, progeny, intellect, and wealth. They are essential because upon them the life of man depends and if threatened, corruption, disorder and injustice will result in individual and collective life. As al-Shatibi maintains:

“Daruriyyat are vital because they are indispensable in sustaining the masalih (sing. maslahah) of din and dunya (the world), in the sense that if they are

² Nur al-Din ibn Mukhtar al-Khadimi, *‘Ilm Al-Maqasid Al-Shari‘ah* (Riyadh: Maktabat al-‘Abikan, 2001), P.16-17.

³ Imran Ahsan Khan Nyazee, *Theories of Islamic Law* (Islamabad: International Institute of Islamic Thought, 1994), p.240.

disrupted the stability of the world is disrupted. Their disruption results in the termination of life in the world, and in the hereafter it results in losing salvation and blessings.

2. Needs (hajiyat) consisting of facilities that human need them in order to provide them with ease and relief in situation of hardship and difficulties in life though their non-existence do not disrupt life and give rise to widespread chaos but result in hardship and stress.

3. Embellishments (tahsiniyyat) consisting of all things that enhance human mores and manners. Their disruption though neither disruptive to life nor entail hardship but a people devoid of them will be lowered in the estimation of right thinking and right natured people. Tahsiniyat in this sense denotes the idea of good habits and Islamic code of morality. Consequently, the Shari`ah rules and regulations on the whole provide practical measures to cater for all three levels of human interests, namely, the vital needs, the complementary needs and the betterment requirement. A day to day example that illustrates the existence of this hierarchy of human maslahah in the Shari`ah paradigm is the following:

One of man`s vital needs is housing, the existence of windows to allow for ventilation in the house is complementary to it, and to equip the house with facilities, such as furniture and beds are required to enhance the quality of the house.

Analogous situation in the Shari`ah is the case of necessity of having a din (religion) for people. To safeguard this very vital maslahah for man, the Shari`ah puts practical measures by which din can be nurtured and enhanced. For instance, it ordains Muslim to uphold the laws of obligatory `ibadah for consolidation of their sense of religious belief. To enable Muslims to perform the `ibadah at all times, even if they are sick, various facilitating rules, such as praying in a sitting position, and performing taymmum when ablution is impossible, are allowed as part of hajiyat. To enable Muslims to achieve more excellence in worshipping God, Sunnah prayers are recommended as part of tahsiniyyat.

Maqasid and waqf

Ibn `Ashur⁴ stated that places endowment under the haji category of the maqasid. Hajiyat constitute the purpose behind those provisions of the Shari`ah which provide ease in case of difficulty and which eliminate or reduce hardship from people`s lives. As Ibn `Ashur defines them as, "That which Muslim community needs them for satisfaction of their well-beings and managing their affairs in a better way -because the non-existence of hajiyat though does not lead to the total disruption of social order, it definitely affects its orderly functioning. For example, if a sick person is required to fast in the month of Ramadan, it will be very hard for him or it may even

⁴ Maqasid. Muhammad Tahir ibn `Ashur, Al-Shari`ah Al-Islamiyyah (Kuala Lumpur: Fajar Ulung Sdn.Bhd., 1999), P223.

be impossible for him to do so. Therefore, the Shari`ah affords such a person the option of postponing the days during which he due to illness cannot fast. In business transactions also, the Shari`ah has allowed a variety of contracts and trading practices on the the doctrine of `umum al-balwa (inescapable necessity) if an objectionable element in a business otherwise cannot be avoided at all. For instance, a negligible rate of non-halal income that an investor gets by way of dividend is tolerated on account of unavoidable situation. Similarly in the area of human custom and habit (`adah), the Shari`ah allows the incorporation of any local custom into the body of Islamic law in meeting human needs so long as it is not otherwise prohibited. It likewise allows divorce in case if a marriage conflict becomes intolerable.

In this context, waqf to Ibn `Ashur⁵ is one of the major components among the donations (sadaqat) whose raison det`re is to ease the difficulty faced by destitute and poor on top of realizing other social objectives which needs to be taken care of. The reason is that human greed would not have allowed supporting these causes had Islam not sanctioned them by clearly declaring that the merit for such benevolent acts even does not cease after death. That is why great companions such as `Umar, Abu Talhah and others like `Utham (bought the Well of Rumah and made it waqf under the instruction of the Prophet). took the lead to make waqf for public welfare. The implications of this theory, for waqf kahiri include the following:

First, waqf in the scheme of maqasid, being a haji benefit is fundamental in supporting religion, life, family, human intellect and even property at the societal level. The reason is that waqf if not instituted, houses of worship cannot be solely built and sustained on zakat fund as it is designated for other social causes besides fi sabil Allah. Poverty-stricken people who have no access to education, health care, daily means of sustenance would not expected to be a part of productive and meaningful citizenry among the Ummah. This is the logic behind the organic connection behind the hierarchy of maqasid as the demand for daruriyyat creates the demand for hajjiyyat and tahsiniyyat and also the principle that hajjiyyat and tahsiniyyat are pursued for the sake of daruriyyat.

Second, the utility anticipated by waqf, namely the socio-economic welfare of the ummah would remedy the deviant economic behavior on the part some Muslims who spend bulk of their wealth on tahsiniyyat at the expense of hajjiyyat which in turn jeopardizes the necessities desired by Islam. For instance, optional hajj and `umrah more often by wealthy people who never care about the plight of poor and social causes is a case in point. A question is raised here as to which of these voluntary devotions should be given priority, particularly in view of conditions of extreme poverty, hunger and diseases that prevail in many Muslim societies today.

⁵ Ibid. P.302-306

A cursory study of the issue from Islamic sources would provide us with the answer that charity, which is more socially oriented than voluntary pilgrimage, should be given priority.

The reasons are:

1) Muslims cannot remain unconcerned and indifferent to other peoples' misery and suffering based on the authority of the Prophet's tradition where he declared:``

The mutual love, kindness and graciousness of Muslims function like a body; when some of its parts are in pain, then all the other parts of the body become a victim of fever and sleeplessness.``

2) The governing law of human relationship, in the Islamic view, is one of sympathy and not antipathy. The Prophet clearly voiced this concern:``A Muslim is a brother to another Muslim. He shall neither oppress him nor should he usurp his right. He who provides for the needs of his brother, will be helped by God. And for him who removes one difficulty of a Muslim brother, God will remove one difficulty of his on the day of judgment. And for him who covers the defect of a Muslim brother, then on the day of judgement God will cover his defect.``

3) In the event of a conflict between a voluntary worship and social responsibility, the rule is to fulfill the latter. This principle is drawn from the practice of Ibn `Abbas. Ibn Abbas one day was performing I`tikaf (spiritual retreat) in the mosque. A man came to him. He saluted him and sat down. Ibn Abbas said to him that he looked worried and inquired what was the matter. The man replied:``Yes O! cousin of God's prophet; I have to repay some one's debt but I have no means to do so.`` Ibn Abbas said:``May I talk to you in this connection?`` He replied that if he wished to, he might. Ibn Abbas then put on his shoes and came out of the mosque. The man reminded him that he was observing I`tikaf, which was nullified by the act of going out of the mosque. Ibn Abbas replied:``No I have not forgotten. But I have heard from the prophet who said:``He who walks for the need of his brother and satisfies his need, then his act is better for him than ten years of I`tikaf and he who performed one day's I`tikaf for God's pleasure then God will place three trenches between him and hell, and whose distance will be more than the distance between the East and West.``

Hence, the above tradition makes it very clear that spending money for human welfare is more superior to doing the voluntary pilgrimages.

Consequently, Muslims who perform the hajj and `umrah repeatedly but do not dispense with a single penny to help the poor and needy have certainly lost sight of the essence of worshipping God and the sense of priority and balance in their acts of devotion to Him.

Third, understanding of this would prevent israf (prodigality) and lavishness spending (tabdhir). A person who lavishly spends on tasiniyyat, let's say leisure trips, feasts, wedding parties, etc while the poor and the orphans starve in his backyard is

committing the offence of israf and tabdhir as prohibited by Islam. More serious is when such practices become a social custom and widening the economic gap between the poor and needy and leads the latter to involve in crimes of theft, burglary etc. The Prophet anticipated this when he said: `` O Abu Dharr ! when you prepare soup put a little more water in it , and see if your neighbour needs some. ``

Lastly, the main objective of waqf is benevolence (al-birr) as held by al-Zarqa. Al-birr according to al-Zuhayli is a collective name embracing all donations dedicated to the destitute, scholars, relatives, mosques, schools, hospitals, welfare homes, hajj, striving for promotion of Islamic cause, researches and publications of Islamic books etc. Accordingly, dedication of waqf to mosques alone does not take care of other heads of hajjiyyat for which waqf as one of the measures has been instituted in Islam as maintained by Ibn `Ashur.

Conclusion and recommendations

Waqf which involves a process of holding up of the property and devoting its usufruct to the beneficiaries historically was an important source of financing public utilities, education and researches, health care and caring centers for the orphans and disabled aside from providing capital for traders and maintaining mosques and providing space for burial of the dead. Nevertheless, contemporary practice of waqf represents somewhat skewed understanding of the concept of waqf khairi as it is taken to mean devoting for purely ritualistic causes. This paper, therefore, argued for a paradigm shift on the part Muslims on the basis of the purpose of the Shari`ah and fiqh of priority. In this context, dedicating one`s wealth for capacity building of the poor and needy secures life, intellect, creates wealth and increases the number of committed Muslims to uphold religion and go to pray in the mosques, built on waqf land. Loss of sensitivity to care for the public welfare, on the other hand, increases poverty which in turn plums up the social ill index.

Accordingly, to optimize contribution towards creation of philanthropic waqf (public endowment) in the wider sense as was the case during the glorious days of Islam, we propose the following legislative strategies:

At the epistemological level, the Religious Council of each States must emphasize the role of welfare type of waqf within the frame of other voluntary acts of worship via religious teachers involved in mosque related activities.

At the juristic level, the idea of cash waqf and also temporary waqf as reflected by best practices, such as in Kuwait and South Africa should be popularized so as to dispel the notion that waqf has to be in the form of real estate or permanent assets.

Baitulmal in coordination with other family members of the founder and non-profit organization could encourage creation of income generating endowments where the proceeds could be spent on social welfare. During Othman Caliphate cash was invested in mudarabah and the revenues generated from them were used for charitable purposes.

Popularize the idea of welfare waqf among the employees both in private and public sectors in order to encourage them part with a portion of their salary as tax-deductable waqf.

References

- Al-Syathibi. *Al-Muwâfaqât Fî Uṣûl Al-Syarî'ah*. Beirut: Dar al-Kutub al-ilmīyah, 2001
- Imran Ahsan Khan Nyazee. *Theories of Islamic Law*. Islamabad: International Institute of Islamic Thought, 1994.
- Muhammad al-Zuhayli. *Maqasid Al-Shari'ah I*. Damascus: Dar al-Maktab, 1998.
- Muhammad Tahir ibn `Ashur, Maqasid. *Al-Shari'ah Al-Islamiyyah*. Kuala Lumpur: Fajar Ulung Sdn.Bhd., 1999.
- Nur al-Din ibn Mukhtar al-Khadimi. *Ilm Al-Maqasid Al-Shari'ah*. Riyadh: Maktabat al-`Abikan, 2001.