

Muhammad Nejatullah Siddiqi

Maqasid-e Shari`at (Objectives of the Shariah)

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“Maqasid-e-Shariat” (Objectives of the Shariah) is the latest work by Prof. M.N. Siddiqi, first published by the Islamic Research Academy, Islamabad, and republished by the Markazi Maktabah-e-Islami, New Delhi. We have before us the one published from New Delhi.

The subject of Objectives of Shariah has assumed utmost importance these days in the wake of numerous new issues faced by the Ummah in recent years. The Urdu language is spoken by a very large number of Muslim population and scholars in the world. But writings on this topic are very few in this Islamically rich language. Prof. Siddiqi seeks to fill this gap and wants to address those who master only this language.

Since long time Dr. Siddiqi held that “envisioning Islamic economy in twenty-first century is better done with reference to goals of Islamic law. This will enable us to handle issues like poverty and inequality (observed in his Keynote Address on Islamic Economics: Current State of Knowledge and Development of the Discipline” delivered at the Round Table Discussion – Organized by IRTI during 26-27 May, 2004, Jeddah). He is of the view that there is need to differentiate between objectives of Islam as a way of life and objectives of Islamic jurisprudence. He realized that this point needed an extended study. Hence he authored this work.

The appearance of this book on an important topic by an eminent scholar like Prof. Siddiqi is a remarkable event. The author has a vast experience of life. He has spent two decades of his life in an Islamic country situated at the heart of Islamic world. He was brought up in a country whose population has crossed figure of a billion, with one of the biggest Muslim populations in a single country. He is living at present in a country known as the most advanced in the world. He had seen in these countries from very close quarter the problems faced by the Muslims. In preparation of this book Dr. Siddiqi had the advantage of access to most of the literature produced on the topic by the past and present scholars, as is clear from the list of references. It took almost five years to complete this work. Before finalizing the book, the author published some of the chapters in research journals and benefited from the feedback of the readers. Some other chapters he presented in conferences and seminars and benefited from the discussions and observations of the audience. He kept improving it through exchanging views with his peer scholars and visitors.

Thus, there is deep thinking, serious discussions, innovative methodology, serious issues, and strong argumentation. However, the author never insists on his own stand. He always invites his readers to a dialogue and exchange of thought.

In the opinion of Prof. Siddiqi understanding and consideration of Shariah objectives is inevitable and extremely important to cope with a number of issues faced by Muslims in the present age. According to the author, writings on the subject have considerably increased in recent years. But most of the writers try to prove that all Shariah rules are founded on certain objectives, that the various *ahkam* (laws, rules, regulations) are not disparate pieces. But they are an integrated body designed by the Law-Giver to enhance human weal. He does not negate the utility of this exercise. But to him it is more important to benefit from those objectives in finding Shariah ruling in new issues. Again, most of the authors confine their discussions to the known *fiqh* rules, while there is pressing need to benefit from the Shariah objectives in other matters like, calling (*da`wah*), training and reforming the society.

The book is divided into eight chapters, in addition to a preface by the author and an introduction by Dr. Zafar Ishaq Ansari, the Director of Islamic Research Institute.

Following are the titles of the chapters:

First chapter: Shariah objectives – a contemporary study; Second chapter: Shariah objectives and the contemporary Islamic thought – problems and prospects; Third chapter: Role of reasoning and nature in understanding and

application of Shariah objectives; Fourth chapter: How to solve differences arising in understanding and application of Shariah objectives; Fifth chapter: Recent efforts in exercising *ijtihad* in the light of Shariah objectives; Sixth chapter: An investigation into modern Islamic finance in the light of Shariah objectives; Seventh chapter: Shariah objectives and future of humankind, and; the Eighth chapter: Shariah objectives – understanding and application.

In the first chapter, the author sheds light on the importance of the Shariah objectives and the reason why it attracted attention in the modern period. He also surveys, though briefly, the history of the idea of Shariah objectives. To him, the concept of Shariah objectives existed from the very beginning of Islamic history. But it was al-Juwayni (d. 478/1085) who first used the term, from whom his disciple al-Ghazali (d. 505/1111) took it and divided it into five categories: Protection of religion, life, reason, progeny and property. Ibn Taymiyah (d. 728H/1328) introduced protection of dignity in place of progeny. He also argued that objectives should not be limited to the protection from harm, but it should also include securing benefits. Thus, the number would not remain confined to five objectives. Ibn al-Qayyim followed the suit of his teacher, Ibn Taymiyah, and included justice among the objectives. The author has also examined the opinions of al-Shatibi (d. 790/1389), Shah Wali Allah al-Dihlawi (d. 1172/1763), as well as a quick survey of the contemporary literature. He does not agree with those writers who insist on five categories of objectives mentioned by al-Ghazali, claiming that all other objectives come under them in one way or other. He suggests many other objectives to be added besides and beyond the five mentioned above, such as honor and dignity of humankind, basic freedom, justice and equity, poverty alleviation, sustenance for all, social equality, bridging gap between the rich and the poor, peace and security, preservation of system, and cooperation at the world level. He supports his stand by various verses of the Qur'an and the sayings of the Prophet (peace be upon him) especially in dealing with the non-Muslims, role of women in the society and the challenges of globalization.

In the second chapter he discusses the role played by the Shariah objectives in determination of rules regarding the problems and issues faced by the Ummah since last fifty years. He cites examples of opinions that were formed in the light of Shariah objectives. He also points out negative effects of rules where Shariah objectives were ignored. He also takes note of efforts made in preparation of the constitutions of a few Muslim governments, re-compilation of Islamic laws, and organization of conferences, research institutions and *fiqh* academies. He mentions a few examples that support his stand, for instance Shariah rules about paper money, women's travel without accompanying a close relative, fixation of fasting and prayer times in North and South poles,

payment of cash in *Sadaqat al-fitr*, methods of payment in long term contracts and employments, and *tawarruq*. With these examples he wants to show how legal opinions were withdrawn to fulfill certain Shariah objectives, as the existing *fatawa* were conflicting with these objectives, and leading to negative consequences. Thus, different opinions were adopted which were more harmonious to the goals of Shariah and fulfilling objectives more effectively. This review was done in the light of reason and experience. It was also realized that certain rules were given for specific circumstances such as prohibiting women to travel without accompanying a close relative or permission of *tawarruq*. By all these examples the author wants to visualize methodology of forming a rule in the light of Shariah objectives.

In the third chapter the author proves that the reason and intuition have an important role in finding out Shariah objectives and application thereof. In this respect he especially notes examples of establishing justice, abolition of tyranny and corruption, and maintenance of peace and security. He also mentions the role of reason and intuition in carrying out the tasks of Prophethood. He shows us how the Prophet (peace be upon him) and his successors adopted different rules and various opinions at different occasions keeping in view the objectives of Shariah.

In chapter four the author discusses how to solve differences arising in understanding and application of Shariah objectives. According to Dr. Siddiqi existence of differences in understanding the objective of Shariah is something natural and there is nothing strange about it. This had been seen even in the first century of Islam. The reason behind it is the difference in analysis of situations and conditions, and differences in comprehension of Divine Guidance. Again it may be due to difference in application of a rule to a new situation. The route to *hukm shar`i* (*shar`iyah* rules) necessitates discussion, wide consultations and, ultimately, decision by *shura* (mutual consultation). He reassured people that there is no other way, that old *taqlidi* (imitative) stance is unsustainable, that there is going to be controversy but it is not to be feared. Mutual consultation and collective thinking is the best way of solving such differences. The same method was followed in the early days of Islam and the same has to be revived now.

In chapter five the author surveys some of the attempts made during last few decades of the 20th and 21st centuries to decide rules for new controversial issues. He visualizes how efforts were made to observe Shariah objectives in deciding those rules. He stresses upon learning lessons from those efforts and adaptation of correct methodology. In this connection he especially mentions a number of problems faced by the Muslim compatriots of the West. He also

presents two instances from the *Fatwa* Committee in Malaysia which changed its earlier *fatwa* about marrying a Muslim man with a lady who converted to Christianity and became among the people of the Book (*ahl al-kitab*). He cites another example from the same *fatwa* committee. Previously it permitted borrowing on interest in the absence of interest free banks. But it forbade it after Islamic banks were established in Malaysia. This was done in observation of Shariah purposes and objectives. The chapter is concluded with a note that it is not surprising to have differences of opinions in finding rules especially when the matter is unprecedented such as genetic engineering, hedge funds, *etc.* whose nature and benefits and demerits are still not very clear. However, there is a way to solve these differences as discussed in the previous chapter.

Throughout the book he has maintained the stance that he is not to sell certain solutions/opinions on the new issues. His focus is methodology. That methodology is (in matters *not* covered by text+analogy) one's understanding of *maqasid* supported by reason + intuition. To strengthen his approach, chapter six demonstrates the severe limitations of stretching analogical reasoning beyond its scope to cover new issues in one field: Finance

Thus, chapter six is of special interest to Islamic economists. In this the author critically studies modern Islamic finance in the light of Shariah objectives. He has chosen this topic because of its importance in the modern time and due to his special interest with the subject. First he briefly presents basic principles of Islamic finance for those who do not have a background of it. Then he presents the condition of Islamic finance in the early Islamic centuries, the state of art at the present, and the future prospects. At the end he examines some of the efforts made to reorganize Islamic finance in the present time to highlight problems and difficulties faced in this regard. He also points out how consideration of Shariah objectives will be helpful in solving those problems. Briefly speaking, there are two methods of financing – direct and indirect through a medium. The main task in this respect is to encourage businessmen and establishments for taking risks. Justice, equity and benevolence should be necessary ingredient of finance so that only one person should not bear all the negative effects of the partnership and investment. The author reiterates that this is what the conventional or capitalistic financing lacks. As a panacea, the idea of ethical investment or the socially responsible investment has been developed. He adds that history teaches us two lessons:

One, the economic development depends, to a great extent, on comprehensive and efficient financing. Two, any economic development based on finance free from justice and benevolence has bad consequences. Thus, efficiency and equity are two important values for any financing activity.

Islamic finance is based on those two values – efficiency and equity. In case there is conflict between the two values, justice will have the precedent. It is for this reason, Islam prohibited interest, gambling, dubious and uncertain financial transaction. It also forbade some other actions such as forestaling, sale of something not owned, or not taken into possession, selling to someone who is helpless exploiting his need; similarly it prohibited hoarding, bidding prices up without an intention to purchase, two sales in one purchase, selling something deferred on credit, *etc.* On the other hand it legalized transactions such as *mudarabah*, *musharakah*, *muzara`ah*, *musaqah*, *qard*, *ijarah*, and some other practices such as *hawalah*, *kafalah*, *daman*, *wa`d* *etc.* some new forms of businesses also developed with the passage of time for instance, *suftajah*, *mudarabah ala`l-mudarabah*, *bay`al-urbun*, money exchange, *bay`al-wafa*, *waqf al-nuqud* and lately insurance or *tamin*.

In the opinion of the author a deep study of these forms of contracts is necessary to grasp the Shariah objectives aimed from them and to decide whether anyone of them or a combination of them, because of temporal changes, will harm the objective of Shariah? Here it must be kept in mind that to distinguish desired objectives from the corrupt practices, sound knowledge of economics, especially micro and macro analysis, and behavioral sciences is needed.

At the end of the chapter the author examines efforts made for the revival of Islamic finance in the contemporary world. He emphasizes that the pioneers of Islamic economists presented Islamic economics as a balanced system between two extreme systems of capitalism and socialism. They advocated establishment of Islamic banking and finance based on just partnership and equity. They had macro perspective keeping in view Shariah objectives. The idea was adopted by a few Muslim countries like Pakistan, Sudan and Iran. However, it is clear from the recent banking experience of private sectors in Malaysia, Indonesia and some Gulf countries that their aims was only to earn profit by avoiding clear cases of interest practices and to provide such investment opportunities for their customers and account holders. The result was that those banks and financing establishments intensively used *murabahah*, *ijarah muntahiah bi`l-tamlik*, *al-salam al-mutawazi*, *sukuk*, *`inah*, and *tawarruq*. The Shariah supervisory Boards of these establishments ignored the Shariah objectives for the sake of which Shariah promoted partnership and equity participation and prohibited debts. The reason was an increasing gap between productive enterprises and supply of money. This led the economy to the same situation for the prevention of which transactions based on *riba*, *qimar*, *gharar* and sale of debts were prohibited. As a result activities of speculation and subterfuge increased. This placed obstacles in the way of growth of just Islamic banking based on equity

and benevolence. Indeed, those who considered the *tawarruq* practiced by Islamic banks as similar to one found in the past *fiqh* literature, did not pay attention to the changes that occurred in the market of finance, debts, and practices of *sukuk* and *tawarruq*, and the difference in individual and group behaviour, and micro and macroeconomics. Dr. Siddiqi hopes that the financial policy makers would pay attention to the defects arising due to negligence of Shariah objectives, and their endeavor should be to regain the lost ground. This is the objective of this chapter.

The author has argued in a previous chapter that by objective he means the objective of Islam as whole in which every aspect of life is included. It is not confined to *fiqh* rules only. Thus in chapter seven he answers what the Shariah objective may offer for a better future of mankind and what should be the role of Muslims as individual, group and the *ummah* as a whole. To strengthen his stand, the author first presents those verses of the Qur'an which address the entire humankind and derives values related to our social life. Next he notes explication of those verses through the traditions of the Prophet (p.b.u.h.) and practices of his successors. He lists the problems faced by the entire humanity and makes it clear that the Muslims cannot play the role of best people for which they have been raised, nor can they solve their problems unless they follow the way of thinking and action that may help achieve this objective. He divides the problems faced by the humankind into two categories. One, the problems that can be solved by a group of people like residents of a city or members of a particular community, speakers of a particular language or people of a particular nationality or color. Two, the problems that concern the entire humankind, which cannot be solved unless collective efforts of the whole population of the world are exerted to solve them. For example, problems of global warming, environmental pollution, prevention of epidemics, weapons of mass destruction, and maintenance of global peace and security. The author emphasizes the fact that our own existence and survival depends on solving these problems. Thus, they also become our objectives. In addition, he notes some other problems which need great collective efforts to solve them, such as removal of poverty and starvation from the world, establishment of peace and justice and abolition of tyranny and exploitation from the world. The author thinks that the role of Muslims has been negative or indifferent towards solving these problems which is against the missions of the prophets as they addressed the whole human being. He reiterates that guidance to solve the modern day problems will be available through the objective of Shariah and not from piecemeal *fiqh*, as these issues did not exist at the time when jurisprudence developed. In fact sometimes *fiqh* discussions prove to be an obstacle in the way of Muslims to direct efforts to solve problems which are common to all mankind, as the author noted in chapter six and presented a few examples in chapter five.

According to Dr. Siddiqi, the teachings of the Quran and the Sunnah which enjoin goodness toward the whole mankind, require us to exert our efforts to solve the problems faced by the entire humankind. The need to remain fully informed about the various aspects of the efforts being made all over the world to solve these problems cannot be overemphasized. It is also necessary that we should have well thought out and clear stand on these issues and make it fully known to the world. To make his point clear the author presents the case of weapons of mass destruction as an example. He says that there is no doubt that use of those weapons does not distinguish between fighter and peace lover, between men and women, between old aged and children, *etc.* Rather its effects extend to even the future generation. There could be no doubt that it comes under the definition of *fasad fi'l-ard*. Thus, there is no doubt about the need to get rid of them, and therefore it will come within the purview of the objectives of Shariah. Therefore, in the opinion of the author, it is religiously prohibited without any reservation or hesitation to manufacture, trade or use them, as *fasad fi'l-ard* is never permitted in any condition. In this respect he notes hypocrisy and hidden attempts on the part of big nations to acquire such weapons. However, he emphasizes that Islamic stand should not be based on the stands of others as this is a question of principle and value. He supports his stand by the story of the two sons of Adam (the Quran 5: 27-32) and by the Qur'anic verse "Repel evil with that which is better ..." (41: 34-35). He claims that the context of these two verses shows that the issue is not related to individual problem. It was a principle-based issue that wins hearts in the long-term. To him, non-possession of such weapons by Muslim countries will not finish Islam or Muslim *Ummah* from the world at the hand of big powers having such weapons. Here it may be said that the real issue is not their elimination from the face of the earth but aims at keeping them weak, dependent and subordinate, depriving them from justice, and interference in their affairs. In fact, as he notes, in one of his meetings, audience opposed his views in the light of the Qur'anic verse "*wa a'iddu lahum maistata`im min quwwah....*" (8: 6) in which the word *quwwah* is common for all kinds of power with the aim of deterrence. Dr. Siddiqi's response was "there is need to compare between merits and demerits, advantages and disadvantages of acquisition of such mass destruction weapons". In his own opinion harms of possessing weapons of mass destruction are much more than their benefits. Apparently, he seems to think that majority of people would not agree with his opinion. Therefore, he invites for further dialogue on the issue.

In the eighth chapter, after bringing into focus in chapter seven issues Muslims share with rest of humanity hence have to involve them in decision making, the author urges upon the readers to start applying their knowledge of

Texts, their reasoning faculty, and join this process of dealing with new issues in the light of *maqasid/masalih* as our elders had done.

The author first presents a summary of the methodology proposed by him throughout the book to deduce rules in new situations. He also points out the reason why jurists keep themselves away from exercise of *ijtihad* based on Shariah objectives, or at least they do not like common Muslims to share with them in process of *ijtihad*. He regards all apprehensions in this respect as baseless. The need of the hour is to encourage *ijtihad* based on Shariah objectives to face the future challenges.

There is no doubt that calling to the religion of Allah and being witness over the people are among the most important objectives of the Shariah. This, in the opinion of Dr. Siddiqi, requires to adopt a method that should attract the attention of people and prepare minds and hearts to Islam. Those methods must be avoided that may create enmity, hatred, disputes and doubts. Again, instead of trying people to accept a single opinion, efforts should be made to respect opinion of each other and cooperate with each other. The author criticizes *fiqh* academies and *ulama* who advise common Muslims to turn towards them in their problems and avoid the exercise of *ijtihad* to save them from conflict and controversies. This was the very reason for closing the doors of *ijtihad* in the past. Prof. Siddiqi does not agree with such people. According to him, difference of opinion does not harm the Ummah. Rather it strengthens it. This he supports through evidence from past and modern history.

As far as extending the right to *ijtihad* to commoners is concerned, the author makes clear that this does not refer to conventional jurisprudential *ijtihad*. Rather it means *ijtihad* in the general affairs of life, such as education, health, tourism, dealing with the neighbours and friends, bringing up children, marital relations, calling to Allah, training of callers, organization of parties and financing them, interaction with the national system and participation in it, dealing with the other communities, international relations, *etc.* which do not fall under the sphere of conventional jurisprudence. It is possible for one who is expert of these fields to exercise *ijtihad* in the sphere of his expertise. If people are forced to strictly imitate in religious affairs, it would extend to other worldly matters as well, and they will not have courage for innovation, invention and modernization. This is so because life is a unity and there is no duality within this. The past situation cannot remain as it is because of changing the nature of problems. The author presents examples of Islamic financing and Shariah supervisory boards that has demonstrated a kind of non-seriousness and lack of competence in newly arising problems. Finance is one aspect of our life. There are many other aspects that pose challenges. To prepare oneself to meet those

challenges one needs to have knowledge of contemporary sciences, and experience of practical life, in addition to traditional sciences. The present problems cannot be solved in a purely traditional way. Rather we need the same methodology that was used during the times of companions, followers and leaders of original thinking. Dr. Siddiqi makes clear that the world after fifty or eighty years will be entirely different from the world that existed fifty years or a century ago in terms of economy, geography and politics. Thus, the tools and strategies used by Islamic movements to cope with problems in the past century, will not work in the coming years. Thus, it is inevitable to change the strategy and reorganize priorities to face problems of the coming years in the light of Shariah objectives such as justice, equality, equity, freedom of thought and action, human dignity *etc.* Indeed, negligence of these objectives in the field of finance and other spheres of life has tarnished the image of the *ummah* and put it in a defensive position. At the end, the author asks to forget what is lost, and plan afresh for the future. This needs a critical evaluation of our present situation and readiness for dialogue and discussion without any reservation. Though it does not appear to be something pleasant but there is no other way. We have to be aware of the Shariah objectives their application, and differences among the Muslim community to reconstruct the image of the *ummah* and regain its honor and dignity. The main purpose of this book is to prepare readers for this task. Dr. Siddiqi's present work is an addition to the literature on Shariah objectives. It needs to be translated to other major languages spoken by the Muslim majority.