

APPLYING THE SHARIAH FROM THE VIEWPOINT OF *MAQĀSHID AL-SHARĪ'AH*: ANALYZING LEGAL OPINIONS OF SRI LANKAN MUSLIM SCHOLARS


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 DOI: 10.15575/as.v23i2.15032

Received: 22-11-2021, Accepted: 31-12-2021, Published: 30-06-2022

Abstract: The *Shari'ah* is of fundamental importance for all Muslims. No Muslim is exempted from following the *Shari'ah*. However, the understanding of Islamic law is often too narrow and problematic for several reasons. Further, this situation is more critical in the Muslim minority context since it paves the ways to misunderstand and misinterpret the nature and purpose of the *Shari'ah*. Therefore, applying *Shari'ah* has become a controversial matter that harms people's interests rather than serves them. Further, during the last few decades, there has been significant interest among the scholars of *Shari'ah* in producing the *Maqāsid al-Shari'ah* as a new methodology to interpret the texts of *Shari'ah*. They propose *Maqāsid al-Shari'ah* as general principles that open expansive rooms for applying *Shari'ah* under its broad perspective. Acknowledging this background, the researcher examined the views of Sri Lankan Muslim scholars about applying *Shari'ah* based on *Maqāsid al-Shari'ah*'s viewpoint. Hence, the perceptions about the application of *Shari'ah* are collected from selected Muslim scholars by conducting the interview. This study follows the qualitative method of data collection and content analysis method to reach the results and findings. Accordingly, the study reveals that the prevailing narrow perspective about *Shari'ah* serves as an obstacle for the correct and beneficial application of the *Shari'ah* and causes negative perceptions among the public. Consequently, the study concludes that the broad perspective of *Shari'ah* opens a more expansive space for the application of *Shari'ah* and largely helps cooperate and collaborate with other religious communities.

Keywords: Application of *Shari'ah*, the Muslim minority, *Maqāsid al-Shari'ah*, and Sri Lankan Muslims.

Introduction

Sri Lanka is a small multi-religious, multi-ethnic country located at the center of the Indian Ocean with around 22 million populations. Accordingly, Muslims, the second-largest minority community, has recorded tremendous legacy of peaceful coexistence with other religious communities, Sinhalese and Hindus. Accordingly, the Sri Lankan Muslim minority community comprises three major ethnic groups; Moors, Indian Muslims, and Malays. Therefore, 92% of the population of the Sri Lankan Muslim community is ethnically Moors¹ whose origin connects with Arab merchants and Persian sailors², as the following discussion discloses. Regarding religion, Sri Lankan Muslims follow Imam Al-Shafie (*madhab*) in religious and social matters.³ Indeed, the Sri Lankan Muslim minority community enjoys considerable religious freedom. Thus, the constitution of Sri Lanka confirms that all religions, ethnic groups, and citizens are protected by law. Furthermore, article 10 of the constitution depicts under 'fundamental rights' that "every person is entitled to freedom of thought, conscience, and religion, including the freedom to have or adopt a religion or belief of their choice."⁴ Accordingly, this study specifically addresses the context of the Sri Lankan Muslim minority community, where no specific academic scholarships have been conducted related to the application of *Shari'ah*.

However, many studies have been conducted on Muslim personal law and its application in the Sri Lankan context. Indeed, Muslim personal law possesses the Muslim Marriage and Divorce Act (MMDA), the Inheritance Act, and Waqf Acts. Hence, the article titled "The Qauzi court system in Sri Lankan and its impact on Muslim women" is one of the remarkable contributions of Saleem Marsoof in this area.⁵ This study examines the Quazi court systems and mainly focuses on critical issues related to Muslim women, such as child marriage, polygamy, consent and signature of the bride, and the imbalance in the divorce law.

On the other hand, the article by Zulkiple and Jazeel on 'History, distribution, and affiliation of the mosque in Muslim minority of Sri Lanka' merely elaborates the brief historical setting of mosques in Sri Lanka. It exposes the essential characteristics of those mosques. However, this academic work also does not pay attention to the application of Islamic law, even by the Mosques.

Further, many articles have been published in recent years, but most of them cover the socio, economic and religious issues and challenges faced by the Sri Lankan Muslim community. For example, A.R.M. Imthiyaz and Amjad Saleem have significant contributions, such as 'Muslims in Post-war Sri Lanka: understanding Sinhala-Buddhist

¹ The Portuguese, Dutch and British called Muslims as Moors due to the fact that this term early used for the inhabitants of Mauritania or Morocco. They were Islamized in seventh century. So, when Portuguese entered Eastern sea they found Muslims and describe al Muslims as Mouros.

² Thomas K. Gugler, *Buddhist Zion: Sri Lanka's Sinhalisation politics toward its Muslim minority*" *SudAsian Chronik - South Asian Chronicle*, 3/2013, S. 161-182.

³ Informant 11, Interview by author, Colombo, 10 Jan 2019, 1530pm-1700pm.

⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May 2015) Revised Edition 2015, Published by Parliament Secretariat, p-4 (Pdf downloaded and - retrieved 17, 02, 2020). <https://www.parliament.lk>

⁵ Saleem Marsoof, *The Qauzi Court System in Sri Lankan and its impacts on Muslim Women*' Muslim women Research and Action Forum, 2011.

mobilization against them.⁶ The article also narrates the challenges faced by the Muslim community after the end of the civil war in 2009. Also, the “Islamic identity formation, madrasas, and Muslims in Sri Lanka’ is another notable contribution of Imtiyaz. Furthermore, Busthami Khir wrote an article on ‘who applies Islamic laws in non-Muslim countries: a study of the Sunni principle of the governance of the scholars.’ Indeed, this article discusses the views of Sunni jurists regarding the governance of the scholars and its applicability to Muslim minority communities in non-Muslim abodes.⁷ However, this study also does not provide specific guidelines for the present context to apply *Shari’ah* in non-Muslim abodes. Hence, this study mainly discusses the possible application of Islamic *Shari’ah* in the current context in a non-Muslim abode under the viewpoint of *Maqāshid al-Shari’ah*. Specifically, the article analyzes local scholars’ views and their understanding of the application of *Shari’ah* in light of *Maqāshid Shari’ah*.

Indeed, the primary objective of this paper is to refine the understanding of the application of Islamic law in a Muslim minority country and to create a broader horizon for the application of *Shari’ah* under the viewpoint of *Maqāshid al-Shari’ah*. Because the understanding of *Shari’ah* primarily impacts its application. The narrow perspective about *Shari’ah* does not help accommodate the Muslim community in a non-Muslim abode. Nevertheless, this crisis of thought serves as an obstacle to *Shari’ah*’s application and paves the way for negative perception of *Shari’ah* among the general folk, Muslims, and non-Muslims. On the contrary, a comprehensive perspective about *Shari’ah* based on the *Maqāshid* opens vast space for the application and helps to facilitate Muslims in non-Muslim territory. Accordingly, the Sri Lankan Muslim minority community faces many challenges and obstacles in following the path of *Shari’ah*. At this juncture, examining the understanding of local scholars about the application of *Shari’ah* is more vital. Thus, it helps to refine their knowledge based on *Maqāshid al-Shari’ah* and opens broad areas for applying Islamic law.

Method

This study follows the qualitative method⁸ of data collection and content analysis method to reach the results and findings. Hence, the study uses primary and secondary sources⁹ such as books, journal articles, and direct interviews with local scholars, or the researcher relied on collecting data from both library research and interview method. Thus, the interview method was one of the most essential and powerful tools for data collection in social research. So, the researcher collected the perceptions about the application of *Shari’ah* from selected Muslim scholars by conducting the interview. To have an in-depth discussion on the application of Islamic

⁶ Imtiyaz A.R.M. and Amjad- Saleem. (2015). Muslims in Post-war Sri Lanka: understanding Sinhala-Buddhist mobilization against them. *Asian Ethnicity*. Vol. 16, No. 2. 186-202.

⁷ Khir, Bustami, Who applies Islamic Law in Non-Muslim Countries? A Study of the Sunni Principle of the Governance of the Scholars, *Journal of Muslim Minority Affairs*, 2007, Vol. 27 No 1, 79-91.

⁸ Stephen Lapan, Mary Lynn Quartaroli, and Frances Rimer, eds, *Introduction to Qualitative Research in Qualitative Research an introduction to methods and designs*, ([Place]: Jossey-Bass, 2012) 6–12.

⁹ <https://www.intellspot.com/primary-data-vs-secondary-data/>, Retrieved 21/08/2021.

law in a Muslim minority context, the researcher utilized a purposive sample¹⁰ to choose appropriate respondents for the interview. Later, he examined their opinions on how far tally with Maqasid al-Shari'ah's perspective. By doing this, the researcher aims to refine the understanding of Shariah and its application to facilitate Muslims' life in a non-Muslim abode. Further, the researcher explains how the notion of *Maqashid al-Shari'ah* can open expansive room for the application of *Shari'ah*. Eventually, the paper concludes with suggestions to refine the understanding of the application of *Shari'ah* that facilitate the Muslim community in a non-Muslim abode.

Discussion and Results

The application of *Shari'ah* in a non-Muslim abode

The *Shari'ah* is fundamentally important for all Muslims, whether in the East or the West, residing in a Muslim abode or a non-Muslim abode. No Muslim is exempted from following the *Shari'ah*, as revealed in "To Allah belong the east and west: wherever you turn, there is the presence of Allah" (al-Baqarah 2:115).¹¹ Thus, Islamic law regulates all aspects of life, from the family to international relations, and sets clear limits and boundaries. Certain acts are prohibited by God, while others are permitted, with the explicit purpose of promoting human wellbeing and righteousness.¹² More importantly, the salvation of Muslims in the afterlife depends on their faith and obedience to the divinely decreed law.

Over the centuries, Muslim communities have faced many challenges and problem, whether economic, political, or spiritual. The contemporary issues are more related to Islamic law than faith and morality.¹³ However, the understanding of Islamic law is often too narrow and not comprehensive enough, which is problematic for several reasons. Further, it is hard for Muslim minorities to imagine a fully autonomous space in which to apply Islamic law. Nonetheless, applying the *Shari'ah* has recently become the central topic of public and academic discourse.

This situation is more critical in the Muslim minority context. A narrow understanding of Islamic practices and norms leads to many misunderstandings and causes Muslims and non-Muslims alike to misinterpret the nature and purpose of the *Shari'ah*. This often narrow and limited understanding of the *Shari'ah* does not help accommodate the Muslim community in a non-Muslim environment. The accompanying crisis of thought serves as an obstacle to the correct and beneficial application of the *Shari'ah* and causes negative perceptions among the general public.

¹⁰ Ian Dey, *Grounded Theory in Qualitative Research Practice*, ed. Clive Seale et al. (London: SAGE, 2005), 98.

¹¹ Al-Qaradhwi, Yusuf, *al-Mushkilât al-fiqhiyyah li al-Aqalliyyât al-Muslima fi al-garb*, in Scientific review of the European Council for Fatwa and Research, No 01, Ireland, 2002, p-18-74.

¹² Ibn Ashur, Muhammad Tâhir, "*Ibn Ashur Treatise on Maqâsid al-Shariah*" (trans by Muhammad al-Tahir el-Mesawi) International Institute of Islamic Thought, London, 2006, p-87.

¹³ Zaprul Khan, *Maqâsid al-Shari'ah in the contemporary Islamic legal discourse; perspective of Jasser Auda, Walisongo*; Jurnal Penelitian Sosial Keagamaan, Vol 26 No.2 (2018) pp 445-472.

The application of Shari'ah under the viewpoint of Maqāsid al-Shari'ah

Scholars of *Shari'ah* have given numerous definitions to *Maqāshid*. Indeed, it is widely accepted that there is no anonymously accepted definition for *Maqāshid al-Shari'ah* among scholars in early and contemporary times. However, the definition of the *Maqāshid al-Shari'ah* is subject to the independent reasoning of scholars. Accordingly, the researcher has chosen here two remarkable definitions that are more comprehensive and suitable to the context of minority communities. They create broad areas for the application of *Shari'ah*.

Accordingly, a definition by Ibn Ashur, who is known as the second teacher of *Maqāshid* after Imam al-Shatibi¹⁴ for the general objective of *Shari'ah*, opens ways for a Muslim minority community toward their well-being and welfare. Thus, he defines the all-purposes principle '*maqṣad āmm*' of *Shari'ah* as 'preservation of the community's social order and ensuring its healthy progress as its all-purposes principle '*maqṣad āmm*' by promoting the well-being and righteousness (*salah*) of the human beings.¹⁵ Accordingly, he elucidates that two-fold duties were given to all messengers of Allah; first removing the corruption from the earth, and second calling people to obey Almighty Allah. It is interesting to note here what Ibn Ashur means by righteousness.

Another contemporary scholar Syekh Allal Fasi's definition of *Maqāshid*, expands the realm of *Maqāshid* to some extent, giving a broad perspective on the notion. First, he defines *Maqāshid al-Shari'ah* as purposes, goals, and underlying reasons behind each ruling of *Shari'ah* placed by the Lawgiver'.¹⁶ Further, he outlines "General *Maqāshid al-Shari'ah* means to populating and developing the earth, preservation social order, and peaceful harmony, a continuation of the goodness of world by the goodness of vicegerents, the establishment of justice and firmness, protection of intellect and work, elimination of evil from the world, bring out all goodness planning for the betterment of all."¹⁷ Accordingly, the numerous texts of *Shari'ah* confirm that the overall objective of *Shari'ah* is to set things rights and remove corruption in all kinds of human activities.¹⁸ Further, Ibn Ashur's definition of objectives of *Shari'ah* is not limited to individuals' well-being. However, it also considers the community's well-being as an objective of *Shari'ah*. Therefore, he notes, Prophet Moses went to rescue the children of Israel from Pharaoh's corruption. Indeed, corruption is not his disbelief (*kufr*) but evil deeds on earth because the Israelites did not follow Pharaoh in his belief.¹⁹

Based on the above arguments, the objective approach to *Shari'ah* creates room for the Muslim minority community to live under the circumstances of oppression if they aim to remove corruption from their abode, and it paves many ways to

¹⁴ Ahmad Rysuni, "The research in Higher Objectives of Shariah presence, development and future" in *Studies in the philosophy of Islamic Law, Theory and Application*, Edited by Ahmad Zaky Yamani, AL-Furqan Islamic Heritage Foundation, 2006, 181-230.

¹⁵ Ibn Ashur, Muhammad Tāhir, "*Ibn Ashur Treatise...*, 2006, p-87.

¹⁶ Fasi, al-Allal, *Maqāsid al-Shar'ah al-Islāmiyyah wa Makārimuhā*, Dar al-Bydha, 1973, p-3.

¹⁷ *Ibid*, p- 41.

¹⁸ Ibn Ashur, *Treatise...*, 2006, p- 88.

¹⁹ *Ibid*.

contribute to humanity. Also, this objective approach guides them to work for their well-being and all humankind regardless of their religion, race, color, and ethnicity by removing corruption from the earth. Moreover, this broad perspective, on the one hand, helps the Muslim minority community to cooperate with other religious people and communities to enhance the standard of life of all where they all work to achieve the objectives of *Shari'ah* such as eliminating poverty, human development, protection of the environment, social welfare, ensuring justice and freedom and human rights. Moreover, collaborating with other communities in common goals, as mentioned above, paves the ways to introduce Islam to them and creates good perspectives about Islam and Muslims.

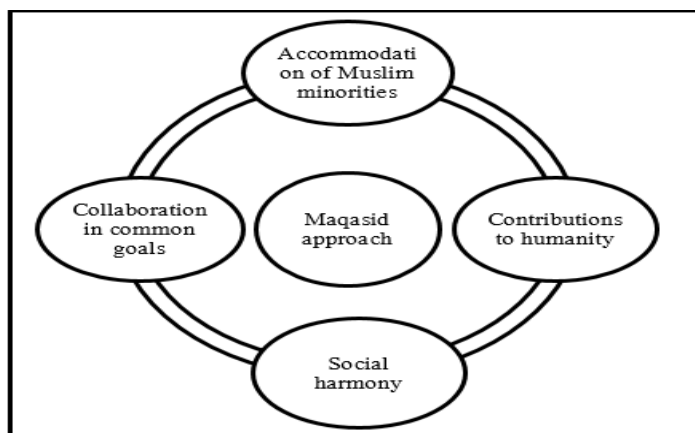


Figure 1, The application of *Shari'ah* under the viewpoint of *Maqāsid al-Sharī'ah*

Note: The below picture depicts that how *Maqāsid al-Sharī'ah* accommodates Muslim minorities in a non-Muslim abode.

Furthermore, the intellectual discourse on well-known higher objectives of *Shari'ah* is considered a very early subject in the realm of *Maqāshid* and Islamic legal theory. In brief, the argument forwarded by Rejeb Senturk is more applicable to Muslim minorities living in non-Muslim environments. He relates the higher objectives of Islamic law to human inviolability and deliberates on universal human rights. He explains that the classical Muslim jurists never claimed to be the fathers of universal human rights, but all religions accept human inviolability (*'ismah al-ādamiyīn*). He notes that this is a universal rule that constitutes the basis for all legal systems in history hitherto. Further, the axiomatic inviolability rights (*kulliyāt*) and universal human rights are based on the inviolability of human life, property, mind, religion, family, and honor (dignity). More importantly, these rules constitute the common ground between Islamic and other legal systems.²⁰

Indeed, faith is a fundamental right of human beings and a primary reform source. Thus, Ibn Ashur coined the classical term of preservation of *Din* as 'freedom of

²⁰ Rejeb Senturk, Human Rights in Islamic Jurisprudence, in 'The future of Religious Freedom Global Challenges' ed- Allen D. Hertzke, Oxford University Press, 2013, pp – 290 -311.

faith' freedom of belief.²¹ More importantly, this new term paves the way for contemporary Maqāshid scholars to expand the notion of preservation of Dīn from a broad perspective. Indeed, Islam confirms the preservation of the faith of every individual. Allah says, "There is no compulsion in faith. Truth stands out clear from error" (2:256) and "For you your faith and me mine" (109:6). Accordingly, Rejeb Senturk deliberates the objective behind the preservation of freedom of religion. He argues that if true freedom of religion does not prevail in the world, the very purpose of this life and reward or punishment in the afterlife cannot be achieved. Thus, the action under compulsion or undue pressure cannot be rewarded or punished by God. Freedom of religion is a prerequisite to achieving life's true purpose and meaning.²² Indeed, the viewpoint of Senturk is more appropriate in the context of Muslims living in non-Muslim environments since it opens the door of freedom of faith more widely and allows individuals to search for the truth with an open heart.

Accordingly, Islamic *Shari'ah* has given utmost importance to preserving human life, where life is considered sacred. Furthermore, human life is granted security by all religions.²³ Here, protecting human life means preventing all kinds of harm to any parts of the body inside or outside and preventing life from death. Further, whoever is being ill-treated by others and did physical damage to the former, then the latter is subject to the obligation of blood money or revenge similarly.²⁴ In this case, there is no difference between the life of Muslim or non-Muslim, Arab or non-Arab, but regardless of all differences, human life is protected. There are numerous explicit texts of *Shari'ah*'s urge to preserve human life.²⁵ 'Do not take any human being's life which God has declared to be sacred- otherwise than in the pursuit of justice.' (6:151)

Today, preserving the human mind relates to right thinking, education, and modern skills. Presently, education is vital where it has a significant role at the individual and social level. In this connection, Qaradāwi warns about the restriction of the preservation of reason to prescribe punishment for consuming intoxicants that do not meet the current requirements of the contemporary world, and he asserts that Muslim scholars should emphasize developing a scientific mindset, the pursuit of learning, and the affirmation of the value of knowledge.²⁶ This view comes under the promotion of human reason.

In contemporary times, Selamah Abdullah Yusuf defines 'MÉI' in Islamic perspective as all the resources Allah has subservient to His vicegerents and can be defined as anything that can be owned and has value including the rights and benefits of ownership. Further, he denotes that ownership of rights for human beings is based on the concept of *Khalifah*, where Allah is the sole owner of wealth, and human beings

²¹ Ibn Nāshīr, Al Sheikh Mohmmad al-Tāhir Ibn Nāshīr, *Maqāsid al-Shari'ah al-Islamiyyah*, 1997, p- 280-288.

²² Rejeb Senturk, *Human Rights...*, 2013, p- 290-311.

²³ Rysuni, Ahmad, *Al Kulliyath al Asasiyyah li al Shariah al Islamiyyah*, 1st ed, Dār al-Kalemah, Cairo, 2013, p. 50.

²⁴ Ibn Nāshīr, 1997, p- 212.

²⁵ Attia, Gamal al-Din, *Towards realization of the higher objectives of Islamic law*, London, International Institute of Islamic Thought, p 62.

²⁶ Qaradawi, (1991), *Madkhal li Dir'Esah al Shar'Énah al Islamiyyah*, 74-75.

are trustees and custodians.²⁷ Further, Ibn Ashur pointed out that preserving individual's wealth leads to preserving the community's wealth. Because preserving all is achieved through preserving its constituent parts.²⁸ Indeed, this view is vital lest an individual's property in a Muslim minority community is not undermined when destroyed intentionally or accidentally.

Preservation of progeny is the fifth higher objective of Shari'ah, which anonymously scholars of Shari'ah agreed upon. Hence, Shari'ah had sanctioned punishment for an unfaithful partner to preserve the progeny.²⁹ Nonetheless, contemporary scholars have extended this topic and addressed it in a broad view. Accordingly, Gamal Attia proposed objectives pertain to the family, such as order, the relation between the sex, preservation of progeny or the species, preservation of family lineage, achieving harmony, affection, and compassion, preservation of personal piety within the family, ordering institutional aspect of family, and ordering financial element of the family.³⁰

It is worth noting the point of Ibrahim Ghānim where he emphasizes that most of the writings in *Maqāshid al-Shari'ah* have paid attention to the preservation by the protection of "*Janib al-adam*" in all five essentials, and examples given to each essential are still the same to date, and there are no new examples cited to meet the current requirements.³¹ Further, he noticed less attention was paid to promotion and development. According to him, the present condition of the Muslim Ummah requires that priority be given to the part of promotion '*Janib al-wujud*' over the part of protection.³² Therefore, these dual faces of *Maqāshid* are vital for a Muslim minority community. It creates ample room for the application of *Shari'ah* and helps to facilitate their life under a non-Muslim abode. Indeed, a broad perspective about the application of *Shari'ah* under the objective approach is suitable for Muslim minority abodes where they do not have the authority to apply all revealed rulings of *Shari'ah*, such as *hudud* punishments. However, this broad perspective about the concept paves the way and opens several means to apply Islamic *Shari'ah* or the Islamic way of life and help to attain the objectives of *Shari'ah* to some extent.

²⁷ Selamah Abdullah Yusuf, *measuring wealth development based on Maqāsīd al Shariah: Hizf al Maal index*, in 'Maqāsīd al Shari'ah based index for socio economic development' IIUM press, 2018, pp-185-203.

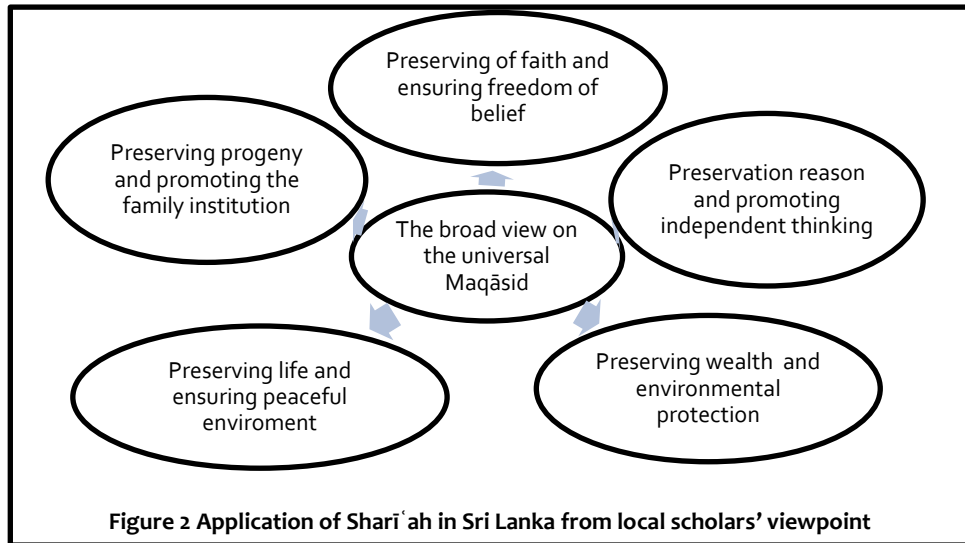
²⁸ Ibn Ashur, *Treatise...*, 2006, p- 117.

²⁹ Zuhri Saifudin, *The confusion about Maslaha Implementation in Ijtihad Discourse*, Social Science and Humanities, (2019). 27 (3): 1983-1902.

³⁰ Attia Gamal, pp-124- 131.

³¹ Ghānim, Ibrahim al-Buyumi, *Maqṣad hizf al-Nafs fi fiqh al-miyāh*, (The purpose of self-preservation in the Jurisprudence of water), Al-Furqan Islamic Heritage Foundation, London, 2014, p-37.

³² Ibid p-76.



Application of Shari'ah in Sri Lanka from local scholars' viewpoint

Examining the understanding of local scholars about the application of *Shari'ah* is vital to determine the extent of their knowledge of the *Maqāṣid al-Shari'ah* and their characteristics and levels. How local scholars interpret and apply Islamic law in their local context directly impacts their community. Hence, the discussion to understand the local scholars' views regarding applying the *Shari'ah* is necessary. Accordingly, following the thematic analysis, the researcher attempts to examine the views of scholars.

The scholars have similar views on the application of Islamic law, with only slight differences. In their view, applying the *Shari'ah* in the Sri Lankan context is impossible because Sri Lanka “is not an abode of Islam,” but the Muslims “are given ample religious freedom and rights here.” One of the consulted informants shared his view that “most of the Islamic *Shari'ah* is not suitable to apply in this country. So we cannot expect them to implement it here. Islamic *Shari'ah* itself does not enforce to implement them here.”³³

Scholars agree that the Muslim personal law (MPL) is an essential part of the *Shari'ah*, and Muslims are given the constitutional right to implement it. MPL is applied in the form of the Muslim Marriage and Divorce Act (MMDA), the Inheritance Act, and the Waqf Acts.³⁴ Also, there is concern among moderate scholars that the Muslim Marriage and Divorce Act (MMDA) should be amended to meet present social needs and requirements. Accordingly, there is a conflict of interest in making some amendments between ACJU and some social activists. An informant shared his concern: “there are two big questions related to MMDA. First, how far have we utilized this opportunity? Second, does it meet the present needs and requirements of our context? But, on the contrary, there are many obstacles to the amendment.”³⁵ In

³³ Informant 03, Interview by author, Beruwala, Sri Lanka, 22 Jan 2019, 1200pm-1300pm.

³⁴ Informant 03.

³⁵ Informant 01, Interview by author, Mawanella, Sri Lanka, 04 Jan 2019, 1100am -1230pm.

this connection, another informant worried that they failed to utilize this approved opportunity and said that “the Muslim personal law has constitutionally approved family law, but, we do not apply it correctly. For example, in the inheritance act of MMDA, people do not use this.”³⁶

Indeed, the application of criminal law is another essential part of the law that has caught the attention of local scholars. As expected, none of them found that Sri Lanka is suited for applying Islamic criminal law, the *hudud* punishments. Some informants explained the reasons for their views. One answered, “We cannot expect to apply the whole *Shari'ah*. But we should apply according to our capacity and the opportunities that prevail in this country.”³⁷ Also, “We need to accept that we cannot implement some areas like criminal law, for example, cutting off hands. We cannot change social phenomena like sexual appearance on TV, social media, et cetera.”³⁸ and “We cannot think about applying laws that are being executed with power. But we have many opportunities at the individual level.”³⁹ Another response was, “There is no application of Islamic criminal law in the abode of an apostate.”⁴⁰ An informant pointed out a common misunderstanding about the *Shari'ah* in the local community: it only consisted of criminal law. However, “applying Islamic criminal law in our country is impossible and cannot be expected in its application in Sri Lanka, a democratic multi-religious country.”⁴¹

Furthermore, they discussed possible areas for the application of the *Shari'ah*. Most informants consider that only the individual and the family are the appropriate areas for applying the *Shari'ah*, and not the community or the government. Indeed, Muslims in a non-Muslim abode is not expected to apply all *Shari'ah* rulings. One informant argued that the private sphere is enough and said, “If a safe environment is ensured for an individual to conduct his rituals such as five-time prayers, fasting, paying *zakat*, *hajj*, and other individual related matters. Then it is enough for a minority community.”

Further, an important point is marked by stating the Hanafi legal opinion that economic transactional rulings also are not applicable in the non-Muslim abode and that “rituals only are enough to be applied here.”⁴² Among the responses was, “Notably, we have to establish a suitable model in family life, trade, business, political, and others. Indeed, our forefathers received unprecedented respect for their excellent conduct and characteristics.”⁴³ “Scholars believe that individuals can play a vital role in establishing the *Shari'ah* and presenting Islam as a life model for others, such as family life, business transactions, social interactions, communication, et cetera. So apart from applying the *Shari'ah* at the community level, at least we must

³⁶ Informant 06, Interview by author, Paragahadeniya, Sri Lanka, 08 Jan 2019, 1100am-1210pm.

³⁷ Informant 08, Interview by author, Hemmathagama, Sri Lanka, 19 Dec 2018, 1000am-1130am.

³⁸ Informant 07, Interview by author, Colombo, Sri Lanka, 09 Jan 2019, 1000am-1130am.

³⁹ Informant 01.

⁴⁰ Informant 03.

⁴¹ Informant 06.

⁴² Informant 03.

⁴³ Informant 04, Interview by author, Beruwala, Sri Lanka, 21 Jan 2019, 2000pm-2120pm.

try to apply it in personal life.”⁴⁴ “By doing this, we should be an indispensable community for this country.”⁴⁵

The Sri Lankan Muslim minority community is a blessed community that enjoys ample religious freedom while having several means to strengthen their religious education and spirituality. The local scholars repeatedly pointed out those available means and ways throughout their interviews. For example, an informant noted that Muslims have ample freedom to live according to Islamic *Shari'ah*. He said, “We have eight hundred Muslim schools and departments and faculties for Islamic and Arabic language studies in government universities. Also, Muslim personal law is implemented, and Islamic programs are broadcasted on Sri Lanka Broadcasting Service, SLBC. Furthermore, Muslims [students] enjoy Ramadan vacation, official leave to perform *hajj* and *umrah*, and Friday break for the *Jumma* sermon for Muslim officers. Moreover, *hijab*, *niqab*, slaughtering cattle, and polygamy are permitted, and wearing a cap is allowed when a Muslim appears in a court.”⁴⁶ He continued, “We have Islamic Banking and Takaful facilities. Moreover, we enjoy so many exemptions here, such as appearing before the court during the festival and the *Jumma* sermon.”⁴⁷

Accordingly, educating society and enhancing spirituality are nuanced ways of applying the *Shari'ah*. For this purpose, the Muslim community is given ample freedom, rights, and facilities, as mentioned above. Furthermore, “the government also supports enacting Muslim Personal Law and the Department of Muslim Religious and Cultural Affairs, so we should cooperate with the government.”⁴⁸ “Therefore, we should identify these rights and educate general folk. We are blessed with ample rights in this Muslim minority country which are not available in other countries, even in Muslim majority countries.”⁴⁹ Acknowledging the available facilities and means for the promotion of the *Shari'ah*, one informant showed his honest appreciation by saying, “The opportunities that we have in this country to apply *Shari'ah* are not available in many Muslim countries, even in many Arab countries. It is my personal view.”⁵⁰ Another informant shared, “More importantly, Muslim schools can play a vital role in enhancing the young generation in line with *Shari'ah* because Islam is a mandatory subject at primary and secondary levels.”⁵¹ Nonetheless, some worried that while the Muslim community had ample means for promoting Islam, it failed to make optimal use of them.

Some leading scholars have pointed out the unsuitability of implementing *fatwas* issued in Muslim majority countries or the *fiqh* of minorities developed by Muslims in the West. Indeed, this is an important fact that should earn the attention of the local scholars in Sri Lanka. The first group agrees that they should not imitate or import rulings from outside the country; instead, they should generate directives

⁴⁴ Informant 01.

⁴⁵ Informant 04.

⁴⁶ Informant 03 & Informant 9.

⁴⁷ Informant 11, Interview by author, Colombo, 10 Jan 2019, 1530pm-1700pm.

⁴⁸ Informant 11, & Informant 12, Interview by author, Colombo, Sri Lanka, 10 Jan 2019, 1700pm-1815pm.

⁴⁹ Informant 03 & 11

⁵⁰ Informant 01 & Informant 10. Interview by author, Beruwala, 21 Jan 2019, 1000am-110am.

⁵¹ Informant 05, Interview by author, Welamboda, 08 Jan 2019, 1700pm-1830pm.

according to their local context. One informant said, “We need a special *Fiqh* council to study our issues deeply as it is in the Western world and some other countries. Unfortunately, we lack this. Second, we cannot imitate all Western *fatwas* here due to our unique problems, and our context is entirely different from them.” Furthermore, “We cannot think the application of *Shari'ah* here like in Muslim majority countries. We cannot imitate them. I have met many Arab scholars, and then they advised me that your context is entirely different from ours, so you must decide your *fiqh* for your context.”⁵²

The second group stresses that the needed minority *fiqh* should be established according to the Shafi'i school. One informant stated, “The term ‘minority *fiqh*’ is new for people. Thus, it causes divisions among them. So, I suggest developing minority *fiqh* from the fundamentals of the Shafi'i school. Hence, we can avoid confusion, conflicts, and unwanted disagreements.”⁵³ The following figure depicts the local scholars' perspective on applying the *Shari'ah* in Sri Lanka based on the above discussion.

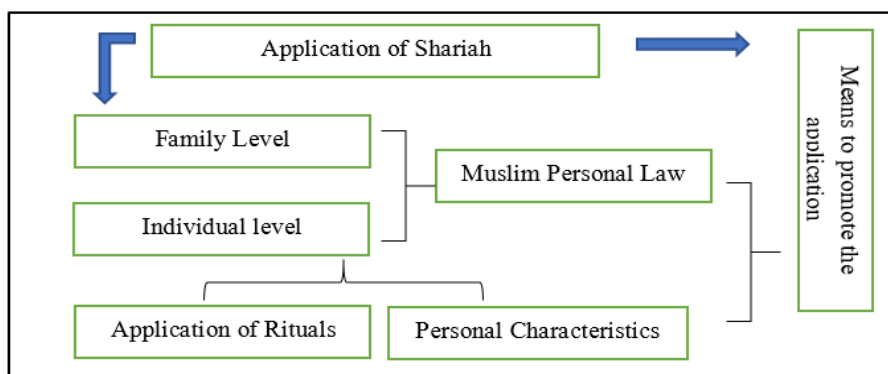


Figure 3

Note: The above figure illustrates the possible areas of application of *Shari'ah* from the opinions of local scholars

Analyzing scholars' opinions based on Maqasid perspective

The application of the *Shari'ah* in a Muslim minority community depends on the community's understanding of it. If they interpret it too narrowly, its application will also be narrow and restricted and might lead to the community's increased isolation. It will tend to be an exclusivist and closed community rather than an inclusive and open one. A narrow understanding of the *Shari'ah* closes all the doors to peaceful coexistence and good relationships with other communities. Thus, a minority community must have a broad view of the *Shari'ah* and be flexible in its application. The local scholars were acutely aware of the fact that most Sri Lankan Muslims did not know much about the *Shari'ah*. A lot of local Muslims thought that “*Shari'ah* is mostly meant by its rulings only”⁵⁴ and “The criminal law is the whole of *Shari'ah*.”⁵⁵ Such

⁵² Informant, 2.

⁵³ Informant, 11.

⁵⁴ Informant, 2.

perceptions reflect the current crisis of thought and illustrate the importance of educating the Muslim community about the comprehensiveness of the *Shari'ah*.

Local Muslim culture focuses more on personal matters and one branch of the *Shari'ah* only, the personal law. Most Muslims are unaware of the higher principles and goals of the *Shari'ah* and its broader, communal aspects. The communal discourse is limited to partial matters, while the higher objectives and general principles are ignored. At this juncture, it is worth noting that Ibn 'Ashur and Abu Suleiman have addressed this problem in specific terms and used the Prophet's (PBUH) instruction to erase whatever was written from him except the Qur'an as reference. Ibn 'Ashur explains that the Prophet (PBUH) requested this for fear that people in the future would lose their way by following certain detailed practices and ignoring the general message of the Qur'an. In other words, the Sunnah of the Prophet mainly contains partials related to the individual sphere, while the Qur'an focuses on society's moral principles and values.⁵⁶

Abu Sulaiman described this historical process, whereby Muslim scholars and jurists in the past had moved from the communal perspective to the individual perspective. When the schools of thought lost their influence on political affairs, the mosques became isolated from public and political affairs, and the scholars' role was limited to worship and individual morality. In this way, the communal spirit of the *Shari'ah* vanished from academic scholarship and academic discourse.⁵⁷

Given the political circumstances, the scholars focused on discussing what Muslims could and could not do in their personal lives. However, the scope of the *Shari'ah* encompasses all spheres of human activity, and there is the possibility to revisit and re-examine these neglected areas that might pave the way for developing a more inclusive and outward-looking society. For example, suppose we review the definition of 'Allal al-Fasi about the *Shari'ah* general objectives, we find that he lists among the general objectives of Islamic law are: populating and developing the earth, preserving the social order and peaceful harmony, affirming the goodness of the world through the goodness of its vicegerents, establishing justice and firmness, protecting the intellect and work, eliminating evil from the world, bringing out all goodness, and planning for the betterment of all.⁵⁸ Al-Fasi calls for implementing all the *Shari'ah* objectives, which are the shared responsibility of all Muslims, regardless of religion, ethnicity, or location.

In the context of this study, the *Maqāṣid al-Shari'ah* is of great significance as they contain the general rules and universal principles that need to be applied when deciding the legitimate ways in which the Muslim minority community can coexist and cooperate with the other local communities. Imam al-Gazali writes about these universal objectives, "Preventing the loss of these five fundamentals and protecting

⁵⁵ Informant, 6.

⁵⁶ Mesawī, al-Tahir, Al-Sheikh Muhammad al-Tahir ibn Ashur wa Kitabuhu Maqāṣid al-Shariah al-Islamiyyah, Al-Basair, 1997, (part 1), pp-77-78. See also, Ibn Ashur Treatise, 130-1141.

⁵⁷ Abu Suleiman, The Quranic Worldview a Spring Board for Cultural Reform, International Institute of Islamic Thought, London, 2011, pp 11-14.

⁵⁸ Fāsi, al-Nallāl, Maqasid al-Shariah al-Islamiyyah wa Makārimuhā, Dar al-Bydha, 1973, p- 41. and see also, Ismāil al-Hasanā, Nadhariyyat..., p- 118.

them can never be neglected by any religious community or legal system meant for the good and well-being of humankind.⁵⁹ These are common areas to cooperate with other religious communities as categorized under fundamental human rights. Moreover, it is interesting to note that realizing these five indispensable objectives is essential, not only on the individual level but also on the communal level. The *Shari'ah* urges that the social order's smooth function depends on preserving these essentials; if not, the order of the community will collapse.⁶⁰

To illustrate the aspect, Muslims can take the general objective to protect life. The common misconception is that the only way to protect human life is through the sanction of retaliation (a life for a life). However, such a narrow approach does not do justice to the broad perspective of Islamic law. Ibn 'Ashur argues that retribution (*qiṣāṣ*) is in fact the weakest means of protecting life and not the only one by far, even though it is the classical view. Instead, he proposes to direct the discourse to the means of preserving and protecting life by focusing on preventing measures, for instance, preventing, fighting, and eliminating epidemics.⁶¹ Indeed, this view opens many ways for contemporary scholars to discuss new ideas and thoughts on preserving life from a broad perspective.

Furthermore, the universal objectives should be addressed in terms of applying modern terminologies to meet the present challenges in a non-Muslim abode. Here, Rejeb Senturk argues that the classical Muslim jurists never claimed they were the fathers of universal human rights. All religions have accepted human inviolability (*'ilmah al-ādamīyūn*) since the time of Adam. Thus, the universal inviolability rights (*al-kulliyāt*) include the inviolability of life, property, mind, religion, family, and honor. Further, he notes that these rules constitute the common ground shared by Muslim and non-Muslim legal systems.⁶² Thus, this approach opens conversations with other religious communities and preserves universal human rights regardless of religion, ethnicity, and location.

Anis Ahmad makes a point of particular relevance in the non-Muslim majority context. He argues that the universal principles of the *Shari'ah*, such as justice, equality, leniency, freedom, and security, can be followed by all people, Muslims and non-Muslims alike. Thus, it is not necessary to propagate them under the exclusive theme of 'Islamic law' since Islamic law is based on the universal principle of *tawḥīd*.⁶³ Indeed, this broad understanding helps the Muslim minority community to be accommodated peacefully in a non-Muslim environment and reduces the urge or tendency to isolate itself. Thus, the application of Islamic law comprises guidelines specifically related to the Muslim community and universal values and principles related to all.

It is also worth noting that the universal *maqāṣid* covers the two aspects of protection and promotion. For example, life is promoted by maintaining good health

⁵⁹ Al-Gazali, *al-Mustafa min 'Ilm al-Usūl*, Vol.1, pp-417-422. (Tans Mesawi, Ibn Ashur..., 2006, p-114)

⁶⁰ Ibn Ashur, 2006, p-114.

⁶¹ Ibid, p-116.

⁶² Rejeb Senturk, *Human Rights...*, 2013, pp- 290-311.

⁶³ Anis Ahmad, *Crisis in the Muslim Mind Revisited*, Zoom Meeting with IIIT students of IIUM, 21, 04 2020, 20.00pm – 21.10pm.

and protected by penalties for those who destroy it.⁶⁴ Ibrahim Ghanim points out that most of the writings on *maqāṣid al-Sharī'ah* only discuss the principle of preservation by protection (*jānib al-‘adam*) in all five essentials.⁶⁵ All this has led to a very narrow perspective of the *Sharī'ah* and its application in different contexts. In contrast, objective-based thinking allows the Muslim minority community to apply Islamic law in a much broader sense. Furthermore, a narrow interpretation of the law removes any common ground that can be shared with non-Muslim communities and does not invite cooperation and collaboration. Hence, local scholars benefit from its study to broaden their perspective on the objective-based application of Islamic law. The following figure illustrates how modern *maqāṣid* thought helps create more space for the application of the *Sharī'ah*.

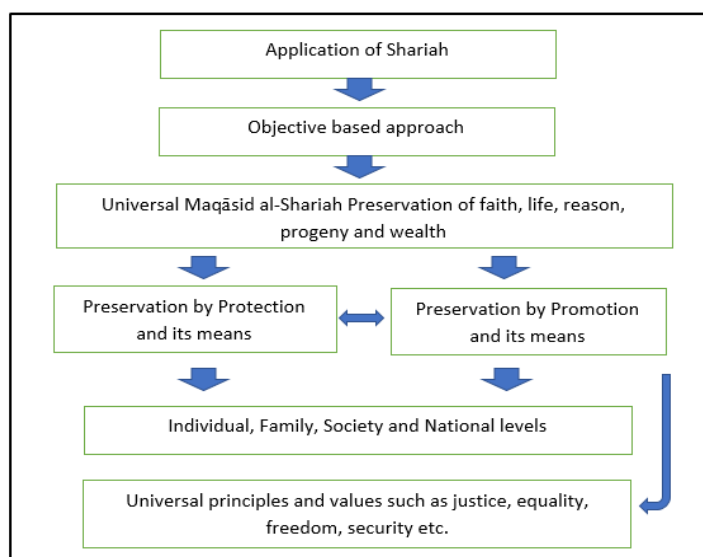


Figure 4, Analyzing scholars' opinions based on Maqasid perspective

Conclusion

Indeed, the discussions above have proved that the *maqāṣid al-Sharī'ah* is an evolving methodology that helps broaden the thoughts of the Muslim minority community to accommodate their context while following *Sharī'ah* injunctions. Further, this broad perspective helps the Muslim minority community to cooperate with other communities to enhance the standard of life of the whole society too. Indeed, the academic discourse of applying *Sharī'ah* to a non-Muslim highly depends on the understanding of *Sharī'ah*, as discussed above. In brief, the broad perception of *Sharī'ah* opens a more expansive space for the application of *Sharī'ah*. Because the broad perspective helps Muslims to realize their rights and further extend their contributions to other communities, Through this latter perspective, they can be a 'witness' to Islam too. Furthermore, the above discussion reveals that the Sri Lankan

⁶⁴ Nyazee, Imran Khan, *Islamic Jurisprudence, (Usūl al-Fiqh)* International Institute of Islamic Thought, The other Press, Kuala Lumpur, 2003, p-207.

⁶⁵ Ghānim, Ibrāhīm al-Buyūmi, *Maqasid hifz al-Nafs...*, 2014, p-37.

Muslim minority community suffers primarily due to the narrow perspective about *Shari'ah* and its application. Therefore, it is acknowledged that they need a comprehensive perspective about *Shari'ah* to accommodate their life. Hence, the above discussion discloses that the *Maqāshid* approach largely supports the Muslim minority community to be accommodated peacefully and opens new rooms to collaborate with others under common interests. Also, it is worth noting here that the dual faces of *Maqāshid*, protection, and promotion, broaden the perception about universal *Maqāshid*. In this respect, the *Maqāshid* approach can transfer the Muslim community from an exclusive and closed position to an inclusive and open place by paving the way for cooperation and collaboration with other religious communities. Consequently, this novel approach helps improve the standard of life for human beings. It calls toward objectives such as eliminating poverty, protecting the environment, social welfare, ensuring justice and freedom, and human rights. Hence, this way, the application of *Shari'ah* is taken from a broad perspective. Also, since the Islamic *Shari'ah* is misunderstood and limited by criminal punishments, the *Maqāshid* viewpoint creates a broad perspective about *Shari'ah* and opens new means for preserving universal *Maqāshid* beyond the classic view. Eventually, the *Maqāshid* thought should be generalized at a significant level; this is very important for the Muslim minority community to find more areas for applying *Shari'ah*.

References

- Abu Suleiman, *The Quranic Worldview a Spring Board for Cultural Reform*, International Institute of Islamic Thought, London, 2011, 11-14.
- Ahmad Rysuni, "The research in Higher Objectives of Shariah presence, development and future" in *Studies in the philosophy of Islamic Law, Theory and Application*, Edited by Ahmad Zaky Yamani, AL-Furqan Islamic Heritage Foundation, 2006, 181-230.
- Al- QaradÉwi, Yusuf, *al-Mushkilāt al-Fiqhiyyah li al-Aqalliyyāt al-Muslima fi al-Garb*, in *Scientific review of the European Council for Fatwa and Research*, No 01, Ireland, 2002, 18-74.
- Al-Gazali, *al-Mustafa min Nilim al-Usūl*, Vol.1, pp-417-422. (Tans Mesawi, Ibn Ashur..., 2006)
- Anis Ahmad, *Crisis in the Muslim Mind Revisited*, Zoom Meeting with IIIT students of IUM, 21, 04 2020, 20.00 pm – 21.10pm.
- Attia, Gamal al-Din, *Towards Realization Of The Higher Objectives Of Islamic Law*, London, International Institute of Islamic Thought.
- Fasi, al-Allal, *Maqāsid al-Shari'ah al-Islāmiyyah wa Makārimuhā*, Dar al-Bydha, 1973
- Ghānim, Ibrāhim al-Buyumi, *Maqāsad hifz al-Nafs fi fiqh al-miyāh*, (The purpose of self-preservation in the Jurisprudence of water), AL-Furqan Islamic Heritage Foundation, London, 2014
- <https://www.intellspot.com/primary-data-vs-secondary-data/>, Retrieved 21/08/2021.
- Ian Dey, *Grounded Theory in Qualitative Research Practice*, ed. Clive Seale et al. London: SAGE, 2005

- Ibn Ashur, Muhammad Tāhir, "Ibn Ashur Treatise on Maqāsid al-Sharīah"(trans by Muhammad al-Tahir el-Mesawi) International Institute of Islamic Thought, London, 2006.
- Ibn Nāshīr, Al Sheikh Mohmmad al-Tāhir Ibn Nāshīr, Maqāsid al Sharīah al-Islāmiyyah, 1997, p- 280-288.
- Imtiyaz A.R.M. and Amjad-Saleem. Muslims in Post-war Sri Lanka: understanding Sinhala-Buddhist mobilization against them. *Asian Ethnicity*. Vol. 16, No. 2. (2015). 186-202.
- Khair, Bustami, 'Who Applies Islamic Law in Non-Muslim Countries? A Study of the Sunni Principle of the Governance of the Scholars', *Journal of Muslim Minority Affairs*, Vol. 27 No. 1 (2007), 79-91.
- Mesawi, al-Tahir, Al-Sheikh Muhammad al-Tahir ibn Ashur wa Kitabu Maqāsid al-Sharīah al-Islāmiyyah, Al-Basair, 1997, (part 1), 77-78. See also, Ibn Ashur Treatise, 130-1141.
- Nyazee, Imran Khan, *Islamic Jurisprudence, (Usūl al-Fiqh)* International Institute of Islamic Thought, The other Press, Kuala Lumpur, 2003.
- Qaradawi, (1991), *Madkhal li Dirāsah al Sharī'ah al Islamiyyah*.
- Rejeb Senturk, *Human Rights in Islamic Jurisprudence*, in 'The future of Religious Freedom Global Challenges' ed- Allen D. Hertzke, Oxford University Press, 2013, 290-311.
- Rysuni, Ahmad, *Al Kulliyath al Asasiyyah li al Shariah al Islamiyyah*', 1st ed, Dār al-Kalemah, Cairo, 2013.
- Saleem Marsoof, *The Qauzi Court System in Sri Lankan and its Impacts on Muslim Women*' Muslim women Research and Action Forum, 2011.
- Selamah Abdullah Yusuf, measuring wealth development based on Maqāsid al Sharīah: Hifz al Maal index, in 'Maqāsid alSharī'ah based index for socio economic development' IIUM press, 2018, 185-203.
- Stephen Lapan, Mary Lynn Quartaroli, and Frances Rimer, eds, *Introduction to Qualitative Research in Qualitative Research an introduction to methods and designs*, ([Place]: Jossey-Bass, 2012) 6–12.
- The Constitution of the Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May 2015) Revised Edition 2015, Published by Parliament Secretariat, p-4 (Pdf downloaded and - retrieved 17, 02, 2020). <https://www.parliament.lk>
- The Portuguese, Dutch and British called Muslims as Moors due to the fact that this term early used for the inhabitants of Mauritania or Morocco. They were Islamized in seventh century. So, when Portuguese entered Eastern sea they found Muslims and describe al Muslims as Mouros.
- Thomas K. Gugler, *Buddhist Zion: Sri Lanka's Sinhalisation politics toward its Muslim minority*" *Sudasian Chronik - South Asian Chronicle*, 3/2013, S. 161-182.
- Zaprulkhan, *Maqāsid al-Sharīah in the contemporary Islamic legal discourse; perspective of Jasser Auda, Walisongo*; *Jurnal Penelitian Sosial Keagamaan*, Vol 26 No.2 (2018) 445-472.

Zuhri, Saifudin, The confusion about Maslaha Implementation in Ijtihad Discourse, Social Science and Humanities, 27 No.3 (2019) 1983-1902.



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