

## The Regulator's Perspectives to Operationalize *Maqasid al Shariah*: A Case of Pakistan

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### ABSTRACT

*Islamic financial institutions play a crucial role in promoting Islamic finance. Shariah compliance is a major concern that cannot be compromised under any circumstances. The primary objective of Shariah is to promote a society based on 'falah', which means well-being or success. Islamic development is based on 'maqasid al Shariah'. It is imperative for Islamic financial institutions to fulfill these objectives of Shariah. Maqasid al Shariah are the higher goals set by Islamic Shariah law, aiming to achieve the well-being of society not only in this world but also in the hereafter. Academia often criticizes Islamic finance for deviating towards a capitalist system instead of focusing on these maqasid, which were the original purpose of Islamic finance. This raises the question of whether the Islamic banking industry and its regulators interpret the concept of maqasid al Shariah in the same way as academia and assign it the same level of relevance and importance. There is a possibility that the Islamic finance industry and regulators perceive, interpret, and practice this phenomenon differently. This study aims to examine how regulators view the concept of maqasid al Shariah and how they put it into practice. The study adopts a constructivist approach and uses a case study methodology, focusing on The State Bank of Pakistan (SBP), the central bank and regulator of the banking system in Pakistan. To develop a framework, a total of 13 in-depth interviews were conducted with Shariah scholars, Islamic banking experts, and policymakers at the Central Bank. The study identifies four perspectives held by the regulator regarding maqasid al Shariah and their implementation: (1) Public welfare (maslahah), (2) Justice/fairness, (3) Shariah compliance, and (4) Government policy.*

**Keywords:** *O Maqasid al Shariah, Regulator perspective, Development, Falah*

### INTRODUCTION

The concept of development is important and has been appraised by academicians, practitioners, groups, and individuals alike. While there may be differences in

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understanding or interpreting the concept of development among these groups, there is complete agreement on its vital nature. Development can be classified into secular and Islamic world views. The secular perspective focuses on material and economic development, which can be traced back to the enlightenment moments in the 17th and 18th centuries. Various measures such as GDP, real GDP, and sustainable development have been used to gauge economic development. However, these measures still prioritize material and economic aspects.

The Islamic point of view on development differs from the conventional view and is more comprehensive. Islam emphasizes the well-being of human beings and considers meeting their needs as their fundamental right. This means that Islam addresses both material and non-material/spiritual needs. Therefore, Islam can play a vital role in sustainable human and material development by considering spiritual and non-material needs on an equal footing with material needs. Socio-economic progress, guided by maqasid al Shariah (objectives of Islamic law), can provide a comprehensive framework for human progress on a wider socioeconomic scale. The idea of human development in Shariah is embedded in maqasid al Shariah, which aims to protect the interests of all human beings and prevent harmful acts. Ultimate goal of Islamic teachings is to be a blessing for mankind. This is the primary purpose for which the prophet (PBUH) was sent to this world (al-Quran 21:107). One way to achieve this goal is to work for the "falah" or real well-being of the people irrespective of race, color, age, sex, or nationality, through economic empowerment and structural solutions (Asutay, et al, 2023, p:5). The word "falah" is mentioned 40 times in the Quran, highlighting its importance in the Islamic worldview.

Technically, maqasid al Shariah are the goals and higher objectives of the Shariah (Auda, 2008; Kamali, 2008b; Chapra, 2008; Al Shatibi, 2003). Maqasid al Shariah serve as the foundational basis and rationale for fiqh. The maqasid al Shariah are either directly stated in the Quran and Sunnah or inferred by scholars. The purpose of Shariah is to serve the interests of all human beings and protect them from harm. Al Ghazali, a well-known Islamic philosopher, jurist, and scholar, describes the objectives of Shariah as "promoting the well-being of the people, safeguarding their faith (dīn), self (nafs), intellect ('aql), posterity (nasl), and wealth (māl). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever harms them is against public interest and should be removed" (Chapra & Bank, 2007).

Al Shatibi also supports these maqasid identified by Al Ghazali but acknowledges that there are other goals indicated by the Quran, Sunnah, and scholars. He categorizes them as primary goals (al-asliyyah) and others as secondary goals (tabiah). The realization of these secondary goals contributes to the achievement of the primary goals. The secondary goals may expand and change over time (Bedoui, 2012). Preservation of these goals should not be seen as a static concept, but rather as a continuous process of enrichment and progress.

## Research Objectives

1. To review the extant literature to identify and analyze different governance frameworks available for Islamic financial institutions.
2. To have an opinion of the regulator regarding different *maqasid al Shariah* and their implementation strategy.
3. To come up with an overall framework for implementation/operationalization of *maqasid al Shariah* from the regulator perspective.

## Research Questions

1. What governance frameworks are available which guide the Islamic financial institutions towards achievement of *maqasid al Shariah*?
2. What are the different models and interpretations available for *maqasid al Shariah* from the academic perspective?
3. What are the constructs for operationalization of *maqasid al Shariah* at the level of regulator?

## LITERATURE REVIEW

*Maqasid al Shariah* have undergone a process of evolution over a period of time. Multiple researchers and *shariah* scholars have contributed toward the process and have come up with multiple explanations and interpretation of the phenomenon. Few of the scholars have even defined multiple levels and hierarchies of *maqasid al Shariah* and have contributed towards the development of the discipline.

*Maqasid* can also be considered as those good ends that the laws want to achieve by blocking or opening certain means. So the *Maqasid* of ‘preserving the minds and souls of the people’ explains the ban on alcohol and intoxicants. *Maqasid* of protecting peoples’ property and honor gives a rationale for the death penalty as a possible punishment for rape or genocide.

*Maqasid* of the Islamic law are the objectives, principle, intent, goal and end behind the Islamic rulings (Auda 2008). Different Jurists have further taken the idea of *masalih* and added more dimensions to the *Maqasid al shariah* like Abd al-Malik al-Juwayni (d. 478 AH/1185 CE) used *maqasid al shariah* and public interest interchangeably. Abu Hamid al-Ghazali (505 AH/ 1111 CE) placed *Maqasid* under what he called as ‘unrestricted interests’ (*al-masalih al-mursalah*). Najm al-Din al-Tufi (716 AH/1316CE) defined *Maslahah* as ‘what fulfills the purpose of the legislator’.

Al Qarafi (1285AH/1868 CE) has linked both *Maqasid* and *Maslahah* by a fundamental rule (*usuli*)’a purpose (*maqasid*) is not valid unless it leads to the fulfillment of some good (*maslahah*) or the avoidance of some mischief (*mafsadah*). A *maqasid* in the Islamic law is there for the ‘interest of humanity’.

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Traditional classification divides the *Maqasid* into three levels. Necessities (*darurat*), needs (*hajiyyat*) and luxuries (*tahsiniyyat*). Necessities are further divided into what preserves one's faith, soul, wealth, mind and offspring. Preservation of honor is yet another addition into it by some of the jurists. These are the essentials for the human life itself. This is one of the reasons behind the prohibition of alcohol and intoxicants in Islam. Islam is also against all types of usury, monopolies, frauds and corruption in any of its kinds and forms since all these financial activities may create harm for the human life. Similarly Islam assigns high weightage to the preservation of offspring since it contributes to the overall family culture and fabric of the society. Finally the importance of protection of faith is also a necessity for human beings, although related to life here after, but preservation of faith is of utmost importance to the life of an individual.

Needs lie at a lower degree of importance as compared to necessities. Needs are something which are not mandatory for the survival of the human being. One can survive if these are not available. One of the fundamental rules in Islamic law states: 'A need that is widespread should be treated as a necessity' (Auda, 2008).

Purposes at the level of luxuries are related to the beautification of life. These are the things which are encouraged by Islam only to further praise the Allah's mercy and generosity upon human beings. It may include things like perfumes, beautiful homes and stylish clothing. It should be kept in mind that these purposes should be having a low priority in one's life.

It is important to note that each level should serve the level below, which is a reflection that these levels are interconnected and overlapped with each other. For example, both trade and marriage, at the level of needs, are connected with the necessities of preservation of wealth and offspring. Furthermore absence or lack of one item from a level moves it to next level above. For example if trade at level of needs is unavailable which leads to economic recession, it then moves up to the level of necessities because it becomes more important for the survival of humans. One can relate these purposes of Islamic law with those of Maslow's 'hierarchy of needs.

Islamic theories of goals or *Maqasid* too have been evolving with time. Contemporary scholars further divided the *Maqasid* into three levels. These are General *Maqasid*, specific *Maqasid* and partial *Maqasid*. General *Maqasid* are the ones which are observed throughout the Islamic law and it includes *maqasid* such as necessities, needs and newly proposed ideas of justice, universality and facilitation. Specific *maqasid* include the ideas of welfare of children in family law etc. Partial *Maqasid* are the intents behind certain scriptures or rulings, such as discovering the truth in looking for a number of witnesses in a court case or allowing an ill and fasting person to break his fast in order to reduce his difficulty. Ibn Ashur prioritized *Maqasid* related to Ummah over the individuals. Al Tahir ibn Ashur was of the idea that main purpose of the Islamic law is to maintain "orderliness, equality, freedom, facilitation and the protection of pure natural disposition (*fitrah*)". Muhammad al Ghazaly emphasized more on the factors of justice and freedom. Yusuf al Qaradawi, after surveying the Quran, stated the following universal *Maqasid* "preserving true faith, maintaining human dignity and rights, calling people to worship God, purifying

the soul, restoring moral values, building good families, treating women fairly, building a strong Islamic nation and calling for a cooperative world.” Taha al-alwani also went through the Quran and declared oneness of God followed by purification of soul and promotion of civilization on earth as 3 of its most supreme and prevailing *Maqasid*.

Jasser Auda (2008) describes *Maqasid*'s structure as “multidimensional structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represents valid viewpoints and classifications”.

Al Tirmidhi al Hakim (d. 296 AH/908 CE) produced the first known volume which carried the word *Maqasid* in its title. The title of the book was ‘*al-salah wa Maqasiduha*’ (prayers and their purposes) and it discussed the secrets behind each of the acts one performs in the prayers. Abu Zayd al-Balkhi (d. 322 AH/933 CE) produced the first known book which discusses the *Maqasid* related to *Muamlat*. Title of the book is “*al-Ibanah an ilal al-Diyanah*” in which he describes *Maqasid* behind the Islamic juridical rulings. He also produced a book focused towards *Maslahah* by the title *Masalih al-Abdan wa al-Anfus* (Benefits for Bodies and Souls). In this he has tried to explain how Islamic rulings and practices contribute to health, both mentally and physically.

AL Qaffal al-Kabir Shashi (d 365 AH/975 CE) who authored the book *Mahasin al- Sharai* (The Beauties of the Laws) is the oldest manuscript found by Jasser (2008) in Dar al-Kutub at Egypt. This book is an important contribution to the development of Al *Maqasid* theory. This contribution from the *Shafii* School is considered the initial work towards development of al *Maqasid* theory and it also paved the ways for the work done by al-Juwayni and al-Ghazali.

The idea of ‘*al- maslahah al-murslahah*’ (unrestricted interest) also got developed and acceptance in the fifth century. This filled the gap for developing theory of *Maqasid* in the domain of Islamic law. The notable scholars who contributed in the area of *Maqasid* in this era are Abu al-Maali al-Juwayni, Abu Hamid al- Ghazali, Al-Izz ibn Abd-al-Salam, Shihab al-Din al-Qarafi, Shamsuddin ibn al-Qayyim and most significantly, Abu Ishaq al-Shatibi.

Abu al-Maali al-Juwayni (d. 478 AH/1085 CE) was focused on the public needs and he introduced a theory of levels of needs in his book *al-Burhan fi Usul al-fiqh* (the proof in the fundamental of law). He suggests five levels of *Maqasid* namely necessities (*darurat*), public needs (*al-haja al-ammah*), moral behavior (*al-makrumat*), recommendations (*al-mandubat*) and what cannot be attributed to a specific reason.

Abu Hamid al-Ghazali (d. 505 AH/ 1111 CE), who is a student of Al-Juwayni, authored a book ‘*al Mustasfa* (the purified source). He further took the necessities and assigned an order to them as follows: faith, soul, mind, offspring and wealth. He also gave an idea of preservation (*al-hifz*) of all of these necessities. Ghazali is of the opinion that a necessity of higher order should be given more priority over a lower order necessity.

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Shihab al-Din al-Qarafi (d.684AH/1285 CE), added a new dimension to the existing theory of *Maqasid* which says that opening of certain means to achieving good ends is also desirable and it should be included in the *Maqasid*.

Shamsuddin ibn al-Qayyim (d. 748 AH/1347 CE) a student of Imam Ahmed ibn Taymiyah. He says that people at times use tricks to give a legitimate shape to a forbidden transaction i.e. they try to cover an illegal transaction such as that of usury or bribe under the cover of a gift or a sale transaction. He says that the person doing this is committing a sin since he is intending a forbidden act and trying to give it a legitimate appearance.

Abu Ishaq al-Shatibi (d 790 AH/1388 CE) provided the very fundamentals of the *Maqasid* theory. In his publication *al-Muwafaqat, fi Usul al-Shariah*, he declared that '*al-maqasid*' are the fundamentals (*usul*) in their own capacity rather than being considered as only 'unrestricted interests'. He considered *al-maqasid* to be the fundamentals of religion. He is also of the opinion that '*al-maqasid*' should be the basis for the ruling and not the wisdoms behind the rulings. He also emphasized that for making any juridical reasoning (*ijtihad*) knowledge of *Maqasid* should be a must. He used an inductive method in his book to prove the importance which he attached to the *Maqasid*. He used several evidences to prove his idea. Because of all these factors his book remained a standard text book on *Maqasid e Shariah* until the twentieth century. Al- Shatibi also clarified that *istiqrā* (induction) is one of the most relevant method for identifying the *Maqasid* of the *Shariah*.

*Abū Zayd 'Abd ar-Rahmān ibn Muḥammad ibn Khaldūn al-Ḥaḍramī*; (27 May 1332 – 17 March 1406) used to be an Arab intellectual of Islam, social scientist and a historian. His book *Al-Muqaddimah* is one of his best known works. In the book, along with the useful contributions, one of the relevant contributions relevant to *Maqasid al Shariah* is the concept of '*Asabiyyah*' described as the solidarity, group feeling or group consciousness. He has also related this factor to the *Fitrah* or innate human nature.

Jasser Auda (2008) suggest that human development is somewhat equal to '*maslahah*' (public interest) and *Maqasid e Shariah* are supposed to achieve through implementation of Islamic law.

Kamali (1999) says that Quran has expressed, in numerous places, about the purpose and rationale of its laws which is a clear reflection that these laws are goal oriented. This feature of the Quran is clearly visible for its laws relating to both *ibadah* (ritual worship) and *muamlaat* (civil transactions). He has also expressed the view that *Maqasid* and *Maslahah* (public good) are one and the same thing and they are most of the times used interchangeably by the *Ulema*. He has classified *Maqasid* into the following three different categories which are in descending order. The *Daruriyyah* (the essential), the *Hajjiyah* (the complementary) and the *tehsiniyah* (the desirable or the embellishments).

The above discussion gives a comprehensive overview of the *Maqasid al Shariah*. It also gives a very clear idea that these *maqasid*, whatever the number or hierarchy or priority been assigned to them, are mandatory to be achieved since without their achievement the very basic ideology of Islam '*Falah*' could not be achieved.

Islamic financial institutions play a pivotal role in the Islamic economic system. Achieving '*falah*' or betterment of the society, along with other pillars of the society, becomes obligatory for these institutions as well. This responsibility gets severe when these institutions become the custodians and care takers of most of the economic resources available in the society. In order to look for the reasons of bad rankings of Muslim countries at the multiple development indices, studies are been conducted in order to check the contribution of Islamic financial institutions towards achievement of '*falah*' but to the surprise the findings of these studies do not report a hopeful situation. The following studies confirm the findings. Zaheer & Rasool (2017), Shaikh (2017), Asutay (2012), Asutay & Harningtyas (2015), Ascarya & Sukmana (2016) have all found low islamicity scores. This provides a rational that there lies a knowledge gap because of which these Islamic financial institutions are not in a position to achieve desired results of '*falah*'.

### **Governance and its importance**

“Governance refers to the process of decision-making and the implementation of policies and regulations by those in authority. Good governance is essential for the proper functioning of any organization, whether it be a government, corporation, or non-profit organization” (UNESCAP, 2009).

In an organization, community, or society, governance refers to the structure and procedures for decision-making, power, and control. It covers the procedures, frameworks, and regulations that people and organizations use to exercise their authority, make choices, and carry out their plans of action in order to accomplish objectives or deal with problems.

Governance can be applied to various contexts including corporate governance, public governance, global governance, nonprofit governance and community governance. Here in this chapter we will focus on the benefits of the governance mechanism, governance mechanisms at the financial institution's level, governance at the Islamic financial institutions, local and international governance systems at the Islamic financial institutions and different governance systems followed worldwide.

Good and effective governance is something which is required by any entity, whether public or private, whether a profit making or a not for profit organization, a hospital, a university or even a country. Good governance ensures that the resources are effectively managed by setting priorities, allocating resources, monitoring and evaluating outcomes to make sure that resources are utilized effectively and efficiently. Governance of financial institutions is important because it ensures the safety and stability of the financial system, protects consumers and investors and alongside promotes general public's interest in the financial sector. It also helps promote and ensures the reliability and integrity of the financial system. A good governance system is also supposed to prevent frauds, mismanagement of funds and unethical behaviors, in the presence of which the stability of the financial system is seriously undermined. A bad governance system can seriously harm the consumers and investors at the same time. An effective governance system ensures that the financial institution is able to meet the regulatory requirements and

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is in compliance with the national and international regulations suggested by the local regulators and the international standard making bodies.

#### **Governance mechanism at Islamic financial institutions**

Governance of conventional financial institutions is important (Ibrahim, Ismail & Bidin, 2020). There are a few instances existing in the history where few Islamic financial institutions have closed down. The collapse of the Islamic bank of South Africa in the year 1997 and the failure of Ihlas Finance of Turkey in 2001 are a few examples (Nathie, 2010).

Governance of Islamic financial institutions requires a special focus on shariah and its related issues and this reflects why Islamic financial institutions are too focused on the shariah governance in their processes, procedures and decision makings alongside the general governance of the institution as an entity. This shariah governance is reinforced by other support activities which include shariah audit and recording and reporting of all the transactions conducted at the institution as per the shariah guidelines called as accounting.

For an Islamic financial institution maintenance of shariah compliance is of the prime concern otherwise they lose the trust of the depositors as well as the borrowers. It also gives a significantly negative signal in to the market when any Islamic financial institution is found guilty of such malpractices of being involved in any non shariah compliance activity.

Based on the arguments it becomes inevitable to ensure the governance and implementation of Shariah principles in the Islamic banking practices (Grassa and Matoussi, 2014; Ullah, Harwood & Jamali, 2018; AlAbbad, Hassan & Saba, 2019). So in order to make the Islamic financial system more resilient, trustworthy and efficient there was a significant need to have entities to govern Islamic financial institutions.

The governance mechanism of the Islamic financial institutions can be broadly classified into two categories.

1. International governance mechanism in Islamic banking.
2. National (Local) governance mechanism in Islamic banking.

#### **International governance mechanism in Islamic banking**

This governance mechanism consists of the bodies which are responsible for setting, maintaining and promoting the global international standardization and best practices in Islamic banking and finance (Ullah, 2012). There are several bodies that play a role in developing and promoting Islamic finance standards. Some of the key ones are:

1. Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI)
2. Islamic Financial Services Board (IFSB)
3. International Islamic Financial Market (IIFM)
4. International Shariah Research Academy for Islamic Finance (ISRA)



5. General Council for Islamic Banks and Financial Institutions (CIBAFI)
6. International Islamic Fiqh academy (IIFA)

### **National (Local) Governance mechanism in Islamic banking**

The national or the local governance system refers to the legal and regulatory environment under which an Islamic financial institution operates. It includes the laws and regulations imposed by the government and multiple or a single regulator.

### **Models of governance system**

Three different types of national *shariah* governance systems, for Islamic financial institutions, are followed by different countries around the globe based on their own convenience, policy and strategic approach towards the management and regulation of the Islamic financial and services industry.

#### **The centralized model**

The centralized structure is followed in some countries like Iran, Sudan, Malaysia, Indonesia and Brunei and it operates in a way that there is a central *Shariah* Advisory Council (SAC) which is formed at the national level and which is supposed to issue general fatawas related to Islamic financial transactions. (Albarrak & El-Halabay, 2019).

#### **Self-regulated or laissez-faire**

The second model is a self-regulated one where there are no interferences from the supervisory bodies and *shariah* compliance is achieved through the *shariah* advisory of the Islamic financial institution. This model is followed by most of the GCC countries, including Kuwait, Saudi Arabia, Qatar and most of the non-Islamic countries such as France, Germany, UK, Hong Kong and South Korea (Albarrak & El-Halaby, 2019).

#### **Hybrid model**

The third model is a hybrid one which makes sure that there is a central supervisory board existing at the national level alongside the Islamic financial institute is also supposed to maintain compliance to *shariah* in their products and services and it has to regularly update and report to the central supervisory board (Albarrak & El-Halaby, 2019).

In case of Pakistan all the conventional as well as the Islamic banks are regulated by State Bank of Pakistan (SBP) while all other Islamic financial entities other than banks which include Takaful companies, waqfs, Mudarabah companies and microfinance institutions etc. are regulated by securities and exchange commission of Pakistan (SECP).

Whatever is the structure followed by the regulators it must comprises of some or all of the following main components.

- a. Central *Shariah* Board
- b. *Shariah* Supervisory Board

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- c. *Shariah* advisor
- d. *Shariah* compliance, monitoring and audit units.

The central *shariah* board is supposed to operate at the national regulatory authority level while the rest of the entities and forums are to be held at the institutional level of the Islamic financial institute.

## **METHODOLOGY**

### **Research Design**

The philosophy of constructivism was adopted for this research. A qualitative approach was applied to the research strategy, and a case study method was selected. The data was collected by conducting narrative interviews. Other sources of data included the policy documents from the regulators. This research adopted the narrative case study method, which combines case study research and narrative research. The overall structure follows that of case study research, while the data collected is in a narrative form. The approach of combining case study and narrative methods is not unique, and several researchers (Whedbee, 2009; Ferrari, 2016) have opted to use such an approach for studies that have similarities with this one.

In this research, the researcher conducted narrative interviews with *Shari'ah* scholars, Islamic banking experts and the policy makers related to Islamic banking and finance at the central bank in whom they informed their product initiation and development processes, the importance they assign to *maqasid al shariah* while devising and designing any product or policy, how they achieve *shariah* compliance in the product development process, how the regulator monitors and ensures *shariah* compliance. And also narrated their practical perspective about operationalization of *Maqasid al shariah* in their activities.

### **Case: Regulator perspectives**

The regulator perspective is held by the experts at the governance level of the regulator. Since financial industry is highly regulated around the world to build general public's confidence and trust and same is the case for Islamic financial institutions. Their perspective about *maqasid al shariah* and its operationalization is important because they are the ones devising the policies and strategic plans for the industry. They include the policy makers (regulators) responsible for *Shariah* and members of the *Shariah* advisory committee of the regulator. Policy documents, circulars and strategic plans will also be the units of observation to analyze the operationalization of *maqasid al shariah*.

### **Focal theory**

The focal theory adopted in this research is the *Maqasid al-Shariah* theory. The theory of *Maqasid al-Shariah* was developed by Islamic scholars and jurists throughout the centuries. However, the concept was further refined and systematized by Abu Hamid al-Ghazali (1058-1111), an influential Islamic scholar, philosopher, and theologian. Other prominent scholars who contributed to the development of *Maqasid al-Shariah* include Ibn

Taymiyyah (1263-1328), Ibn al-Qayyim (1292-1350), and Abu Ishaq al-Shatibi (d. 1388). *Maqasid al-Shariah* refers to the higher objectives and purposes of Islamic law, beyond its literal or technical aspects, and seeks to ensure that the implementation of *Shariah* serves the common good and promotes justice, mercy, and other values that are integral to Islamic ethics.

*Maqasid al-Shariah* theory is a framework in Islamic jurisprudence that focuses on the higher objectives or purposes (maqasid) of Islamic law (*Shariah*). It aims to identify the underlying values and goals that the *Shariah* seeks to uphold and promote, and to use these as a basis for interpreting and applying Islamic law in a way that is relevant to the contemporary context.

The *Maqasid al-Shariah* theory recognizes five main objectives or purposes of the *Shariah*, which are the preservation of:

- a. Religion (Din)
- b. Life (Nafs)
- c. Intellect (Aql)
- d. Lineage or family (Nasl)
- e. Property (Mal)

These objectives are considered to be universal and timeless, and they are intended to promote human welfare, justice, and harmony in society. The *Maqasid al-Shariah* theory emphasizes the importance of balancing these objectives and avoiding any harm or injustice that may arise from their implementation.

### **Data collection**

In this research, the data sources used included narrative interviews, documents (circulars, notifications, policy documents, strategic plan). Using purposive sampling method, 13 respondents were selected from the population of practitioner (*Shari'ah* scholars, bankers) working at the governance level of Islamic banking institutions operating in Pakistan. This also includes the respondents from the regulator. All 13 of the interviews of the respondents from the respondents were transcribed although saturation level was achieved after 11 interviews.

Use of data from multiple sources serves the purpose of triangulation. The aim of triangulation is not only to confirm the output from different sources but also to increase the researcher's understanding of the phenomenon (Cassel, 2004). Triangulation also improves the validity of the research findings (Jick, 1979). The data sources used in this research are described in the following subsections.

The following figure shows the designation and code of the interview respondents:

**Table 1** Structure of Case

SNO	Code	Designation
1	R1	Director, IBD
2	R2	Member, Shariah advisory committee
3	R3	Joint director risk management group
4	R4	Former governor SBP
5	R5	Joint director
6	R6	Ex director, IBD
7	R7	Ex director, IBD
8	B1	Head Islamic banking
9	B2	Head shariah compliance
10	B3	Head shariah structuring
11	B4	Group head, Islamic banking
12	S1	Resident shariah board member
13	S2	Resident shariah board member

The code R reflects that the respondent belongs to the category of regulator, the code B represents a Banker while S represents a Shariah scholar.

### **Data analysis method**

Data analysis is crucial to qualitative research, but it can be difficult, particularly when creating a framework or theory from a significant amount of gathered data. A narrative analysis was done in this study because the data was gathered through narrative interviews.

The arrangements for data display, also referred to as *data visualization*, include the methods of displaying the key findings of the data analysis (Lacey & Luff, 2001). Data can be visualized in various ways; for example, in the form of quotations, figures, tables, graphs and images. The arrangements for data interpretation include the methods of describing and explaining the key findings. Commentary is the most common form of data interpretation in qualitative inquiry (Spiggle, 1994).

There are two approaches to analyzing qualitative data: a manual approach, and analysis through computer-assisted qualitative data analysis software (CAQDAS).

Members of the qualitative research community today commonly use CAQDAS in analyzing their qualitative data.

From the CAQDAS tools available, the researcher selected Quirkos 2.5.2 to analyze the qualitative interviews. Quirkos is a new, lightweight software application created for thematic and qualitative content analysis.

Inductive data analysis was used to analyze the data because the goal of this study was to construct a framework and too in the absence of much relevant literature. The interview transcripts were examined again and again by the researcher during this process. Based on the objectives and research questions set out in this research, a theme of – *Regulator perspectives* – was created, and several codes linked with the theme were devised. Following line by line analysis of each interview relevant portions of the interview transcript were added to the created codes. This process is referred to as *categorization* by Gibbs (2007). New codes were also created during the line-by-line analysis. After the analysis of a few interviews, the researcher found that it was necessary to remove as well as re-create some of the codes. Three iterations of the similar sort took place and as a result each time the typology and comprehensiveness of the codes improved. Gibbs(2007) calls the codes which are created based on the concept covered in the interview as *concept-driven codes*.

## **ANALYSIS**

Thirteen (13) narrative interviews were conducted to capture the regulator's perspective on the operationalization of maqasid al Shariah. Participants included key decision makers from the Islamic banking department, with a focus on obtaining the regulator's perspectives on this topic. The analysis identified several themes as new contributions to the understanding of maqasid al Shariah from the regulator's perspective. Public welfare (Maslahah) has always been central to Islam, and the Quran emphasizes taking care of the rights of others even at the expense of one's own preferences. This principle is also recognized by practitioners, Shariah scholars, and regulators in the Islamic banking sector. They prioritize public welfare in their practices. For example, the Islamic banking department is involved in circulars from every department to ensure that consumer harm is avoided.

The state bank plays a role in enforcing guidelines and empowering the Shariah board to address shortcomings and protect customers' well-being. The regulator also promotes transparency in charity policies, such as disclosing donations and ensuring they go to the intended beneficiaries. Deposit insurance through "waqf" has been introduced to protect small depositors. The regulator is reaching out to opinion leaders and using social media campaigns to educate and engage the masses. Refinancing schemes are aligned with Shariah compliance and prioritize areas like agriculture, SMEs, and low-cost housing to benefit the poor.

The Director of the Islamic banking department reports that policies suggested by the state bank are reviewed to ensure consistency with Islamic principles and customer

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protection. Complaint and compensation mechanisms exist to address any harm experienced by customers. The regulator provides guidelines for pool management and mandates the involvement of the Shariah board to prevent injustice and safeguard customers' interests. New products undergo scrutiny by the regulator to ensure compliance with Shariah principles and customer-centric conditions. Islamic banks are being encouraged to adopt participatory modes of financing to share risks, profits, and losses. The charity policy prohibits donations to sister and allied companies, while prisoners are included as beneficiaries.

The regulator also takes action against minor issues affecting customers, such as unauthorized charges. The use of mosque preachers to promote awareness of Islamic banking is another initiative reported by the director. Financing priorities in agriculture, SMEs, and low-cost housing reflect a focus on marginalized populations and align with maqasid al Shariah. The objectives of maqasid al Shariah are derived from the Quran and Sunnah, and the regulator implements them without explicitly stating their name. There is a strong connection between maqasid al Shariah and the Sustainable Development Goals, covering aspects such as poverty, education, health, gender equality, and environmental protection. Resistance and challenges are expected when adopting and following maqasid al Shariah. The Shariah division of the state bank is responsible for overseeing Shariah-related matters. Islamic banks receive some flexibility in reserve requirements compared to conventional banks, reflecting the support provided by the state bank.

**Source: R3, Joint Director**

R3, the joint director at the State Bank of Pakistan, has linked Maqasid al Shariah with the sustainable development goals adopted by the United Nations. These goals aim to create a better living environment for all, which is closely tied to public welfare and Maqasid al Shariah. It has been reported that the regulator does not have a specific department dedicated to fulfilling Maqasid al Shariah, but they do have a Shariah department that handles all Shariah-related matters. This reflects the regulator's indirect efforts to achieve Maqasid al Shariah. R3 also informs that the regulator supports Islamic financial institutions by providing relaxation in reserve requirements, allowing Islamic banks to remain liquid and utilize their excess liquidity to provide financing facilities to the general public, which ultimately benefits society.

"Secondly, the State Bank wants banks to focus on financing SMEs or agriculture. The State Bank provides guidelines for financing, but the regulator's involvement is limited. The rest depends on the public."

**Source: B1, head of Islamic banking**

B1 confirms that the regulator's intention is to provide facilities and guidelines to Islamic banking institutions to support SME and agriculture financing. This is aimed at giving majority access to finance to marginalized sectors and promoting financial inclusion, ultimately benefiting the public.

"The guidelines for Shariah compliance already exist. Your role is to provide Halal investment opportunities, prevent Riba, and offer Riba-free financing and returns. Training is also important in achieving these goals, and both we and the State Bank emphasize it."

**Source: B2, head of Shariah compliance**

"The Board of Directors has the motive of increasing profitability, while the regulator's intention is to safeguard the general public's interest."

**Source: S1, RSBM**

Both sources, B2 and S1, agree that the regulator's intentions are for the betterment of the general public and that they do not allow Islamic banks to engage in any illegal or unethical practices.

"I shall watch with keenness the work of your Research Organization in evolving banking practices compatible with Islamic ideas of social and economic life.... The adoption of Western economic theory and practice will not help us in achieving our goal of creating a happy and contented people. We must work our destiny in our own way and present to the world an economic system based on the true Islamic concept of equality of manhood and social justice. We will thereby be fulfilling our mission as Muslims and giving to humanity the message of peace, which alone can save and secure the welfare, happiness, and prosperity of mankind."

**Source: appendix I, History**

"In the case of early/premature encashment of TDR, the applicable weightage on such TDR shall be that of the TDR of the nearest completed tenor."

**Source: appendix II, profit distribution circular**

Islamic banking focuses on the common good, encouraging high ethics such as universal brotherhood, collective welfare and prosperity, and social welfare and justice.

"It is important to note that Islamic banks, by their nature, are less likely to engage in money laundering and other illegal activities. They are prohibited from investing in narcotics, casinos, nightclubs, alcoholic drinks, etc. This means that clients of Islamic banking must have businesses that are socially beneficial for society, creating real wealth and adding value to the economy rather than engaging in paper transactions.

**Source: Appendix III, FAQ's**

The frequently asked questions section of the Islamic banking department's website also reports instances which emphasizes the inclination of regulator towards public welfare.

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**Justice/fairness**

Islam has given vital importance to justice and fairness of the system. If there is injustice and lack of fairness in the system, the system will not work at all and would be considered “zulm”

The following instances reported by different respondents provide sufficient evidences that regulator is concerned and promotes the fairness and justice of the system followed in the industry.

*“The consumer protection department has also the same role to play because a level playfield should be available to the consumer because Islam says to protect the rights of the consumers, the idea of justice.”*

*“An example would be annual charges of the credit card imposed on the customer without the card being activated. Or deducting the SMS transaction alerts charges from the customer without their consent so the central bank has a keen eye even on these minor transactions and this reflects that central bank is already taking step for the protection and betterment of the consumer and Islamic banking is part of it.”*

*“Movement from Shariah compliant to Shariah based, capacity building, transparency, distribution of benefits which a bank derives should be transferred to customers.”*

**Source: R2, Member SAC**

*“The whole burden of removal or reduction in poverty cannot be put solely on Islamic banks”*

*“Mandatory external Shariah audit through chartered accountant firm.”*

*“It provides guidelines on pool management processes. For example how to distribute or how much to distribute the profits, hibba control etc.”*

*“Our central Shariah board at SBP comprises of scholars from all schools of thought. This includes a scholar from Deo bandi, Ahle Sunnat and Ahle tashe schools of thoughts”*

**Source: R1, Director IBD**

*“You can also have a look at our charity policy. We have made sure that banks do provide proper disclosures, should not provide it to their own another company etc.”*

*“In order to secure the small depositor of the Islamic bank we have introduced deposit insurance through “waqf”.”*

**Source: R1, Director IBD**



*“If there is no violation of Shariah compliance then even an Islamic bank will exploit, which might lead towards injustice with customers, and regulator is trying to solve this issue by empowering the Shariah board.”*

**Source: R4, Former governor SBP**

*“Currently we are using BCO (banking companies ordinance) and we are performing financial engineering of the BCO to create Islamic banking law.”*

**Source: R3, Joint Director**

*“Setting the profit margins is the job of the regulators and we must allow them to play this role.”*

**Source: R6, EX Director IBD**

*“In such cases the state bank plays its role and they force the bank to ensure certain things e.g. guidelines about pool management and they empower the Shariah board. The BOD have their own motive of increasing the profitability but the regulator have the intentions of safeguarding the general public’s interest.”*

**Source: S1, RSBM**

*“They also promote certain sectors and provide encouragement to export sector through export refinance schemes and schemes for agriculture and SME.”*

**Source: R5, Joint Director**

*“KIBOR and LIBOR are used as benchmark for setting prices and nothing else. You can use anything or even any commodity for this purpose. It’s just a benchmark and once it has served the purpose it goes out of the equation. KIBOR is decided upon the mutual agreement of conventional bank and their liquidity and demand supply etc. in comparison the size of Islamic banking industry is too small to have its own benchmark.”*

**Source: R4, former Governor SBP**

*“Islamic banks are given relaxation in terms of reserve requirements (CRR) too in comparison to conventional. The spread between them is almost around 4 to 5 %. So this is the hand holding SBP is giving to IBI’s.”*

**Source: R3. Joint Director**

*“Regulators know that there are constraints for the banks and they do not put extra pressures on the bank.”*

*“We have a very strong requirement of maintaining a CAR, if I don’t my bank could be sold out. So in these circumstances the regulator does not pushes the bank too*

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*much. if some regulator's action leads towards a default or a problem then it would be bad for the industry and will bring a bad name for them as well."*

**Source: B3, head shariah structuring**

*"If there is no violation of Shariah compliance then even an Islamic bank will exploit, which might lead towards injustice with customers, and regulator is trying to solve this issue by empowering the Shariah board."*

**Source: S1, RSBM**

*"I shall watch with keenness the work of your Research Organization in evolving banking practices compatible with Islamic ideas of social and economic life.... We must work our destiny in our own way and present to the world an economic system based on true Islamic concept of equality of manhood and social justice. "*

**Source: appendix I, History**

*"In case of early/premature encashment of TDR, the applicable weightage on such TDR shall be that of the TDR of the nearest completed tenor. For instance, a five year TDR encashed after one year shall be assigned the weightage applicable on one year TDR". "*

**Source: appendix II, profit distribution circular**

*"Clause 5.3: The special or individual Hiba for calendar year (CY) 2013 shall be capped at 50% of CY 2012 level in absolute terms and for CY 2014 at 25% of CY 2012; whereas no Special Hiba shall be permissible from January 2015 onward."*

**Source: appendix II, profit distribution circular**

*"2. To address the comprehension and practical issues regarding some of the clauses of the Instructions, the following clarifications are issued:*

**Source: appendix II, profit distribution circular**

*"Question No. 36) Can Islamic banks claim compensation or liquidated damages on account of late payment/default by the clients?"*

*Answer: The contemporary Shariah scholars have evolved a consensus that banks are authorized to impose late fees on the delinquent. However, the proceeds of such penalty are to be used for charity purposes. It is the court or any recognized alternative independent dispute resolution body which can allocate any part of the penalty as liquidated damages/solatium for the banks.*

*"Question No. 40) If banking were to be based on interest-free transactions, how would it work in practice?"*

*Answer: Islamic bank, like other banks, is an institution whose main business is to mobilize funds from savers and use these funds to finance the economic activities of businessmen/entrepreneurs. An Islamic bank performs these functions using various financial modes which are compatible with the Shariah. For mobilizing resources, it uses either the contract of Mudarabah or Wakalah with the fund owners. Under the first contract, the net income of the bank is shared between fund user (Mudarib) and fund providers (Rab-ul-Maal) according to a predetermined profit sharing formula. In the case of loss, the same is shared by fund providers in proportion to the capital contributions. In addition, there are current accounts that are in the nature of an interest-free loan to the bank. The bank guarantees the principle in case of current accounts but pays no profit on such accounts.*

*Under the Wakalah contract, clients give funds to the bank that serves as their investment manager. The bank charges a predetermined fee for its managerial services. The profit or loss is passed on to the fund providers after deducting such a fee.*

**Source: Appendix III, FAQ's**

Source R2 reports that the regulator's consumer protection department is playing a significant role in protection of consumers from any sort of exploitation through any means and protects their rights promoting the idea of justice. R2 also informs that movement of banking activities from *Shariah* compliant to *Shariah* based, capacity building, transparency and seizure of late payment charges and its replacement with punishment should be implemented on the banks through regulatory pressures and this would increase the fairness in the system and regulators are doing all this to ensure justice and fairness in the system.

R1 also informed about the requirement of external *Shariah* audits on Islamic banks. Pool management process is also guided by the regulator and in order to ensure the transparency and fairness of the whole process the central *Shariah* board at the SBP comprises of all the religious scholars from all the schools of thought which include *ahle Sunnat*, *Deo Bandi* and *ahle tashe*. This diversity makes all the policies more fair and practical to implement. R4 stated that the SBP has empowered the *Shariah* board of the banks to make sure there is no exploitation of the customers by the banks. R3 reported that SBP is in the process of developing its own Islamic banking law since currently we are following banking company's ordinance. A financial engineering is in process to create Islamic banking law.

R5 reported that in order to promote fairness and justice the regulator does provides banks with sector wise targets in order to promote certain sectors like exports through export refinancing schemes and schemes for agriculture and SME.

Source R3 and B3 also informed that there are certain constraints for the banks and SBP does not put extra pressure on them so that their existence is sabotaged. It was also reported that the regulator has to be and they are very careful in issuing guidelines and instructions to the banking sector because once they are issued it has to be complied with

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and if it leads towards any problem then it harms the industry as well as the reputation of the regulator itself.

All these instances from different respondents and extracts from the appendices and frequently asked questions, reflect that regulator makes sure the fairness and justice is maintained for both banks and the customers.

**Shariah compliance**

*Shariah* compliance is at the heart of Islamic banking activities. *Shariah* compliance could not be compromised at any level and at any cost. The following instances further emphasize its importance especially in the context of regulator's perspectives.

*"Mandatory Shariah compliance department"*

**Source: R1, Director IBD**

*"For every new product to be launched by any bank they have to submit it to SBP 30 days prior to launch for the approval. If there is no objection by SBP then they might launch it."*

**Source: R2, Member SAC**

*"There was no Shariah compliance structure, there was no Shariah boards at the banks, there were no Shariah inspections, there were no external Shariah audits. There was lack of awareness both at the demand and supply side."*

*"Mandatory Shariah board, at least 3 members, 1 resident Shariah board member, 2 other members. Mandatory Shariah compliance department Mandatory Shariah audit department (internal to the bank) Central Shariah committee at SBP Mandatory external Shariah audit through chartered accountant firm For every new product to be launched by any bank they have to submit it to SBP 30 days prior to launch for the approval. If there is no objection by SBP then they might launch it."*

*"As a way forward, since SBP is not explicitly guiding the banks regarding Maqasid the role of RSBM (resident Shariah board member) of the banks has got a very pivotal significance. He is currently on the payroll of the bank and even if he wants he cannot get too harsh with the management for the implementation Shariah principles, because he has the fear of losing his job."*

*"A bank has to pass through three doors. Regulations from the ministry of finance, regulations from SBP, and the third one is the door of Shariah compliance. This third door becomes a bottleneck for Islamic banks."*

*"So this responsibility of implementing these Maqasid lies on the shoulders of the Shariah department."*

*“Same goes for SBP, we have a Shariah division whose mandate is to look into all the matters related to Shariah.”*

*“SBP is not implementing these Maqasid by the name of Maqasid e Shariah but as we know that these Maqasid are derived from Quran and sunnah and they are providing us the guidelines from birth till the end of life, so this means that if we are following Shariah it means we are following Maqasid e Shariah as well.”*

*“An acceptable solution could be to that RSBM of the bank should be the employee of the SBP and all the banks contribute towards the generation of salaries of them. This will free them from the master servant relationship and RSBM will become more independent and strict enough to implement Shariah standards.”*

**Source: R3, Joint Director**

*“Second step in this direction would be to check for is there any precedence existing in the banks who have considered them as their responsibility, the answer is a no. practically it is a no.”*

*“As far as the Islamic banking is concerned or even micro finance institutions are concerned the guidelines or instructions issued by the state bank are always focused on Shariah compliance and not on the maqasid.”*

**Source: R5, Joint Director**

*“All our operation or products will meet the bear minimum criteria for conformity with Shariah standards.”*

**Source: R5, Joint Director**

*“Banks even do not follow the regulations prescribed by the state bank. We recently imposed heavy penalties for noncompliance. First we warn them then we impose penalties.”*

**Source: R3, Joint Director**

*“An acceptable solution could be to that RSBM of the bank should be the employee of the SBP and all the banks contribute towards the generation of salaries of them. This will free them from the master servant relationship and RSBM will become more independent and strict enough to implement Shariah standards.”*

**Source: R3, Joint Director**

*“In order to check everything is going good state bank is emphasizing on Shariah audit which is already being done by our bank.”*

**Source: B2, head shariah compliance**

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*“Mandatory Shariah board, at least 3 members, 1 resident Shariah board member, 2 other members. Mandatory Shariah compliance department Mandatory Shariah audit department (internal to the bank) Central Shariah committee at SBP Mandatory external Shariah audit through chartered accountant firm For every new product to be launched by any bank they have to submit it to SBP 30 days prior to launch for the approval. If there is no objection by SBP then they might launch it.”*

**Source: R1, Director IBD**

*“Sbp in July 2018 made it mandatory (minimum training requirement) to train executives, BOD's, branch managers and staff of the branches in the domain of Shariah. These trainings are delivered by the Shariah compliance department”*

*“If he is monopoly then to stop this activity is the only responsibility of the state/government and it's not the bank's responsibility to stop these sorts of activities.”*

**Source: S2, RSBM**

*“In such cases the state bank plays its role and they force the bank to ensure certain things e.g. guidelines about pool management and they empower the Shariah board.. So the BOD is not giving this mandate to cover up for this injustice but the regulator is giving this mandate that Shariah board must look into these matters as well and ensure the well-being of the customers. The BOD have their own motive of increasing the profitability but the regulator have the intentions of safeguarding the general public's interest.”*

**Source: S1, RSBM**

*“I shall watch with keenness the work of your Research Organization in evolving banking practices compatible with Islamic ideas of social and economic life. We must work our destiny in our own way and present to the world an economic system based on true Islamic concept of equality of manhood and social justice.”*

**Source: appendix 1, History**

*“The validity of a transaction does not depend on the end result but rather the process and activities executed and the sequence thereof in reaching the end. If a transaction is done according to the rules of Islamic Shariah it is halal even if the end result of the product may look similar to conventional banking product.”*

***“Question No. 13) If Islamic banks do not invest in interest based activities then how do they generate profit to pay to their customers?”***

***Answer: The Islamic bank uses its funds in various trade, investment and service related Shariah compliant activities and earns profit thereupon. The profit earned from such activities is passed on to the depositors according to the agreed terms.***

**Question No. 14) Are not Islamic banks just paying interest and dressing it as profit on trade and investments?**

**Answer:** *No, Islamic banks accept the deposits either on profit and loss sharing basis or on qard basis. These deposits are deployed in financing, trading or investment activities by using the Shariah compliant modes of finance. The profit so earned by the bank is passed on to the depositors according to the pre-agreed ratio which, therefore, cannot be termed as interest."*

**Source: Appendix III, FAQ's**

Sources R1, R2 report that there has to be a mandatory *Shariah* compliance department and every product launched need to get a prior approval from the regulator to ensure its *Shariah* compliance. To ensure *Shariah* compliance a mandatory *Shariah* board which consists of 3 members, 1 resident *Shariah* board member and 2 other members. A mandatory *Shariah* compliance department which is internal to the bank, central *Shariah* committee at the SBP, and a mandatory external *Shariah* audit through a chartered accountant firm. Source R1 also reports that the regulator has made the role of resident *Shariah* board member a strong one so that he can ensure *Shariah* compliance without being influenced by the board

R3, in order to ensure *Shariah* compliance, responded that for more effectiveness the RSBM of a bank should be employee of the state bank and all the banks contribute towards their salary generation. This will free them from the master servant relationship and RSBM will become more independent and strict enough to implement *Shariah* standards. R3 also reported that heavy penalties are being imposed on banks which are non *Shariah* compliant.

R5 also reported that the guidelines issued by the state bank are not directly related to *maqasid al Shariah* but they are always focused on *Shariah* compliance.

S2 reported that in July 2018 state bank made it mandatory (minimum training requirement) to train executives, BOD's, branch managers and staff of the branches in the domain of *Shariah*. These trainings are supposed to be conducted by the *Shariah* compliance department of the bank.

These instances and the extracts from appendix I along with the frequently asked questions available as an appendix III provide sufficient enough of an evidence that regulators in any case cannot compromise on *Shariah* compliance.

**Government policy**

Government and their policies play a crucial role in the implementation of various initiatives, programs and actions in the society. Governments play a role in setting the objectives, providing legal framework, resource allocation, coordination and collaboration, monitoring and evaluation and public engagement.

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In a similar context of Islamic banks and *maqasid al Shariah* government has to play a pivotal role for successful outcomes. The following instances further emphasize the role of government.

*“Government has to play a very important role in all this, so you cannot purely link all this with Islamic banking.”*

**Source: R1, Director IBD**

*“The constitution says that Interest is prohibited and riba is to be eliminated as early as possible. The banking law in Pakistan states that no bank can give interest based loan from the depositor's money, set aside the Supreme Court's decision, but still banks are violating this law. Banking law (banking company's ordinance) also states that no bank can take interest bearing deposit but it is being violated. 99 %debt portfolio of government of Pakistan is interest based. Riasat e madina and loans to be given for house building and youth on interest.”*

*“Govt. has a very strong role to play.”*

**Source: B2, head shariah compliance**

*“Law of land and Shariah are important. For an Islamic bank the guide book is Shariah and then comes the rule of land. Shariah does not say anywhere that rule of land must not be followed.”*

**Source: B4, group head, Islamic banking**

*“The way forward is that as the economy gets documented the things would improve and this is the responsibility of the government.”*

**Source: S1, RSBM**

*“Numerous laws were amended and new laws were enacted to facilitate Islamization of economy during this period in which State Bank played a major role. In a technical sense it was the most advanced model compared to any other model being practiced anywhere in the world at that time.”*

*“However, the financing procedure based on ‘mark-up’ practiced by banks was declared un-Islamic by the Federal Shariat Court (FSC) in November 1991 but on appeal to the Shariat Appellate Bench of Supreme Court the 1991 FSC ruling was suspended till orders of the court. The Supreme Court's Shariat Appellate Bench delivered its judgment in December 1999 with the directions that laws involving interest would cease to have effect by June 30, 2001 and later the date was extended to June 30, 2002. However, on a review petition filed by a bank, Shariat Bench of the Supreme Court set aside the previous verdicts on Riba in June 2002 and remanded back the case to Federal Shariat Court for hearing afresh.”*



*“In the meantime, the government decided to promote Islamic banking in a gradual manner as a parallel and compatible system. The initiative to re-introduce Islamic Banking in Pakistan was launched in early 2000 to shift to interest free economy through a market driven and flexible approach, in a phased manner without causing any disruptions.”*

**Source: appendix 1, history**

Source R1 categorically states that the benefits which are expected from the Islamic finance industry cannot be achieved only by the industry but firm support from the government is also required.

Source R2 quotes that it is clearly written in the constitution of Pakistan that *riba* is prohibited and is supposed to be eliminated from the economy as early as possible. The banking law in Pakistan also states that no bank can give interest bearing loan from the depositor’s money nor they can accept any interest bearing deposit but the banks are completely violating this rule. Government has to play the corrective role by ensuring all these provisions of law.

Source B4 has identified that law of land and *Shariah* go hand in hand. For an Islamic bank the guide book is *Shariah* and then at the second level there is rule of law. *Shariah* does not say at any level that the rule of law must not be followed. Source S1 is of the opinion that it is the responsibility of the government to document the economy and this will further improve the working conditions for the Islamic banks.

Appendix I which informs about the history of Islamic banking in Pakistan also signifies the role and initiatives taken by the government for the promotion of Islamic banking industry.

**FINDINGS AND CONCLUSION**

Islamic financial institutions are an important part of an economy and they are showing their growth both globally and on national levels as well. The use of word ‘Islamic’ increases the expectation level of the market participants in every respect specially ‘Falah’. This brings in the role of *maqasid al Shariah* into the whole discussion where it is believed that *maqasid al Shariah* are higher degree objectives of Islam, which primarily believes in the protection of Emaan, self, intellect, progeny and wealth and if they are strived to be achieved for this it will bring public welfare.

Based on the argument several studies were conducted by the academicians which reported poor performance of Islamic financial institutions in bringing any public welfare. This reflects a gap where the researcher believes that there must be something which, the participants of the Islamic financial institutions, the practitioner, both bankers and *shariah* scholars, and the regulators see differently. In order to fill up this gap 4 new regulator perspective were constructed which are as follows.

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*Maslahah* or public welfare has always been at the core of Islam and Quran has mentioned several times about taking care of rights of the other individuals even if it happens at the cost of forgoing your own rights or preferences. Based on several arguments discussed in the analysis section it is very obvious that the regulators give a significant amount of importance to *Maslahah* while making any policy decision.

Islam has given vital importance to justice and fairness of the system. If there is injustice and lack of fairness in the system, the system will not work at all and would be considered “*zulm*”. The regulator’s consumer protection department is playing a significant role in protection of consumers from any sort of exploitation through any means and protects their rights promoting the idea of justice. The requirement of external *Shariah* audits on Islamic banks, pool management process, and inclusion of religious scholars from all the schools of thought, empowerment of the *Shariah* board and several other mentioned in the analysis section are all the instances to prove that regulator is very much concerned about the justice and fairness of the system.

*Shariah* compliance is at the heart of Islamic banking activities. *Shariah* compliance could not be compromised at any level and at any cost. a mandatory *Shariah* compliance department, prior approval of every product from regulator, a mandatory *Shariah* board and *Shariah* compliance department internal to every bank, central *Shariah* committee at regulator level, a mandatory external *Shariah* audit and imposition of heavy penalties on banks found engaged in non *Shariah* compliant activities are all concrete evidences that regulators are serious in the implementation of *Shariah* compliance and is at their top priority.

Government and their policies play a crucial role in the implementation of various initiatives, programs and actions in the society. Governments play a role in setting the objectives, providing legal framework, resource allocation, coordination and collaboration, monitoring and evaluation and public engagement. In a similar context of Islamic banks and *maqasid al Shariah* government has to play a pivotal role for successful outcomes.

The benefits which are expected from the Islamic finance industry cannot be achieved only by the industry but firm support from the government is also required. Law of land and *Shariah* go hand in hand. For an Islamic bank the guide book is *Shariah* and then at the second level there is rule of law. *Shariah* does not say at any level that the rule of law must not be followed. So the will of the government is also a significant parameter.

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