

**ACCOUNTABILITY OF THE AFGHAN  
GOVERNMENT FROM MAQASID PERSPECTIVE:  
FIVE NECESSITIES OF HUMAN SURVIVAL**



By:  
**Abdul Rahim Hakimi**  
SRN: 19300016085  
DISSERTATION

**The School of Graduate Studies State Islamic  
University  
Sunan Kalijaga Yogyakarta  
2022**

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The dissertation draft deserves to be submitted to the committee of the close examination

Wassalamu' alaikum wr. Wb.

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Concentration: Islamic Thought and Muslim Society (ITMS)

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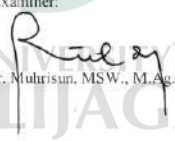
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## ATTESTATION

Dissertation entitled : ACCOUNTABILITY OF AFGHAN GOVERNMENT FROM MAQASID  
PERSPECTIVE: FIVE NECESSITIES OF HUMAN SURVIVAL

By : Abdul Rahim Hakimi  
S I D : 1930016085  
Department. : Doctor (S3) / Islamic Studies

to be submitted and defended  
as one of the requirements to obtain a doctoral degree (Dr.)  
in Islamic Studies with specialization in *Islamic Thought and Muslim Societies*

Yogyakarta, December 2<sup>nd</sup>, 2022

Head of the Examining Committee,



*[Signature]*  
Prof. Dr. H. Siswanto Masruri, M.A.  
NIP. 19530727 198303 1 005

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**BISMILLĀHIRRAHMĀNIRRAHĪM**

HAVING OBSERVED AND CONSIDERED THE ANSWERS CONVEYED BY THE PROMOVENDUS AND THE OBJECTIONS OF THE EXAMINERS IN THE CLOSED DEFENSE ON **AUGUST 9<sup>TH</sup>, 2022**, AND THE ANSWERS OF THE PROMOVENDUS AND THE OBJECTIONS OF THE EXAMINERS TODAY, WE DECLARE THAT THE PROMOVENDUS, **ABDUL RAHIM HAKIMI** STUDENT NUMBER **1930016085** BORN IN **GHOR AFGHANISTAN**, AUGUST 15<sup>TH</sup>, 1976

**HAS SUCCESSFULLY PASSED THE EXAMINATION WITH THE PREDICATE:**

**EXCELLENT / VERRY GOOD / GOOD \***

HE IS GRANTED A DOCTORAL DEGREE IN ISLAMIC STUDIES WITH SPECIALIZATION IN ISLAMIC THOUGHT AND MUSLIM SOCIETIES, WITH ALL ASCRIBED RIGHTS AND DUTIES.

**ABDUL RAHIM HAKIMI** IS THE 869<sup>TH</sup> DOCTOR GRADUATED FROM PASCASARJANA.

YOGYAKARTA, DECEMBER 2<sup>SD</sup>, 2022

HEAD OF THE EXAMINATION COMMITTEE,



*Juwani*  
Prof. Dr. H. Siswanto Masruri, M.A.  
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\* CORET YANG TIDAK DIPERLUKAN




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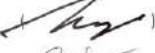
Promovendus : Abdul Rahim Hakimi. (  )  
Student ID : 1930016085

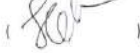
Title : ACCOUNTABILITY OF AFGHAN GOVERNMENT FROM MAQASID  
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Venue : AULA 1<sup>st</sup> floor School of Graduate Studies UIN SunanKalijaga  
Time : 08.30-10.30 AM.  
Result / Grade (GPA) : 3.83  
Graduation : Cum laude / ~~Very Good/ Good~~

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## Abstract

Afghan citizens have faced numerous challenges, including discrimination against minorities, security threats, immigration, systematic killing, economic crises, and human rights abuses. Therefore, to know whether the Afghan government has taken any action to respond to the mentioned cases or not, the title of the dissertation, "Accountability of the Afghan Government from *Maqāṣid* Perspective: Five Necessities of Human Survival," has been identified. Thence, it will answer questions like, "What is the relationship between *Maqāṣid* and government accountability? Have the Afghan governments met their goals and been accountable for the protection of the five necessities of human life? If the government could not protect the five necessities, what were the reasons for the failure?"

For more information about the previous chaotic situation, I studied others' writings. Hence, the works of the literature revealed that the governments were not accountable; because of this, they could not progress and have not supported human rights; they have also not accounted for foreigners and people. Similarly, foreign supporters of the government have been complaining and concerned about government accountability. Likewise, human rights organizations complained that governments are reluctant to be accountable.

This dissertation uses the Maqasid of Islamic Law, which outlines the five essential components of human survival, as a framework for examining government initiatives, strategies, and metrics to highlight the government's strengths and weaknesses to respond to the second and third questions. such as religious liberty, the protection of the soul, and the mind, the preservation of children, and the protection of property.

I obtained the data from different digital libraries, such as *Makatabat al-Shamila*, *Maktabat al-Noor*, and other libraries, and the majority of these sources were in Arabic. The other part of the data is achieved from the international and national organizations that have researched or reported the issues.

Since understanding the relationship between Maqāṣid of Islamic law and government accountability is important, this research considered the philosophical and methodological terms for further data analysis, which is the answer to the first question. Likewise,

chapters three to seven argue the government's accountability is the answer to the second and third questions.

Notably, this research is novel. Nobody has investigated government accountability from a *Maqasid* perspective in Afghanistan or other countries to cover all five necessities of life. Furthermore, the concepts and objectives raised in this dissertation can be simplified for further research in different fields. Like social justice, human rights, corruption, good governance, political economy, and government relationships with people.

My findings revealed that the government failed to protect religious minorities' and citizens' lives. Although the governments have taken steps to reduce narcotics cultivation, establish hospitals to eradicate mental illness, and open schools for mental development, there are gaps. In addition, governments have taken steps to support offspring, such as passing laws, although the laws are rarely enforced. Also, governments have failed to protect public and private property for many reasons. In conclusion, the challenges have continued through the last two decades.

**Keywords:** Accountability, *Maqāsid* Perspective, Human-lives-Five-Necessities, Faith, Soul, Mind, Offspring, Property.

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## الملخص

يواجه المواطنون الأفغان تحديات عديدة، مثل التمييز ضد الأقليات، و انعدام الأمن في الحياة، و الهجرة، و الإبادة الجماعية، و مواجهة الأزمات الاقتصادية، و تجاهل حقوق الإنسان. وفقاً لذلك، تحدف هذه الرسالة إلى البحث في مساءلة حكومة أفغانستان من منظور المقاصد على الضروريات الخمس لبقاء الإنسان. لذلك، سوف يجيب على أسئلة مثل؛ ما علاقة المقاصد بالمساءلة الحكومية؟ هل حققت الحكومات الأفغانية الأهداف و كانت مسؤولة عن الضروريات الخمس للحياة البشرية؟ إذا لم تستطع الحكومة حماية الضروريات الخمس فما هي أسباب الفشل؟

لمزيد من المعلومات حول الوضع الفوضوي السابق، قمت أيضاً بدراسة كتابة الآخرين. كشفت الأعمال الأدبية أن الحكومات ليست مسؤولة؛ و بسبب هذا لم يتمكنوا من التقدم و لم يدعموا حقوق الإنسان. كما أنهم لم يحسبوا الأجانب و الأشخاص. على حد سواء، لم يكن نظام الحكومة شفافاً، مما تسبب في الفساد في البلاد. باستمرار، كان المؤيدون الأجانب للحكومة يشكون و يقلقون بشأن عدم مساءلة الحكومة. و بالمثل، اشتكت منظمات حقوق الإنسان من إحجام الحكومات عن الخضوع للمساءلة.

و بالتالي، فإن هذه الرسالة تحلل أنشطة الحكومة و خططها و إجراءاتها من منظور المقاصد على خمسة عناصر للحياة البشرية حددها علماء المقاصد كعناصر لبقاء الإنسان للإجابة على السؤالين الثاني و الثالث. مثل حرية الدين، و الحفاظ على الروح، و حماية العقل، و الحفاظ على النسل، و صيانة الممتلكات. بالطبع، حصلت على بيانات المقاصد من مكثبات رقمية مختلفة، مثل مكتبة الشاملة و مكثبات النور و مكثبات أخرى، و كانت غالبيتها عربية. جزء نيكس من البيانات التي تم الحصول عليها من المنظمات الدولية و الوطنية التي بحثت أو أبلغت عن القضايا.

نظراً لأن فهم العلاقة بين المقاصد و المساءلة الحكومية بدا مهماً، فقد أخذ هذا البحث في الاعتبار مصطلحات الفلسفة و المنهجية لمزيد من تحليل البيانات، و هو إجابة السؤال الأول. و بالمثل، فإن الفصل الثالث إلى الفصل السابع يجادل بأن مساءلة الحكومة هي الإجابة على السؤالين الثاني و الثالث.

و الجدير بالذكر أن هذا البحث هو موضوع جديد لم يقم أحد بالبحث في مساءلة الحكومة من منظور مقاصد لتغطية جميع ضروريات الحياة الخمس في أماكن أخرى مشتركة و في أفغانستان على وجه التحديد. علاوة على ذلك، يمكن أن تكون المفاهيم و الأهداف التي أثرت في هذا الكتاب بسيطة لمزيد من البحث في مختلف المجالات. مثل العدالة الاجتماعية و حقوق الإنسان و الفساد و الحكم الرشيد و الاقتصاد السياسي و علاقة الحكومة مع الناس.

و بالتالي، كشفت نتيجة هذه الرسالة أن الحكومة فشلت في حماية الأقليات الدينية و حياة المواطنين. على الرغم من قيام الحكومات بقياس خطط لتقليل زراعة المخدرات، و إنشاء مستشفيات لعلاج الأمراض العقلية، و فتح مدارس لنمو العقل، إلا أن بعض أوجه القصور لا تزال موجودة. و بالمثل، اتخذت الحكومات

خطوات لدعم الأبناء، مثل وضع القانون؛ و من ثم فإن الحكومات لم تطبق القانون. كذلك، فشلت الحكومات في حماية الاموال العامة و الخاصة لأسباب عديدة. في الختام، استمرت التحديات خلال العقدين الماضيين.

الكلمات المفتاحية: المساءلة، منظور المقاصد، الحياة البشرية، الضرورات الخمس، الإيمان، الروح، العقل، النسل، الملكية.



## Abstrak

Warga Afghanistan menghadapi beragam tantangan, seperti diskriminasi terhadap minoritas, ketidakamanan hidup, imigrasi, genosida, menghadapi krisis ekonomi, dan mengabaikan hak asasi manusia. Dengan demikian, disertasi ini bertujuan untuk meneliti Akuntabilitas Pemerintah Afghanistan dari perspektif *Maqāsid* tentang lima kebutuhan kelangsungan hidup manusia. Oleh karena itu, penelitian akan menjawab beberapa rumusan, seperti; Apa hubungan antara *Maqāsid* dan akuntabilitas pemerintah? Apakah pemerintah Afghanistan telah memenuhi tujuannya dan bertanggung jawab atas lima kebutuhan hidup manusia? Jika pemerintah tidak dapat melindungi kelima kebutuhan tersebut, Apa alasan kegagalan tersebut?

Untuk informasi lebih lanjut tentang situasi kacau sebelumnya, saya juga mempelajari orang lain yang menulis. Karya-karya literatur mengungkapkan bahwa pemerintah tidak bertanggung jawab; karena itu, mereka tidak dapat maju, dan mereka tidak mendukung hak asasi manusia; juga, mereka belum memperhitungkan orang asing dan orang-orang. Sama halnya sistem pemerintahan tidak transparan, yang menyebabkan korupsi di negara ini. Terus-menerus, pendukung asing pemerintah mengeluh dan khawatir tentang ketidakbertanggungjawaban pemerintah. Demikian juga, organisasi hak asasi manusia mengeluh bahwa pemerintah enggan bertanggung jawab.

Akibatnya, disertasi ini menganalisis kegiatan, rencana, dan ukuran pemerintah melalui lensa perspektif *Maqāsid* tentang lima elemen kehidupan manusia yang oleh para sarjana *Maqasid* ditentukan sebagai elemen kelangsungan hidup manusia untuk menjawab pertanyaan kedua dan ketiga. Seperti kebebasan beragama, kelestarian jiwa, perlindungan pikiran, pelestarian keturunan, dan pemeliharaan harta benda.

Tentu saja, saya memperoleh data *Maqāsid* dari berbagai perpustakaan digital, seperti *Makatabat al-Shamila*, *Maktabat al-Noor*, dan perpustakaan lainnya, dan mayoritasnya adalah berbahasa Arab. Bagian selanjutnya dari data yang dicapai menurut organisasi internasional dan nasional yang telah meneliti masalah tersebut.

Karena memahami hubungan antara *Maqāsid* dan akuntabilitas pemerintah tampaknya penting, penelitian ini mempertimbangkan istilah filsafat dan metodologi untuk analisis data lebih lanjut, yang merupakan jawaban untuk pertanyaan pertama. Demikian juga bab

tiga hingga bab tujuh berpendapat akuntabilitas pemerintah adalah jawaban atas pertanyaan kedua dan ketiga.

Khususnya, penelitian ini adalah topik baru yang tidak pernah diteliti oleh siapa pun tentang akuntabilitas pemerintah dari perspektif *Maqāsid* untuk mencakup kelima kebutuhan hidup di tempat lain yang sama dan di Afghanistan secara khusus. Selain itu, konsep dan tujuan yang diangkat dalam buku ini dapat sederhana untuk penelitian lebih lanjut di berbagai bidang. Seperti keadilan sosial, hak asasi manusia, korupsi, pemerintahan yang baik, ekonomi politik, dan hubungan pemerintah dengan orang-orang.

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**Kata Kunci:** Akuntabilitas, Perspektif *Maqashid*, Kehidupan Manusia-Lima Kebutuhan, Iman, Jiwa, Pikiran, Keturunan, Harta.

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## **Dedication to the Soul of My Late Father and Brother**

I offer the reward of this Dissertation to the souls of my late parents and brothers, I could not be present at their funeral, and I ask God Almighty to make their souls happy! Amiin!



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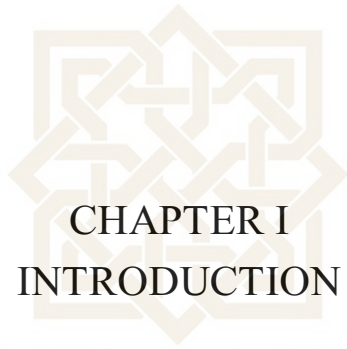
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CHAPTER I  
INTRODUCTION



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## A. Background

The people of Afghanistan have been struggling with numerous problems in the last two decades, such as discrimination against religious minorities, crimes, immigration, diseases, and poverty. In 2018 and 2019, government fighter groups attacked Shī'ah minority worship places and their leaders 42 times, leaving 236 dead and 533 wounded.<sup>1</sup> Shi'ah claimed that the government could not ensure the security of the Shī'ah minority.<sup>2</sup> Likewise, thousands of Sikhs emigrated either to India or western countries because of the threats against religious minorities.<sup>3</sup> Van Mann, a UN staff expressed concern about the escalation of violence in Afghanistan, saying that in August 2019, fighters killed an average of 74 people per day.<sup>4</sup>

Likewise, crime rates have risen dramatically. The database of the Attorney General of Afghanistan revealed, there were thousand six hundred and fifty cases of murder; three hundred thirty-six cases of kidnapping, and four thousand three hundred and five cases of drug trafficking in 2020. In addition, this office registered three thousand eight hundred and seven cases of theft and two thousand and eighty-eight case of violence against women.<sup>5</sup> Besides, reported one

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<sup>1</sup>. U.S. Department of State, "2019 Report on International Religious Freedom: Afghanistan," 2019, 2. <https://www.state.gov/reports/2019-report-on-international-religious-freedom/afghanistan/>. Accessed: 5/27/2022.

<sup>2</sup>. *Ibid.*

<sup>3</sup>. *Ibid.*

<sup>4</sup>. Afzayesh Serqat Wa Ikhtetaf Tajaran Wa Sarmaya Guzaran Ra Nagaran Karda.

<sup>5</sup>. Shakila Ibrahim Khil, "Sabt Bish Az 28 Hazar Qadiyai Janay Dar Jaryan Yaksal Dar Afghanistan (Registration of More than 28,000 Criminal Cases in One Year in Afghanistan)," Deutsche Welle, 2020, <https://www.dw.com/fa->

thousand three hundred sixty-six examples of injuries, thousand hundred and sixty-five cases of beatings, and three hundred and seventy-seven cases of moral crimes were recorded in the General Attorney database. <sup>6</sup> Additionally, reports revealed that approximately 28,000 criminal cases were recorded only in 2020, including murder, robbery, kidnapping, and sexual in which police officers were involved in 1740 cases.<sup>7</sup>

Additionally, addiction has been increasing, on 21 June 2020, the United Nations Office on Drugs and Crime published that the number of drug-addicted 15 - 65 years old reached approximately 1,000,000 in Afghanistan, the reason for addiction was; so, Afghanistan has the highest addictions in the world.<sup>8</sup>

The International Organization for Child Protection statistics revealed that more than 12,500 children and youths were killed or injured between 2015 and 2016, and the military recruited 274 others during this time.<sup>9</sup> Living in Afghanistan means confronting the daily danger of being blown up and deprived of school attendance.<sup>10</sup> Furthermore, the United Nations Children's Fund and the Afghan

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af/55844131/a-ثبت-بیش-از-۲۸-هزار-قضیه-جنایی-در-جریان-یک-سال-در-افغانستان/4/3/2021.

<sup>6</sup> . Ibrahim Khil.

<sup>7</sup> . *Ibid*.

<sup>8</sup> . Walter Kemp, "UNODC Reports Major, and Growing, Drug Abuse in Afghanistan" (June 2020), <https://www.unodc.org/unodc/en/press/releases/2010/June/unodc-reports-major-and-growing-drug-abuse-in-afghanistan.html>. Accessed: 4/3/2021.

<sup>9</sup> . Shakila Ibrahim Khil, "Afzayesh Serqat Wa Ikhtetaf Tajaran Wa Sarmaya Guzaran Ra Nagaran Karda (Increasing Amed Robbery and Kidnapping Worried Merchants and Investors)," Doi Chawala Dari, 2019, <https://doi.org/DW>.

<sup>10</sup> . *Ibid*.

Human Rights Commission have expressed concern about Children's rights in Afghanistan.<sup>11</sup> Additionally, UNICEF Executive Director Henriette Four said; that 2019 was a "particularly deadly" year for Afghan children. This report also stated that in nine months of 2019, nine children were killed or injured each day in Afghanistan, and six hundred thousand children were malnourished.<sup>12</sup> Former UN Commissioner for Human Rights, Louise Arbour, expressed her concern about women's rights in Afghanistan in 2013.<sup>13</sup>

The increasing poverty rate was another challenge. According to a 2020 report by Asia Foundation, 72 percent of Afghans were living below the poverty line.<sup>14</sup> Instead of improving security conditions and protecting citizens, corruption grew among the police,

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<sup>11</sup>. BBC TV, "Waziat Koodakan Dar Afghanistan Nagaran Kunannada Ast (The Situation of Children in Afghanistan Is 'Worrying')," 2009, [https://www.bbc.com/persian/afghanistan/2009/06/090601\\_a-afghan-world-child-day](https://www.bbc.com/persian/afghanistan/2009/06/090601_a-afghan-world-child-day). Accessed: 4/4/2021.

<sup>12</sup>. Shakila Ibrahim Khil, Accessed: 4/5/2021.

<sup>13</sup>. Louise Arbour, "Fighting For Women's Rights in Afghanistan," *International Crisis Group, Originally Published in Foreign Policy, OP-ED / ASIA*, 2013, <https://www.crisisgroup.org/asia/south-asia/afghanistan/fighting-women-s-rights-afghanistan>. Accessed: 4/5/2021.

\* Louise Bernice Arbour CC GOQ (born February 10, 1947) is a Canadian lawyer, prosecutor, and jurist. Arbour was the UN High Commissioner for Human Rights, a former justice of the Supreme Court of Canada and the Court of Appeal for Ontario, and a former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. From 2009 until 2014, she served as President and CEO of the International Crisis Group. [https://en.wikipedia.org/wiki/Louise\\_Arbour](https://en.wikipedia.org/wiki/Louise_Arbour)

<sup>14</sup>. Sandy Feinzig, "Afghanistan Flash Surveys to Glean Data on Perceptions of Women, Peace, the Economy, and Covid-19," The Asia Foundation, 2020, <https://asiafoundation.org/2020/09/16/afghanistan-flash-surveys-to-glean-data-on-perceptions-of-women-peace-the-economy-and-covid-19/>. Accessed, 4/2/2021.

which has led to the failure of the police to enforce the law and protect civilians.<sup>15</sup>

Nonetheless, the previous paragraphs reviewed the abnormalities and chaotic situation of the Afghans for the last two decades. While international coalition forces have supported and donated more than ten billion dollars, the governments had not overcome the challenges. Therefore, to understand whether the Afghanistan laws considered any article for better governance, and making the government accountable or not, this part will review the history of the Afghan constitution. Looking back to the early twenty century, 1923 was the birth of democracy, establishing law and the separation of government powers as important principles.<sup>16</sup> It is correct to say that the government tried to bring modern reform. Still, it was not proper to claim that the governments were accountable because neither the King nor ministers were accountable before the nation.<sup>17</sup> It was not Accountability; only the concept of responsibility, which is different from Accountability, was known at that time. Ministers had the responsibility to perform their duties. Accountability was not visible; article 31 proves this claim that ministers were accountable before the Monarch.<sup>18</sup> The prime minister and other ministers had been selected directly by Monarch, without the ballot of parliament. The King dominated in every aspect;

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<sup>15</sup>. Robert M. Perito, "Afghanistan's Police The Weak Link in Security Sector Reform" (1200 17th Street NW • Washington, DC 20036 • 202.457.1700 • fax 202.429.6063, 2009). 1, [www.usip.org](http://www.usip.org). accessed: 4/2/2021.

<sup>16</sup>. Justice Ministry

<sup>17</sup>. *Ibid.*

<sup>18</sup>. *Ibid.*, art. 31.

nobody could see any sign of Accountability. On the contrary, the imperial system cannot be democratic and the selection of ministers by the Monarch was also undemocratic.<sup>19</sup> The constitution of 1963 article one, line two endorsed the importance of accountability in its statement: "national sovereignty in Afghanistan belongs to the people" - that people could select their leaders, and the leaders were only the parliament members.<sup>20</sup> Besides, article 165 explained that prime ministers and ministers were accountable before the House of Representatives.<sup>21</sup> In addition, article 66 declared that parliament has the right to impeach the Prime Minister and Ministers, and they had to respond to questions of representatives.<sup>22</sup> The constitution of 1963 developed democracy more than the constitution of 1923.<sup>23</sup> The Constitution of 1975 stipulated that people could participate in politics and choose the president, which meant the implementation of democracy. However, this law did not mention any article to convey Accountability except for the growth of democracy.<sup>24</sup> The Constitution of 1989, passed during the communist regime, stated in sections two and three of the first article: "National sovereignty in

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<sup>19</sup>. *Ibid.*, art. 28.

<sup>20</sup>. Justice Ministry, "Qanoon Assasi Afghanistan (Afghanistan Constitution Law)" (1963), art. 1, §§, 1,2, <https://moj.gov.af/>.

<sup>21</sup>. *Ibid.* art. 65.

<sup>22</sup>. *Ibid.* art. 66. \* One important thing that was missing here is the King's accounting before the parliament so this devalues the accountability stated in this law.

<sup>23</sup>. Ministry, Qanoon Assasi Afghanistan (Afghanistan Constitution Law). art. 66.

<sup>24</sup>. Ministry Justice, "Qanoon Asasi Dawlat Jamhoory Afghanistan (Constitution of the Government of the Republic of Afghanistan)" (1355), art., 21, <https://moj.gov.af/dr/> مجموعه -قوانين-اساسی-ملغی- افغانستان

the Republic of Afghanistan belongs to the people".<sup>25</sup> The people exercise national authority through the National Assembly, but these two constitutions failed to embed accountability.<sup>26</sup>

Nonetheless, the stage in which this dissertation focuses is after 2001 and the 9/11 attack on the U.S.A., when international coalition forces sent troops to Afghanistan, and as a result, the new government enacted a new constitution.<sup>27</sup> A few articles of this constitution address issues in which people have the right to know what is happening in the government's offices. For example, article 50, section three of this constitution gave people the right to have access to government offices' information, and stipulated: "Afghan citizens have the right, to access the information from government departments, [but] within the limits of the law."<sup>28</sup> Furthermore, article 69, section one, stipulates that the president is accountable before the people and parliament.<sup>29</sup> The impeachment of ministers by parliament can also be another type of right given to people's representatives, and article 91, section two stipulates that parliament can disqualify ministers.<sup>30</sup> Another authority signed in this article is the parliament's confirmation or rejection of the development budget and the authority to refuse the employment of suggested ministers

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<sup>25</sup> "Qanoon Asasi Jamhoory Afghanistan (Constitution of the Republic of Afghanistan)," Pub. L. No. 464 (1989), art. 1, §§; 2,3, <https://moj.gov.af/>.

<sup>26</sup> *Ibid.*

<sup>27</sup> "Guardian," *USA*, 2016, [www.theguardian.com](http://www.theguardian.com).

<sup>28</sup> *Afghanistan Constitution* (Ministry of Justice, 2004). Art., 50, §. 3.

<sup>29</sup> *Ibid.* art., 69, § 1,

<sup>30</sup> *Ibid.* art., 91, §, 1.



and other heads of offices like the head of the intelligence department and *Brishna* (office of electricity).<sup>31</sup>

Although the constitutional law of 2004, article 50 section three mentioned that “people have the right to access the information from the government agencies,” another section of this law provided “that it was not against the law, and it does not have any limitation.”<sup>32</sup> Even though the law obligates government agencies to provide information, it has not been effectively enforced, and government departments have not given enough information.<sup>33</sup> There is a big contradiction between the law and its application; not only has the president not responded to parliament, but the lower offices also have not accounted to parliament. The case of the mayor of the Kabul city office was one example. He was accused of corruption and embezzlement of public resources<sup>34</sup> Consequently, the representative assembly required him to attend the parliament for impeachment.<sup>35</sup> He denied parliament’s demand and said, “the president appointed me, so I am not accountable before the representatives.”<sup>36</sup> In another instance, the president sent several ministerial nominees to

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<sup>31</sup>. *Ibid.* art., 91, §§; 2,3.

<sup>32</sup>. *Constitutional Law* (Ministry of Justice, 2004). Art. 50.

<sup>33</sup>. Deutsche Welle, “Faalan Rasanai: Qanoon Dast Rasi Ba Itlaat Bi Durusti Amali Namishawad (Media Activists: The Law on Access to Information Does Not Work Properly)” (Kabul Afghanistan, 2018), <https://p.dw.com/p/3Amj0>. Accessed; 24/1/2021.

<sup>34</sup>. (Afghan News Agency) Aazhans Khabari Afghan, “Shahr Dar Kabul Az Lahaz Qanooni Ba Parlamen Pasukhgu Neist (The Mayor of Kabul Is Not Legally Accountable to Parliament),” *Afghan News Agency*, December 29, 2020, <https://doi.org/18275>. Accessed: 3/1/2022.

<sup>35</sup>. *Ibid.*

<sup>36</sup>. *Ibid.*

parliament to get the vote, some of them were selected, and a few of them failed to get the vote, the president appointed these failed ones as ministers without consideration of parliament's decision, and he broke article 69 of the constitution.<sup>37</sup> Breaking the law became a culture in Afghanistan, especially if any law brokers had strong support from the heads of government. For example, the minister of the Finance Ministry was accused of the embezzlement of tens of millions of dollars from the Ministry of Finance. Instead of prosecution, the president appointed him as Afghanistan's Ambassador to Pakistan.<sup>38</sup>

The previous paragraphs show that the Afghan government faced countless problems failing to enforce the law. Also, history has shown that neither the Monarch nor the presidential system was ever accountable. Although constitution 2004, articles 50 and 69, pointed to the accountability of the government, as mentioned in a few examples, the difference between the text and reality was a concerning issue. Even though the government has taken some actions to show accountability to the satisfaction of international supporters, they were not enough. Usually, every government has a program to report the executed documents to the central office, and senior authorized officials send an evaluation board to subordinated

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<sup>37</sup>. (Afghan Voice News Agency) Khabar Guzary Sadai Afghan (AVA), "15 Mashawer Wazarat MaAref Barkanar Shudand (Fifteen Ministry Advisers Were Dismissed from Education)," *Khabar Guzary Sadai Afghan (AVA)*, January 14, 2021, <https://doi.org/218028>. Accessed: 1/19/ 2021.

<sup>38</sup>. Narges Iatamad, "Idara-e-Bazrasi, Shakasti Digar Dar Mabaraza Ba Fasad (Inspector's Office; Another Failure in the Fight Against Corruption)," *Khabar Guzary Jamhour*, 2021, <https://doi.org/99229>.

offices. Evaluation is different from accountability, though. Evaluation existed in the past and was called the Inspection Board, but higher-ranked officials were not accountable. The article *Statement on Accountability and Anti-Corruption in Afghanistan* argued that the Afghan government should be transparent to the people and not deprive them of foreign aid, and must work for the people's interests.<sup>39</sup> The lack of transparency in the Afghan government has negatively impacted the people: the U.S. government returned \$100 million to U.S. treasures because the Afghan government could not fulfill its commitment to transparency.<sup>40</sup> Moreover, the U.S. expressed concerns about the “lack of transparency” in Afghanistan, stating, “that the Afghan government Monitoring and Evaluation committee” was unable to help the international donors share the activities they have done with the donated money. And it could not show its ability to combat corruption and get the people’s trust; therefore, the failure of the leaders of the Afghan government has prevented the country from achieving identified goals.<sup>41</sup>

Although the government established the Anti-Corruption Bureau, this organization has not been very effective. People were losing their lives every day. People were migrating, drug cultivation was increasing, the number of addicts was increasing, people were getting poorer, and crime increased. These issues are all signs of the

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<sup>39</sup>. U.S. Department of State, “Statement on Accountability and Anti-Corruption in Afghanistan,” PRESS STATEMENT, n.d., [www.state.gov](http://www.state.gov).

<sup>40</sup>. *Ibid.*

<sup>41</sup>. *Ibid.*

inefficiency of an anti-corruption institution and other related institutions. Therefore, to understand the strength and weaknesses of the government more, it needed further research to realize whether the activities of the government coordinate the accountability criteria. This Research aims to analyze the government's actions from the dimension of *Maqāṣid* (purposes) *as-Ṣarīḥ*, under the name of "Accountability in Afghanistan Government from *Maqāṣid* Perspective: five necessities of human life." Therefore, advancing this research requires some basic and critical questions to pave the way for the analysis.

## B. Questions

The present research focuses on the Accountability of the Afghan government from the *Maqāṣid as-Ṣarīḥ* perspective. First, people believe governments have not fulfilled their duties and have not followed the law. Second, national and international organizations claimed that the Afghan government should be transparent, implying that the government has not told the truth and has not shared the people's information. Third, the previous examples of the two cases showed that government bodies were not accountable to parliament. Likewise, the U.S. and its allies have worked to make the government responsible, but these efforts were ineffective. The manner of the government harmed the lives of people, security, and improvement of the government agencies and caused lower morale of Afghan forces against the fighters. It caused the killing of thousands of soldiers and innocent people in the country. It also caused international donors to decrease their donations and get their forces out of Afghanistan without having achievements. Thus, the path of this research includes three specific questions:

- 1- What is the relationship between *Maqāsid* and government accountability?
- 2- Have the Afghan governments met their goals and been accountable for the protection of the five necessities of human life?
- 3- If the government could not protect the five necessities, what were the reasons for the failure?

### C. Purpose of Research

The present research aims to answer the previous questions that revolve around the five necessities of *Maqāsid* (purpose) of Islamic law for human survival and whether the governments have met the goal of *Maqāsid* or not. In other words, the objective of this research is to analyze the government's measures toward the preservation of five elements of human life. Thus, the purpose cannot be solved without research, this dissertation aims to use empirical and theoretical, library-based research to investigate the objectives of the research that responds to the questions.

The first point of my research is to answer the first question by explaining the relationship between government accountability and *Maqāsid* of Islamic law. Therefore, chapter two answers the first question and describes the relationship of *Maqāsid* with government accountability. Moreover, I will boldface and explain the methods and factors the scholars have utilized that can cover the government's functions.

The second purpose of the research is to examine the activities of the Afghan government in supporting religious minorities. The steps taken, failures, and reasons for the government's action in this regard will be investigated. The resulting successes, deficiencies, and motivations are the answers to the second question, and chapters three through chapter seven explore these findings.

The third goal is to answer the third question, which highlights the successes and failures of the government in the protection of religion, soul, offspring, and property. The achievements and

shortcomings of governments are the answer to the second and third questions, which will be described in Chapter three to chapter seven, to find whether the government could meet the five necessities criteria, which *Maqāṣid (aims) of ash-Shari'ah* identified, or not!

#### D. The Importance of this Research

Current research can be considered valuable from several dimensions. Academically, this research can open the door to more research in all aspects, which relates to practical *Maqāṣid* (purposes) of *Shari'ah* and be the key to work for those who intend to research in this field. The second noteworthy point of the present study is that it describes the elements of social life that depend on government responsibility which is a practical and fundamental step that brings the *Maqāṣid* into the real life of people. Moreover, the present study practically highlights several issues:

1- Current research provides a way to apply the *Maqāṣid* (purposes) of Islamic law from text to context.

2- This research will reveal that Islamic law is not only a text and concept that will not respond to today's needs of humans but that it also dynamically moves with the lives of humans.

3- This research distinguishes an accountable government from an unaccountable government.

4- This research will help people to understand their rights and ask the future government to undertake their promises and ensure their rights.

5- The current research examines the religious minorities' situation under the rule of the past two decades of governments and determines whether they enjoyed their religious freedom rights or not.

6- The current research examines whether the government ensured the security of life, mind, offspring, and property of people; and whether the government could ensure the safety of people's lives according to the *Maqāṣid* (purpose) of *Shari'ah*.

7- This research will also highlight the weaknesses and strengths of previous governments, which is a good lesson for the future governments of this country so they can address the insufficiencies and problems of legal application.

8- In addition, the current investigation will close the gap between lawmakers and Ulema, as they have always accused the governments of claiming that Afghanistan's laws are not Islamic, which was one of the reasons for the ongoing war in the country.

9- On the other hand, this research could have a message: to those who think Islam can be applied only in the private part and worshiping. So, utilizing the *Maqā'sid* (purposes) of Islamic law will reveal that it can play a role in all sectors, including social, political, etc.

## E. Literature Review

Accountability of the government has been one of the concerns of Afghan citizens and international aid organizations for this country over the last two decades, and it has always been expressed both inside and outside the country. In addition to domestic and foreign media, university professors have always expressed their concerns in their discussions. Therefore, the issues were non-compliance with the law, instability, corruption, a disregard for the rights of women and children, theft of public property, drug addiction among the populace, and rising levels of poverty.<sup>42</sup> According to the mentioned reasons, the issue of accountability of the Afghan government has been chosen from the point of view of the objectives of Sharia regarding the five main needs of human life. It should be noted that one of the research

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<sup>42</sup>. Tolo News, "Gerd Hamay Bashandagan Kabul Dar Nekoresh Qanoon Shakani Dar Keshwar (Kabul Residents Gather to Condemn Lawlessness in the Country)," 2018, [https://doi.org/file:///C:/Users/HP/AppData/Local/Packages/microsoft.microsoftedge\\_8wekyb3d8bbwe/AC/%23!001/MicrosoftEdge/Cache/GIJRCJ7V/logo-af\[1\].jpg](https://doi.org/file:///C:/Users/HP/AppData/Local/Packages/microsoft.microsoftedge_8wekyb3d8bbwe/AC/%23!001/MicrosoftEdge/Cache/GIJRCJ7V/logo-af[1].jpg).

[1]- It can be inferred that this country has some progress, but has not reached the identified goal.



questions is whether or not the Afghan government has accounted for the five necessities of life! To enrich the research, it was necessary to review the research that other people have done in the past to see what things were included in their research and what things were left out of the research.

From late 2001 to 2013, Western countries, in addition to military assistance, spent millions of dollars in Afghanistan to build stability, security, and social welfare, establishing the growth of democracy. Additionally, citizens were delighted that many western countries came to Afghanistan with economic aid and military, believing as a result that everything would get better, and the people would be free from poverty and misery. In contrast, Afghanistan's progress has not been very rapid, and the government has not achieved the identified goal.<sup>43</sup> This country needs to take more steps and show more achievements on Accountability to progress.

Aziz Hakimi argued that if the Afghanistan government and international forces were accountable for human rights, they would not violate human rights. He meant that both sides had violated human rights.<sup>44</sup> Furthermore, foreign donors asked the president to account for the money they donated to Afghanistan, but he did not account; hence they got angry.<sup>45</sup>

Weak management in the system and lack of transparency was the cause of corruption in Afghanistan.<sup>46</sup> Aziz Hakimi added that

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<sup>43</sup> . Languages and Cultures School of Arts, "The Prioritisation and Development of Accountability in Afghanistan: A Norm Development Examination of Liberal Statebuilding," 2016. 8.

<sup>44</sup> . Astri Suhrke Hakimi, Aziz, "A Poisonous Chalice: The Struggle for Human Rights and Accountability in Afghanistan," *ResearchGate*, 2013, 1-2, 201-23, <https://doi.org/NJHR>.

<sup>45</sup> . "Addressing the Accountability Gap in Statebuilding: The Case of Afghanistan" (Stanford, 2011), 1-2. [cddrl.fsi.stanford.edu](http://cddrl.fsi.stanford.edu).

<sup>46</sup> . Lutfullah Rashid, "Ahmiat Fasa Idari Dar Afghanistan, Fasalaha Harf Ta Amal (The Importance of Corruption in Afghanistan, the Gap Between Words and Deeds)," *BBC News*, November 3, 2013, [https://www.bbc.com/persian/afghanistan/2013/11/131103\\_k04\\_corruption\\_afghanistan\\_rashed](https://www.bbc.com/persian/afghanistan/2013/11/131103_k04_corruption_afghanistan_rashed). Accessed: 1/8/2022.



issues like ethnic, linguistic, and regional support of the perpetrators of crime by the government leaders knowingly and unconsciously caused the perpetrators to be immune and exempt from the law.<sup>47</sup> Therefore, the perpetrators of embezzlement who were in high positions in the government have escaped consequences for their crimes.<sup>48</sup> Similarly, donor countries expressed concern about the money they gave the Afghan government; therefore, they suggested creating an accountability system and establishing transparency for the solution.<sup>49</sup> Furthermore, since 2002, \$23 billion has been dedicated to good governance, improving security, and capacity building in Afghanistan; agencies have promised to run thousands of projects, but it is unclear what they did with the money.<sup>50</sup> In 2013, the B.B.C. reported that the Afghan government was reluctant to improve accountability.<sup>51</sup> The media has given voice to a movement to increase governmental accountability, but the government has not listened.<sup>52</sup> USAID Foundation did not confirm the existence of the accounting in the Afghan government but stated that it did not want Afghanistan to be unaccountable and spend money on fraud.

Moreover, Afghanistan's future progress depends on Accountability.<sup>53</sup> Yama Torabi reported that neither the Afghan government nor the donors were accountable because they were not

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<sup>47</sup>. *Ibid.*

<sup>48</sup>. *Ibid.*

<sup>49</sup> Katherine Haver and Mirwais Wardak Adele Harmer, "Collective Resolution to Enhance Accountability and Transparency in Emergencies Afghanistan RTransparencysparent International the Globa Coalition Against Corruption, 2017, 1-2. [www.transparency.org](http://www.transparency.org).

<sup>50</sup>. Jr. harles Michael Johnson, "Afghanistan Oversight and Accountability of U.S. Assistance," 2014, <https://doi.org/GAO-14-680T>.

<sup>51</sup>. BBC Media Action, "Research Summary Accountability in Afghanistan," April 2013, [HTTPS://doi.org/media.actionbbc.co.uk,+44+\(0\)20+8008+001](https://doi.org/media.actionbbc.co.uk,+44+(0)20+8008+001).

<sup>52</sup>. *Ibid.*

<sup>53</sup>. The Islamic Republic of Afghanistan, "Self-Reliance through Mutual Accountability Framework (SMAF)" (Kabul Afghanistan, 2015), 1. [www.mofa.go.jp/000102254.pdf](http://www.mofa.go.jp/000102254.pdf).

ready to share the reality with the people.<sup>54</sup> Similarly, Trent Rude, in a report entitled *Lessons and Opportunities from the Tokyo Mutual Accountability Framework* argued that the Afghan government and foreign donors have created a mechanism that makes both sides accountable. The report expressed hope for the future of accountability in Afghanistan.<sup>55</sup> [Looking at this writing, messages that accountability did not exist because they expressed hope for the future to have an accounting system in the government].

In conclusion, the literature revealed many essential points of the Afghan government's unaccountability: slow progress, lack of supporting the rule of law, specifically human rights, and non-transparency in budget spending. Additional reports discussed the unaccountability of the Afghan government's reluctance to accountability and not paying attention to the demand of the people as another issue of discourse.

Furthermore, in reviewing previous writings on the Accountability of the Afghan government, some articles and reports pointed directly to the government's lack of liability, but others implicitly pointed to the issue. However, despite the significant possibilities that this country has had so far, it has not been able to capitalize on opportunities. Literature generally concludes that the problem of government accountability was a profound concern, so more research is needed to comprehend the obstacles. The current investigation will highlight the five sections, such as preserving religion, preserving the soul, preserving the mind, preserving the offspring, and preserving the property from the *Maqāsid* dimension, which is entirely new research and novel. So the difference between this research and that literature could be twofold: the first is the vision; this research is from the perspective of Islamic law, "Accountability in Afghanistan Government from *Maqāsid*

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<sup>54</sup>. Yama Torabi, "Afghanistan: Bringing Accountability Back In From Subjects of Aid to Citizens of the State," 2008, 39. [www.iwaweb.org%0A](http://www.iwaweb.org%0A).

<sup>55</sup>. Trent Ruder, "Lessons and Opportunities from the Tokyo Mutual Accountability Framework" (the UNITED STATES, 2015), 1. [www.usip.org](http://www.usip.org).

Perspective." The second issue is that other researchers have not argued broadly enough in the same way that this research aims or they have not researched the five essential elements that this research will investigate.

## F. Theoretical Framework

The theoretical system used in this dissertation is the methodology system of goals and objectives mentioned by Jasser Auda<sup>56</sup> and other scholars. Each of the five Sharia necessities is assigned a principle, activities, and measurements of the government's actions were analyzed based on the goal, aims, and objectives of Islamic Law. Therefore, each one is a scale to determine whether the purpose of the government's establishment and goal of law enactment routinely continued or not.

Of course, although the five necessities of Maqasid (purposes) are considered tools to analyze the government's activities, the philosophical theory has been utilized as the approach to explain the relationship between the aims of Islamic law and the government's accountability. For example, what is the philosophy behind the establishment of the government? What duties does the government have towards the citizens? And what rights do citizens have over the government?

Therefore, this analytical study aims to examine the Afghan government's services to its people over the past two decades relating to five necessities to determine whether the government successfully met its goals. The data will be analyzed based on *Maqāsid* (purposes), which according to Jasser Auda's idea, "are the answer to why and what."<sup>57</sup> Before further explaining how this research works in this

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<sup>56</sup>. Jasser Auda, *Understanding Objectives of Shariah and Its Role in Reforming Islamic Jurisprudence* (---: YouTube The Audiopedia, 2017), 30. <https://www.youtube.com/watch?v=F0A8CZyZOLY>.

<sup>57</sup>. Jasser Auda, "Maqāsid AL-Sharia an Introductory Guide," 2008, 3. <https://iiit.org/en/azeri-səriət-in-məqsədləri-maqasid-al-shariah-a-beginners-guide-jasser-auda-idrak-2012-144pp/>.

section, I quote Jasser Auda's definition of *Maqāṣid* (intentions) as a guide for the rest of the discussion:

Maqāṣid [purposes] are also the group of divine intents and moral concepts upon which the Islamic law is based, such as justice, human dignity, free will, kindness, purity, facilitation, and social cooperation. Thus, they represent the link between Islamic law and today's notions of human rights, development, and civility.<sup>58</sup>

Therefore, the data analysis in this research will be based on fundamental factors, such as justice, human dignity, freedom of will, piety, facilitation for the people, and cooperation for the community, because the government's duties have a close relationship to all of these concepts. It is within the competence of governments to address such issues in complex social contexts to overcome the challenges.

Thus, the *Maqāṣid* (purposes) is the framework and basis for the current research. I will analyze each chapter according to the five concepts that are the necessities of human life. For instance, consider the freedom of will from the *Maqāṣid* (purposes) of *the Shari'ah* perspective, which is the lack of coercion in religion. It will have recognized as the basis of religious freedom that the government must consider such freedoms in its sphere of power as a principle of sovereignty and support for its people. Likewise, think justice, one of the fundamental elements of *Maqāṣid* that covers every aspect of life, ensures the security of life, and brings prosperity to people; everybody understands his rights and others' right, which could impact the preservation of the soul.

This section will analyze the data to see the government's steps during the last two decades and the failure. The section will also explore how Islamic law has taken fundamental steps to preserve and survive the generation by encouraging marriage and prohibiting the abortion of a fetus for the sake of generation preservation. Based on these elements, the government's achievements and failures in this regard will be analyzed. Also, Jasser Auda argued that economic crisis

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<sup>58</sup>. *Ibid.*

causes social challenges, and because of this, Islamic law forbids usurpation, usury, bribery, embezzlement, theft, and corruption, and imposes punishments in return.<sup>59</sup> Thus, the theory of Chapter 7 analyzes the issue of the government’s approach to property protection over the past two decades to see whether it has succeeded or failed.

The structure of the current research chapters is as shown in the following figure:

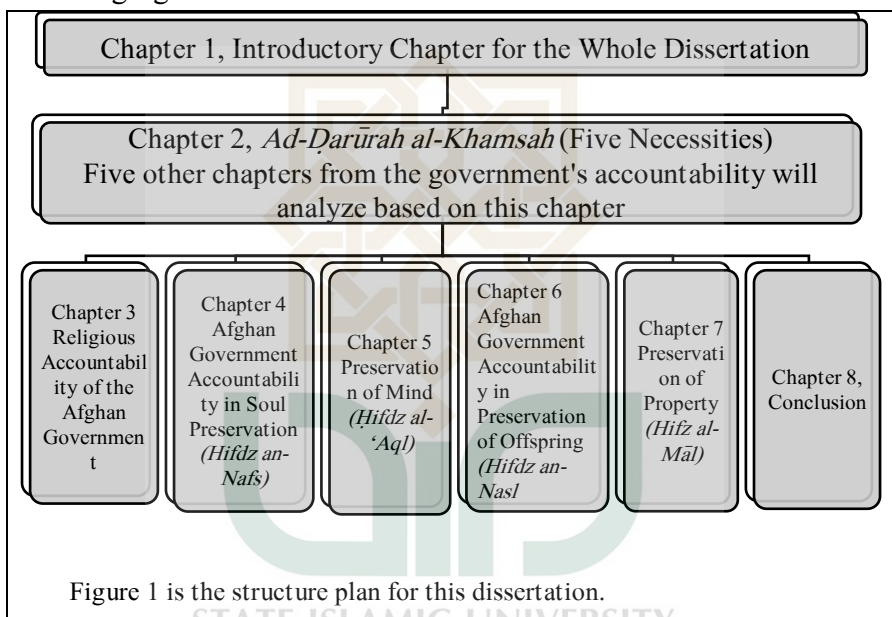


Figure 1 is the structure plan for this dissertation.

## G. Sources

Since the present study is an analytical study, chapter 2 explains the five necessities of *Maqāsjd ash-Shari'ah*, which the five other chapters will analyze. For this reason, I used prestigious sources in this chapter. These sources include books on the interpretation of the Holy Qur'an, books of hadith, books on the *Maqāsjd* (purposes) of *Shari'ah*, relevant articles, and videos published on YouTube by Jasser Auda, which are available in the references list.

<sup>59</sup>. Auda, “Maqasid AL-Sharia an Introductory Guide.” 5.

The interpretations will have presented from methodological and philosophical perspectives, like the purpose of preserving the religion, which is the government's Accountability toward securing the faith and ensuring justice among people, applying the law equally to all individuals, and preparing a secure place for people. Furthermore, this source type is accessible from digital libraries like *Maktab al-Shāmilah* and other digital libraries.

The prophet's *Hadith* (traditions) that relate to this research will have analyzed because traditions also denote Accountability, like what Sad, the son of Ubadah, quoted the prophet as saying: "Every commander that leads ten people will present on the Day of resurrection while the chain around his neck, nothing will save and rescue him except the justice."<sup>60</sup>

Although the books on the Principles of Jurisprudence have not devoted an independent discussion to the purposes of Shari'ah; it infers that purpose from the concepts *ijtihad*, *istihsan* (goodness), and *Masā'el al-Marsala* (Free issues). The signs of using *Maqāṣid* are changing the idea from time to time and place to place for applying the *Shari'ah* rule. The mechanisms that bring the *Maqāṣid as-Ṣarī'ah* into Accountability will be methodology and philosophy approaches.

Many scholars who have written books and articles about the *Maqāṣid as-Ṣarī'ah*, and the philosophical methodology they have utilized in their treaties have been helpful in this research. These books are; (1) *Mawāfaqāt, Syātābī*. (2) *Maqāṣid as-Ṣarī'ah al-Islamiyah, Ibn Aāshūr*. (3) *Philosophy of Islamic Law, Jasser Auda*. (4) *al-Madkhal fi al-Maqāṣid al-Sharia*.

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<sup>60</sup>. Abu Mohammad al-Hareth Bin Mohammad Bin Dāher al-Tamimī al-Baghadādi al-Khāsib al-Marūf Be Ibn Usāmah Abi Usāmah, *Bughjyyatul Baheth An Zawaed Musnadūl Hareth*, ed. Hušain Ahmad Sāleh Al-Baakari, 1st ed. (al-Madīnah al-Munawrah: Markaz Khedmat al-Sunna wa al-Sirat al-Nabawiah, 1992), 630. al-Maktabah al-Shamilah (Mawafiq Lil-Matboa, according to publishing).



The above sources are very important in this research. For example, "Bringing interest and Ward off evil." This rule can have some fundamental points like the purpose of the government establishment. Furthermore, this rule allows people to observe the government's commitments and make them able to assess the government's actions preserving the interest of people and protecting against harm.

The next category of sources for this research is the accountability books and articles that are written about Afghanistan and other countries. These sources are platforms for this research. In this section, the important thing is data analysis. For instance, how this research boldfaced the activities of the government and how connected to social rights. This part source has also argued practically and structured the governments from the power perspective and its authorities. It also explains society's relationship with the government and discusses the rights of people toward the government; these structures will help this new approach for this dissertation.

Moreover, the sources that point to empirical, data-driven government successes and failures are from international databases such as the U.N., the U.S.A foreign department of state, the U.S. defense Ministry, UNAMA, the Independence Human Rights Commission, and UNICEF. In addition, other sources used in this dissertation are some international news agencies like B.B.C. News, New York Times, I.R.F. International Radio France, Voice of America, Deutsche Welle from German, and Sputnik from Russia.

National media reports were also utilized, including T.V. and newspapers, including Tolo T.V. and Ariana TV. These publications and broadcasts are in English and Persian, and they are generally considered accountable. Likewise, I used recorded newspapers with government certificates, like Eight Morning News and others.

The second part of the sources for this research is the empirical source. Therefore, a Google questionnaire was developed and sent to

respondents in Afghanistan via email and telegram. Google automatically sums up data when there is a response, making the process easy. The results of the questionnaire exist within each chapter, therefore it was not necessary to mention the questionnaires again at the end of the dissertation.

## H. Features of Research

The features of this research are varied depending on the topic and circumstances. First, I could not find any previous research on Government accountability conducted from the standpoint of the *Maqāsid* (purposes) of *Shari'ah* in Afghanistan and other countries which conveys its novelty. The second feature of the current research is that it explains how to apply the meanings of *Shari'ah* from theory to practice, and how to utilize the *Maqāsid* in government activities, which encourages the claimants of religion to find the relationship of religion in practice. Third, this research will also provide a window for Ulama to look at issues with an open mind, which is necessary for Islamic law development in all parts of human life. Then, this research will respond to those who claim that Islamic Law does not respond to the needs of modern-day with the complexity of social and political conditions in Muslim societies, especially in Afghanistan. Later, this research may address and neutralize this negative point of view, particularly in Afghan, because by utilizing the methodology and philosophical method, it is possible to apply *Maqāsid* in any aspect of life.

## I. Research Method

The current research method is mixed of library and empirical methods depending on the conditions, data collection, and topic. First, this is "Applied Research" because one principle of the *Maqāsid* (purposes) of the *Shari'ah* is known as the independent variable, and many details are discussed under the topic; for example, maintaining religion is one of the principles of the *Maqāsid* (purposes) of *Shari'ah*, but in addition to freedom of the religious, other issues are argued,



like the security of religious minorities, the freedom of performing the religious ceremonies and protecting their property, and the result of discrimination. Then the current research explains how to apply the meanings of *Maqāṣid* (purposes) of Islamic law from theory to practice; and how to utilize the *Maqāṣid* in government activities. This encourages the religiously devout to find the relationship of religion in practice.

The fundamental method in this research is analytical. International and national organizations have previously researched and confirmed the data about the government's activities. I apply this previously collected data to my analysis and reasoning. Methodology and philosophical approaches are two other fundamental concepts that will be applied to all of the data presented. As Jasser Auda said: "*Maqāṣid is the purpose, objective, and methodology; it is not a discipline.*"<sup>61</sup> It is an Islamic approach based on the objective of Islamic law; therefore, this methodology will be on what you can call methodology language, purposefulness, everything in Islam has a purpose."<sup>62</sup>

The current dissertation research and information collection method need more clarification so that the respectful readers know where and how I obtained the information and what ways I used it. As a result, the information and sources of the second chapter, which is a platform chapter for the subsequent chapters that begin with the third chapter and end with the seventh chapter, are generally derived from valuable sources. These sources contain; commentaries, hadiths, books on *Maqāṣid* (purposes), or articles and treatises that scholars have written.

It needs more clarification that this category of sources includes books, articles, and videos. I obtained the majority of books

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<sup>61</sup> . Jasser Auda, *Understanding Objectives of Shariah and Its Role in Reforming Islamic Jurisprudence* (YouTube The Audiopedia, 2017), <https://www.youtube.com/watch?v=F0A8CZyZOLY>.

<sup>62</sup>. Ibid.

from the Shamal library, some from other digital libraries like the *Maktabat an-Noor* (Noor library), and some from sites where authors have posted their works, such as Jasser Auda's website. The videos I have used include the ones published by Jasser Auda on YouTube; the links and other information exist in the footnotes. In addition, these sources are in Arabic or English, Arabic sources are translated into English and English paraphrased.

The second part of the data I used in this dissertation divides into several categories, with some coming from government agencies such as the Ministry of Justice, the Ministry of Education, the Ministry of Higher Education, and the Ministry of Pilgrimage. I took the second part of this category from national media that has certification from the government, such as Tolo TV or Ariyana TV, which have national and international broadcasts. Furthermore, I obtained some sources from newspapers such as Hasht Subh (Eight Morning) or other agencies that have government certificates. So link references of these data are mentioned in the footnotes and bibliography. I obtained some parts from international organizations like UNAMA, the Human Rights Declaration Commission, or the International TV networks like Aljazira, BCC, CNN, Bloomberg, CNBC, and the New York Times. Likewise, I have taken some information from the U.S. government agencies like the ministry of foreign affairs. These sources were either in English or Persian. Notably, I repeated some sources more than once because of different publication dates from that organization.

The third data collection method used in this dissertation was empirical research in the shape of a questionnaire. The structure of questionnaires varies; for example, some have "yes," "no," and "I do not know" options. Some questions have four choices: A, B, C, and D. options. the reason that I chose this method was to get more responses; if the questionnaire were an explanatory question, respondents might not respond; hence, I believed this way is an easier way. I created the questionnaire in Google Forms, which can automatically sum up the results and show the percentage. I sent the

questionnaires via email, WhatsApp, and Telegram. Participants were lecturers from universities in Afghanistan, either in the country or outside. Also, it is notable that each chapter has a separate questionnaire, and the number of respondents is different; for example, some questionnaires have around 140 respondents, some have 50, some have 60, and some have 40. The sample of questionnaires is obtainable in the dissertation's text and listed in the reference figures.

As noted above, the second chapter of the present dissertation is the foundation for the following five chapters related to the five fundamental necessities of human life in Afghanistan.

## J. Limitations

Although every task has challenges, research often has more barriers than other issues. Numerous challenges existed in this research in particular, such as access to information from government offices. For instance, getting information from the offices was not easy; the government's agencies are so conservative that they do not share information. Additionally, Afghanistan was a dangerous country, so moving around the country to research was not safe due to the threats such as insecurity and kidnapping. Traveling to Afghanistan during COVID-19 presented an additional barrier; everywhere was locked down, and traveling anywhere was not safe from infection. This was especially true in Afghanistan, where people do not often follow public health recommendations. The criteria for issuing visas was another challenge for Afghan students because the law of Indonesia for immigration is very strict for Afghans. Furthermore, the term of this research was only three semesters; so, it needed hard-working, otherwise, the student will have laid back. I should also add that the field research I conducted via questionnaires sometimes did not yield quick answers; sometimes, I waited more than a month to receive the questionnaires' responses. It also happened that sometimes, I asked the respondents more than ten times to answer the questionnaires; maybe they didn't have internet,

they didn't have time, or they didn't want to answer; that's why the number of respondents in the questionnaires is not high and equal. The barriers listed above were all compounded by the very short term of researching and writing I had. I needed to work hard to overcome these challenges and meet the ultimate goal.

## K. Benefits of this Research

The benefit of research can be assessed from different angles, depending on its novelty and the social problem. First, the researcher is the first one that benefits from research directly by gaining more knowledge, getting more experience, learning new methods in research, and getting a promotion. The next beneficiary would be the academic environment to which the study belongs. Then, the affiliated organization will use the research as a new source and create a new idea about conducting research in the relevant area. Another beneficiary is the society which is the aim of the investigation they could gain insight into the harms and benefits of actions by the government; they would realize how they suffered or gained, who was accountable, who performed his duties, and who failed. Finally, the last beneficiary would be the government, whose research has shown its weakness and strengths, so it could be a remedy to overcome the challenges in the future. To conclude, the researcher, and the target community, those who have the responsibility and who have suffered, will benefit directly or indirectly from the research.

## L. Dissertation components

According to the topics discussed in this dissertation, it was necessary to divide this work into eight chapters based on the necessity. Therefore the first chapter of this dissertation is a general introductory chapter for all coming chapters. It covers the available component like the background, research questions, research purpose, the research objective, literature, theoretical framework, sources, the feature of the study, research methodology, limitations, benefits of research, and components of analysis.

Likewise, the second introductory chapter is specific for smoothing the path for the five necessities chapters, that the *Maqāṣid* scholars have argued the means of life and survival of human beings. It explains the concept of *Maqāṣid* and how to understand and achieve the intentions from the viewpoints of *Maqāṣid*'s scholars. The next section of this chapter explains the five necessities. It clarifies the preservation of religion, the need for religion, its development, and the accountability of government to protect the faith. Furthermore, this chapter explains the conservation of the soul, preservation of the mind, protection of generation, and maintenance of the property.

Chapter three focuses on the issue of religious minorities and their freedom in Afghanistan. Under this section, some details include the percentage of religion, discrimination against the Shi'ah Muslim minority, Hindus, Sikhs, and Jewish, and why these minorities left Afghanistan. The third section of this chapter argues the reasons for the government's failure, which covers the inconsistency of the law, like the contradiction of constitutional law articles, constitution with criminal law, lack of government capacity, and insecurity.

The fourth chapter focuses on protecting the life or soul. Therefore after the introductory part, the second part argues the soul preservation challenges in Afghanistan during the last two decades and analyzes the statistics of death from various organizations, the statistics of injuries, and the displacement of people. Then, it argues for the failure of the government to provide health services and meet the needs of people during the pandemic. Later, this chapter focuses on steps taken by the American military and other coalition forces to respond to UNAMA; it also argues the accounting of the Afghan government in action and its weaknesses. The last section presents the reasons for the unaccountability of government that covered the legal impact, non-application of law, the grounds that the governments have not applied the criminal law, the government's reluctance to protect the soul, and combat against horrors.

Chapter five explains the preservation of Aql (mind) that has some subsections like the previous chapters; after a short introduction, it presented the incidents with the same adverse effects on the mind as drugs. The next section of this chapter focuses on the achievements and failures of the Afghan government in combating drugs, the reasons for losses, and the signs of the government's unaccountability. Also, this chapter argues the preservation of the mind through education; this part contains the importance of education in Islam for the development of intellect, the government's achievements, and its failures. The last section includes the government's failure regarding the support of talent, which contains some details.

Chapter six explains the situation that harmed the generation, like mortality and termination of pregnancy, for many reasons such as family shame, travel, gender, and killing of children on the battlefields. Section four argues the barriers to protecting the Offspring, for example, the high cost of marriage and the delay of getting married. Part five explains some solutions; if the government utilized them, they could preserve the generations, such as family protection, combating the negative customaries, and obliging some relevant ministries to be accountable. The last part argues the failure of government agencies, like health departments, and law enforcement departments, and the weak stance of religion *Ulamā*. And the last part is the conclusion.

Chapter seven argues the unfair condition that was continuing to the "public property" in the country, such as illegal "mining" in many places, "usurping of public assets," "embezzlement," in different offices, "group embezzlement" in the palace, "deception in the "army," "embezzlement in customs." The next section of this chapter argues the accountability of the government in protecting private property with many failure examples. For instance, the government could not fix the balance between export and import, and people were losing their money in telecommunications, but the government did not take action. Also, this part argues the case of

Kabul bank in detail, the existence of bribery in the private sector. The last section of this chapter argues the barriers that prohibited the government from accountability. Furthermore, this dissertation has a section that analyzes the government's succession, failures, and reasons for failures. Chapter eight is the conclusion of all previous chapters, with suggestions.



## CHAPTER II

### AD-DARURAH AL-KHAMSAH (FIVE NECESSITIES)

STATE UNIVERSITY  
SUNAN KALIJAGA  
YOGYAKARTA





CHAPTER IX  
CONCLUSION

STATE ISLAMIC UNIVERSITY  
SUNAN KALIJAGA  
YOGYAKARTA



Since the establishment of the government in Afghanistan, people have been concerned about numerous problems. Such as religious and ethnic discrimination, insecurity of human lives, addiction, poverty rate, immigration, and exporting investment capital. Meanwhile, the government, as the first accountable institution in the country, has to take steps toward the welfare of society and prevent any problems. Therefore, this dissertation aimed to analyze the government's activities based on *Maqāṣid* (purposes) to determine whether people were correct to be concerned.

In this section, I consider religious freedom. Although Islamic interpreters disagreed on the abrogation of the verse "La-Ikrah," some interpreters argued: "Verse of Jihad abolished verse" of "La-Ikrah." While others disagreed with this idea and claimed: "it has not lost its power. If the claim that someone believes in the abrogation of the verse "*La-Ikrahā fid-Din*" (there is no force in faith) was true, why did Prophet Mohammad not tell the Muslims to harass the Jews and Christians that were living in Medina? Why did the Prophet caliphs not force the Jews and Christians to convert to Islam? The Prophet's behavior and his clips demonstrate that the verse has power and that aggression in religion is not permitted. Why do Muslims not follow the Prophet and his caliphs? What is the government's obligation to religious organizations and religious minorities?

According to my research, the government did not support religious minorities in any way. Suicide bombers killed minorities and blew up their temples and mosques, and people usurped their properties, but the government imposed no consequences. Over the past two decades, the Afghan government has been ineffective at protecting the rights and supporting the interests of Shi'ah Muslims. For example, fighter groups have attacked their mosques and religious events like weddings, bombed their schools, killed hundreds of teenagers, and attacked their demonstrations with suicide bombings, killing hundreds. Where was the government, and what were its duties? Afghanistan has become a country that does not tolerate minorities. The BBC Persian reported that, at the end of the

19th century, about 40,000 Jews lived in Afghanistan.<sup>727</sup> By the middle of the twentieth century, only 5,000 Jews remained in this country; now, there are none.<sup>728</sup>

The Jews were not the only ones who left the country; the other minorities were also subject to discrimination and left the country, like Sikhs, Hindus, and other ethnic minorities. According to the elders of Afghan Hindus, they reached one hundred thousand in the 1990s but now; decreased to 2,500.<sup>729</sup> The discrimination against these two minorities was different; they could not hold their religious ceremonies, they could not burn their dead, and their children could not go to public schools. Because of this, most of their children remained uneducated. Local strongmen occupied their homes, land, and temples, but the government has not helped them to get their property. They faced insults and humiliation from society and could not practice their religious worship.

The unaccountability of the government had several reasons; One was the inconsistency of the law. The constitution articles themselves contain contradictions. For example, article one said that the religion of Afghanistan is Holy Islam. Article three said: "no law should be opposite of sacred Islam." While article seven said: "The government observes the United Nations Charter, international treaties, international covenants, which Afghanistan has joined, and the Declaration of Human Rights." The second reason the Afghan government could not protect minorities was that this government could not bring stability and create a vital system of protection due

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<sup>727</sup>. Zia Shahreyar, "Janizaei Afghan: Asnaad Pishina-e-Yahoodiyan Imruz Dar Afghanistan (Jeniza Afghan: 'Millennium History of Jews in Afghanistan Today')," *BBC Farsi*, January 4, 2013, [https://www.bbc.com/persian/afghanistan/2013/01/130104\\_zs\\_ancient\\_afghan\\_jewish\\_manuscripts](https://www.bbc.com/persian/afghanistan/2013/01/130104_zs_ancient_afghan_jewish_manuscripts). Accessed: 3/8/2022.

<sup>728</sup>. *Ibid*.

<sup>729</sup>. Rooznamai Hasht Subh (Eight Morning Newspaper), "Sikha, Wa Hinduha Afghanistan Ra Tark Mikunand (Sikhs and Hindus Leave Afghanistan)," *Hasht Subh (Eight Morning News)*, June 15, 2015, <https://8am.af/sikhs-and-hindus-in-afghanistan-leave/>.

to entrenched corruption and embezzlement. The third way the government could protect minorities was to address issues of internal ethnic conflict.

The government has failed to preserve the soul of Afghanistan citizens. According to statistics, fighter groups killed 237,435 during the twenty-year war in Afghanistan. And a twofold number were wounded. Did anyone ask the government and the warring parties for what purpose they killed these people?

In addition to killing and injuring people, internal and external immigration also damaged the soul of Afghanistan. Millions of people emigrated to foreign countries or from one province to another. All these incidences were the result of government unaccountability.

It is worth mentioning that the government has made valuable achievements in maintaining and growing intellectuals, but there have also been shortcomings. The services that governments have implemented over the past two decades have yielded intellectual growth, including in higher education, and were valuable for the future of Afghanistan. Significant changes occurred over the last two decades, such as opening schools for girls, creating new schools, and establishing universities where millions of young people and adolescents started studying. Before 2001, very few doctors and masters existed in universities, but over the last twenty years, the number of masters and doctors in all universities has grown significantly. Some universities have even established master's and doctoral programs and developed relationships with foreign universities. Besides increasing the number of schools, relevant ministries have taken vital measures to ensure the quality of the education offered. Despite all these measures in the education and higher education departments, there were deficiencies in other areas. Children in rural villages experienced a lack of access to classrooms, the absence of teachers, insecurity, and insufficiency of educational

facilities. Further, the government could not provide them with work and activities, forcing them to go abroad.

Other measures that the government has taken to prevent drugs that hazard the human mind were valuable, such as establishing the Ministry of Combating Narcotics, prohibiting the cultivation of narcotics, and building hospitals for mental health. Although these steps were a good start for the future of the country; hence, insufficiency existed. For example, the Ministry of Anti-Narcotics was not active, the cultivation of narcotics was continuing, there were not enough hospitals, the number of addicts was increasing daily, and hospitals could not treat all addicts. Furthermore, other phenomena like war, poverty, and migration negatively affect the mind.

I discussed the accountability of the government regarding the preservation of generation in two parts: the government's achievements and ineffectiveness. The government took some steps to preserve the offspring. For instance, it passed a law on custody for the support of children and also passed a law banning abortion. Third, it enacted the law of weddings and ordered some offices to hold community weddings to support young adults economically. In contrast, the government failed to protect the generation in many parts. First, the government failed children against the killing of school students in Kabul and other provinces, and second, the government could not lower the childhood mortality rate.

Afghanistan was known as the deadliest country for children in the world. Fighters targeted school students repeatedly, and the high mortality rate among the children indicated government unaccountability. In addition, the government's indifference to the lives of mothers, the failure to develop a health system that can meet the needs of sick mothers and children, and the indifference to the lives of families who were unable to feed their children were examples of government unaccountability. Another issue that threatened the generation was abortion. Although the government banned abortions,

still, discrimination against fetuses existed in many cases. The third obstacle was consanguineous marriages, which may lead to delayed marriages. Sometimes, consanguinity causes children to become physically or mentally disabled.

The results of the seventh chapter showed the lack of government attention to public and private assets. In addition to neglecting the maintenance of the public property, people accused the government of unnecessarily consuming public wealth. Nevertheless, the government should have explained to the people where they spent the money. Likewise, the government has not taken any action to stop the smugglers and the illegal extractors of mines; meanwhile, the government has not explained to people why it has not taken any action. Similarly, the governments were not accountable for protecting other parts of public and private property, such as usurped land. The government's promises to return the land to its owners have not come to fruition.

Embezzlement was rampant in customs. Almost the majority of customs staff and security have dealt in embezzlement, from those working as a staff to the police, whose job it was to protect people and their assets. The province's governor, district governor, commander, and chief were all involved in the embezzlement of customs. Embezzlement grew so rampant that embezzler agents bribed some media outlets not to expose their embezzlement. Other places of embezzlement were the Ministry of Finance and the Department of Revenue.

Likewise, embezzlement was widespread in the military. The sale of weapons, the possession of fictitious soldiers and officers, the non-payment of salaries to soldiers and officers, and the theft of expenditures allocated to provinces and provincial organs were regular acts of fraud. Those who had tied relationships to high-ranking government officials embezzling. Another example of embezzlement was in the president's palace, where the spending of public property by the president's relatives and friends for personal

benefit changed to a charity house. Parliament members were also involved in the embezzlement. These legislators had agents to collect taxes on their behalf or sending to their accounts. Document forgery was also common. The government has never accounted for these actions.

The lack of accountability extended to maintaining assets in the private sector. For example, the government failed to balance the exports and imports between Afghanistan and neighboring exporting countries. Second, the companies and factories in the country were increasingly bankrupt or closed because they could not compete with foreign producers. Furthermore, the government has not developed policies to meet the demand of the markets or to support these private sector companies economically and technically. Third, the governments have not provided the security of life and work for the private sector. For example, outside rivals have physically attacked some companies' buildings, business owners have been kidnapped and killed, or their family members have been abducted and killed. Fourth, the government preferred to enter contracts for big projects with foreign, not domestic, companies. Fifth, the government could not balance foreign production with domestic production to restrict the foreign products that existed in the country. Sixth, for the above reasons, most traders moved their capital out of Afghanistan, and the government was indifferent.

The government was not accountable in the Kabul Bank case; even Shir Khan Farnood accused the president of withdrawing \$20 million from the bank, which was not his property, for his election. The president's brother, the vice president's brother, and other government members, including the finance minister, got loans from the bank but did not return them, according to claims. Half of the money remained unknown for the rest of the government's life.

To conclude, governments have not had accountability to protect the religious, have not paid attention to saving the lives of citizens, and have not taken effective and sustainable measurements



for the growth and preservation of the mind. Failures in the fight against drugs, establishing professional and equipped hospitals, and treating addicts were visible. Although the government enacted laws to protect the offspring; hence, the enforcement agencies have not consistently enforced them. And the challenges of generational retention still exist. Also, the government failed to maintain public assets, manage mines, stop embezzlement from government offices, was not successful in controlling customs corruption, has not supported the private sector, and eventually went bankrupt.

### Suggestions

I analyzed the data to know whether the government protected religious minorities or not protected them. Therefore I presented a few reasons for its failure, such as war, security failures, and the weakness of intelligence services. Thus, writing the religious preservation chapter faced me with a question: why does the history of discrimination against minorities go back to the two decades before 2001? Due to the prevailing conditions in Afghanistan and the lack of access to reliable sources, I could not find a complete answer to this question. Future researchers can research the reasons why discrimination is systematic in Afghanistan. Also, it is necessary to know why discrimination is increasing in other Muslim countries, including Iraq, Iran, Syria, Yemen, Pakistan, and Saudi Arabia. These areas require research through the lens of *Maqāṣid* of Islamic law to find the root of the problem.

The Afghan government has also failed to protect the lives of its citizens. An increase in violence between 2001 and 2021 caused millions of people to be displaced and thousands to lose their bodies. What will be the fate of families and children and orphans, people who lost their body parts in the war, people who emigrated to Western countries and left the religion of Islam—who is accountable for them? Afghanistan can be a lesson for other countries. Do Iraq, Syria, and Yemen have the same situation? Is the *Maqāṣid* of *Jihad* to destroy cities, force people to flee their homes, and cause social

problems? Or is the *Maqāṣid* of Islamic law different from what is happening in Muslim countries, and there is a need for broad research about the *Maqāṣid* of Jihad (holy war)?

Environmental circumstances, political changes in Afghanistan, and conservatism in the Afghan government departments all impacted my ability to research the issue. Therefore, each of these five concepts, such as religious preservation, soul preservation, mind preservation, offspring preservation, and property preservation, can be an independent topic for research.

My research showed that the Afghan government has failed in all five sectors. Therefore, for the success and internal and external credibility of the government, it is suggested to first support religious freedom, as Islamic law has given the people freedom of belief and protects the rights of minorities. The government should respect minorities' rights to practice their religions. It should preserve their lives and property, and the government should punish those who disturb religious and religious minorities. The second part is the soul protection, mind, and generation. The law requires governments to prioritize life safety, growth and preservation of the mind, and maintenance of offspring in their policies. Another principle, which refers to both public and private property, is that the government needs wealth for the welfare of the government and the people, so it is necessary to maintain both parties to eradicate poverty and unemployment from society. If the government prevents embezzlement of public resources and spends it where necessary, it will effectively solve many challenges to the reconstruction and provide for the needs of the government.



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