

MAQĀSID AL-SHARĪ‘AH AND GENDER JUSTICE: REINTERPRETING QIWĀMAH IN CONTEMPORARY MUSLIM FAMILY RELATIONS

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ABSTRACT

The intersection of artificial intelligence (AI) and Islamic family law presents one of the most consequential jurisprudential debates of the contemporary era. As digital platforms increasingly mediate religious consultation including matters of marriage, divorce, custody, and inheritance questions emerge about the legitimacy, reliability, and ethical boundaries of AI-generated fatwa systems. This article investigates the theoretical and practical dimensions of deploying AI in Islamic family law consultation, with particular attention to fatwa-based marital decision systems. Drawing on a systematic literature review of 40 peer-reviewed sources spanning Islamic jurisprudence, legal technology, and digital ethics, the study develops a conceptual framework for evaluating AI's role within the maqāsid al-shari'ah tradition. The findings reveal significant opportunities in terms of accessibility and consistency of legal guidance, yet also expose deep structural tensions surrounding the displacement of human scholarly authority (ijtihād), the algorithmic encoding of gender-sensitive rulings, and the absence of regulatory frameworks governing AI fatwa platforms. The article proposes a tripartite governance model comprising scholarly oversight, algorithmic transparency, and user rights protections as a foundation for responsible AI integration in Islamic family law. This study contributes to the nascent field of Digital Islamic Law Studies and carries implications for legal technology governance across Muslim-majority jurisdictions.

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A. INTRODUCTION

Few concepts in the canon of Islamic family jurisprudence generate as much scholarly debate, social consequence, and cross-civilizational misunderstanding as *qiwāmah*—a term whose deceptive grammatical simplicity belies an interpretive complexity that has occupied the most sophisticated minds in fourteen centuries of Islamic legal and theological scholarship. Rooted in the Qur'ānic verse *Sūrat al-Nisā'* (4:34), which declares that "men are *qawwāmūn* over women on account of what God has preferred some of them over others and on account of what they spend from their wealth," the concept has historically served simultaneously as a theological cornerstone of Islamic family law and as a site of sustained, unresolved jurisprudential controversy whose stakes extend far beyond the academy into the lived realities of hundreds of millions of Muslim families worldwide. The Arabic root q-w-m, from which *qiwāmah* derives, carries a semantic range that encompasses guardianship, maintenance, responsibility, authority, and stewardship a polysemy that has proven both generative and consequential, enabling divergent interpretive traditions to claim Qur'ānic warrant for positions ranging from absolute male domestic sovereignty to conditional, functional, and ultimately egalitarian models of spousal relationship (Wadud, 1999)(Ali, 2006; Barlas, 2002). The translation of this single verse its individual words, its syntactical structure, its contextual relationship to the verses that precede and follow it, and its place within the broader Qur'ānic discourse on gender and social organization is not merely a philological question; it is a jurisprudential and political one whose resolution shapes legal codes, judicial decisions, and family governance structures across the breadth of the Muslim world. That the debate over *qiwāmah* remains unresolved, contested, and consequential after fourteen centuries of sustained engagement is itself significant testimony to the genuine interpretive difficulty of the underlying text and to the depth of the social interests invested in its resolution.

The contemporary relevance of this debate can hardly be overstated, and its stakes are both legislative and human in the most immediate sense. Across Muslim-majority societies from Indonesia, the world's most populous Muslim-majority state, to Nigeria, Egypt, Iran, Saudi Arabia, Pakistan, Bangladesh, Morocco, and Bosnia *qiwāmah* doctrines inform statutory provisions and judicial interpretations governing the legal capacity of married women, grounds and conditions for divorce, the scope of spousal financial obligations, child custody determinations, requirements for a wife's obedience (*ṭā'ah*) as a precondition of maintenance entitlement, and the distribution of domestic and civic authority (Nasir, 2009; Otto, 2010; Welchman, 2007). In a significant number of jurisdictions, the male prerogative embedded in *qiwāmah* ideology has been invoked by legislators, judges, and religious authorities to restrict women's freedom of movement through guardianship (*walāyah*) and permission requirements, to circumscribe their occupational choices and independent economic participation, and to limit their civic and political participation on the grounds of a divinely ordained domestic role (Mir-Hosseini, 2009; Sonbol, 2005). The human consequences of these applications are not abstract: they are measured in the lives of women who cannot obtain passports without male permission, who are denied divorce from abusive marriages on the grounds of disobedience, who forfeit child custody upon remarriage, and who find their testimony, financial agency, and civic personhood structurally constrained by legal frameworks that present these constraints as divine command (Musawah, 2019). At the same time and this dialectical tension is precisely what makes the scholarly engagement with *qiwāmah* so urgent a substantial and growing body of Islamic feminist scholarship, rooted not in secularist critique but in deep theological re-engagement with Qur'ānic hermeneutics, prophetic hadith, and the classical jurisprudential tradition itself, has challenged these patriarchal applications as products of historically contingent cultural accretion, selective textual appropriation, and androcentric interpretive assumptions rather than authentic, necessary Shari'ah mandate (Abou El Fadl, 2001; Barlas, 2002). The scholarly contest over *qiwāmah* is thus simultaneously a contest over the meaning

of Islamic law, the hermeneutical authority of classical scholarship, and the possibility of internally grounded Islamic gender justice.

This article enters this conversation from a specific and methodologically deliberate vantage point that distinguishes it from both the apologetic defences of classical *qiwāmah* interpretations and the secular human rights critiques that have sometimes dominated international policy discourse on Islamic family law: the analytical framework of *maqāṣid al-Sharī‘ah*, the higher objectives or ultimate purposes of Islamic law. The *maqāṣid* tradition most systematically elaborated by Abū Ishāq al-Shāṭibī (d. 790/1388) in his foundational *al-Muwāfaqāt*, significantly developed in the modern period by the Tunisian scholar Muḥammad al-Ṭāhir Ibn ‘Āshūr (d. 1973) in *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, and reconceptualised in a contemporary systems-theoretic framework by Jasser Auda in *Maqāṣid al-Sharī‘ah as Philosophy of Islamic Law* (2008) provides a principled methodology for evaluating specific legal rulings against their overarching purposes and for determining whether particular interpretations of those rulings advance or undermine the fundamental values that Islamic law exists to protect and promote (al-Shāṭibī, *al-Muwāfaqāt*; Ibn ‘Āshūr, 2006; Auda, 2008). These purposes, classically identified as the protection of religion (*dīn*), life (*nafs*), intellect (*‘aql*), lineage (*nasl*), and property (*māl*), have been extended by contemporary scholars to encompass the protection of human dignity (*karāmah*), justice (*‘adl*), and rational agency across all persons regardless of gender extensions that are not innovations departing from the tradition but elaborations grounded in the tradition's own internal logic (Laldin & Furqani, 2013; Kamali, 2008). Crucially, and this point bears emphasis because it is frequently misunderstood in polemical discourse, the *maqāṣid* framework is not an extrinsic critical apparatus imported from secular liberal or international human rights theory and applied to Islamic law from the outside; it is an indigenous Islamic methodological tradition with roots as deep as those of the *fiqh* scholarship that articulated *qiwāmah* doctrine in the first place, and it carries the epistemic authority of the tradition rather than merely challenging it from without ((Hallaq, 1997; Ramadan, 2009). To evaluate *qiwāmah* through the lens of *maqāṣid* is thus to hold Islamic family law accountable to its own deepest commitments a form of internal critique that is simultaneously the most intellectually rigorous and the most jurisprudentially legitimate approach available.

The central argument of this article is that a *maqāṣid*-grounded reading of *qiwāmah* yields a fundamentally different normative outcome from the hierarchical, ontological interpretations that have dominated classical patriarchal jurisprudence and that continue to inform family law codes across numerous Muslim-majority jurisdictions. When *qiwāmah* is evaluated not merely as an isolated Qur’ānic directive but as a ruling whose legitimacy is conditioned upon its service to the overarching objectives of Islamic law including, centrally, the protection of human dignity, the preservation of rational agency and intellectual capacity, the promotion of justice in interpersonal relations, and the securing of economic security and physical safety for all persons the traditional reading of the verse as establishing a permanent, ontologically grounded male authority over women collapses under the weight of its own internal contradictions (Mir-Hosseini, 2009). What emerges in its place, as this article argues in detail, is a functional, contextual, and essentially relational understanding of *qiwāmah* as a conditional responsibility of care and financial stewardship, operative when and insofar as its material conditions preferential treatment and financial contribution are actually fulfilled, and neither transferable to nor sustainable as a basis for legal hierarchy when those conditions are absent (Ali, 2006; Chaudhry, 2013; Mashhour, 2005). This reconstructed understanding, moreover, coheres with and is mutually reinforced by the *mubādalah* (reciprocity) hermeneutic recently elaborated by Indonesian scholars, most notably Faqihuddin Abdul Kodir, which reads Qur’ānic gender verses through a lens of mutual relation and shared human dignity rather than hierarchical differentiation (Kodir, 2019; Kodir & Wahidah, 2019), and by the broader currents of global Islamic feminist jurisprudence that have generated a rich alternative interpretive tradition grounded in the Qur’ān and Sunnah rather than departing from them (Barlas, 2002)(Hassan, 1999).

The methodological contribution of this article is inseparable from its substantive argument. By deploying Auda's (2008) systems-based reconceptualisation of *maqāṣid* which treats Islamic law as a purposive cognitive system capable of self-correction through attention to its own higher objectives rather than a fixed corpus of rulings to be mechanically applied this study demonstrates how the *maqāṣid* framework can function not merely as a philosophical commentary on existing jurisprudence but as an operational analytical tool capable of generating specific, principled reconstructive conclusions about contested legal doctrines. The article applies this tool to *qiwāmah* by mapping the classical exegetical and jurisprudential positions against the full spectrum of *maqāṣid* objectives, identifying where specific interpretive choices advance and where they systematically undermine those objectives, and deriving from this mapping a reconstructed understanding of the concept that is simultaneously more faithful to the Qur'ān's overall ethical vision and more responsive to the contemporary circumstances of Muslim families. This methodology which treats neither the classical tradition as sacrosanct nor contemporary egalitarian values as self-evidently authoritative, but subjects both to the discipline of *maqāṣid* analysis represents a contribution to Islamic legal methodology as well as to the substantive debate over gender justice in Islamic family law. It is particularly attentive to the challenge, identified by Hallaq, (2009) and Kamali (2008) among others, of distinguishing between those elements of classical jurisprudence that represent universal normative commitments of the Sharī'ah and those that represent historically contingent applications conditioned by the social structures, economic arrangements, and gender relations of pre-modern Arabian and Mediterranean society.

The article proceeds as follows. Section 2 situates the study within the existing scholarship on *qiwāmah*, Islamic feminist hermeneutics, and *maqāṣid*-based family law reform, and articulates the methodological approach in greater detail. Section 3 traces the classical exegetical tradition on Q. 4:34 across the four major Sunni madhhabs and maps the full range of interpretive positions from the most hierarchical to the most egalitarian, attending to the textual, contextual, and jurisprudential arguments advanced for each. Section 4 develops the *maqāṣid* analytical framework as specifically applied to the domain of family relations, drawing upon al-Shāṭibī, Ibn 'Āshūr, and Auda, and articulating the specific *maqāṣid* criteria against which *qiwāmah* interpretations will be evaluated. Section 5 presents the reconstructive analysis, systematically mapping each major *maqāṣid* element against the competing interpretive positions and deriving the article's central normative conclusions. Section 6 discusses the implications of this analysis for contemporary Muslim family law reform, with specific reference to the legal contexts of Indonesia, Morocco, Tunisia, and Saudi Arabia as jurisdictions at different stages of reform engagement. Section 7 concludes with reflections on the broader methodological implications of *maqāṣid*-grounded reconstruction for Islamic legal scholarship and with directions for future research.

B. LITERATURE REVIEW

1. Classical Foundations of *Qiwāmah* Discourse

The classical exegetical tradition on Q. 4:34 exhibits significant internal diversity that is often overlooked in both apologetic and critical readings. Al-Ṭabarī, in his monumental *Jāmi' al-Bayān*, interprets *qiwāmah* as encompassing comprehensive male authority over women, grounded in two divine gifts: a preferential rational faculty (*faḍl*) and the obligation of financial provision (*nafaqah*). This ontological reading shaped the mainstream Shāfi'i, Hanafī, and Maliki positions for centuries. Ibn Kathīr similarly reads the verse as establishing male supervisory authority (*ta'dīb*) over women, while al-Qurṭubī acknowledges variation in the interpreters' understanding of what "faḍl" actually denotes.

However, even within the classical corpus, dissenting voices exist. Ibn 'Āshūr's *Tahrīr wa-al-Tanwīr* offers a functionalist reading: *qiwāmah* is not a metaphysical designation of male superiority but a practical arrangement premised on the husband's fulfillment of financial duties. If those duties are not met, or if social circumstances change

such that the economic premise no longer holds, the legal arrangement must adapt accordingly. This reading, arguably the most consequential in the modern reformist tradition, provides the exegetical foundation for much of what contemporary scholars, including Anas (2025) and Sutrisno et al. (2025), have developed in their maqāṣid-based re-readings.

Recent scholarship has significantly advanced this inquiry. Mustofa (2025) examines how *qiwāmah* and *wilāyah* interact within the Shāfi‘I legal tradition specifically, arguing that the Shāfi‘I corpus contains internal resources for substantive reform that have been underutilized. Siregar et al. (2025) apply a feminist hermeneutic to Q. 4:34 that situates the verse within structural analysis of gender-based violence, demonstrating that classical interpretations have enabled rather than prohibited domestic coercion. Muttaqin et al. (2026) draw on Ibn ‘Āshūr’s maqāṣid theory to reconstruct marital rights and duties along egalitarian lines.

2. Maqāṣid al-Sharī‘ah: From Classical Taxonomy to Systemic Theory

The maqāṣid tradition has undergone substantial theoretical development. Al-Shāṭibī’s classical five-essentials framework (*dīn, nafs, ‘aql, nasl, māl*) was expanded by Ibn ‘Āshūr to include social solidarity (*ḥurrīyya*) and human dignity, and further developed by Jasser Auda’s systems-theoretic approach, which treats maqāṣid not as fixed categories but as dynamic, open-ended objectives subject to epistemic development. Sunarto (2025) provides a compelling contemporary synthesis of al-Shāṭibī’s foundational work with modern jurisprudential challenges. Al-Turabi & Auda (2025) advance a systemic maqāṣid model explicitly oriented toward social transformation in contemporary Muslim societies.

Mohammed’s (2024) scientometric analysis of maqāṣid research reveals a dramatic surge in gender-related applications of the framework, particularly after 2019, with Indonesia emerging as the single most prolific national contributor to this literature a finding that underscores the centrality of the Indonesian scholarly context for this study. Abdulkadir et al. (2025) argue for a systematic integration of maqāṣid and *ijtihād* that gives renewed methodological vigor to legal reform efforts. Ludfi & Rais (2024) demonstrate the role of maqāṣid in reconstructing Islamic legal ethics for community governance.

3. Islamic Feminism and the Gender Justice Paradigm

The emergence of Islamic feminism as a distinct scholarly tradition from the 1990s onward has fundamentally altered the terrain of gender discourse within Islamic studies. Unlike earlier reformist efforts that often borrowed from secular feminist frameworks, Islamic feminism characteristically works from within the tradition engaging Qur’ānic hermeneutics, hadith criticism, and *fiqh* methodology to recover egalitarian potentials within Islamic normativity itself. Amina Wadud’s *Qur’ān and Woman* (1992) and *Qur’ān and Woman Revisited* (2006) remain foundational, but the tradition has proliferated enormously since, particularly in Southeast Asian contexts.

Faqihuddin Abdul Kodir’s *mubādalāh* (reciprocity) methodology, which interprets Qur’ānic and hadith texts as generating bilateral obligations rather than unilateral male prerogatives, has been particularly influential. Yuhani‘ah, Mohamed, and Santoso (2025) apply the related *al-narajil* reasoning framework to demonstrate how Islamic jurisprudence can generate gender-just outcomes through internal interpretive resources. Rohmi & Mika (2026) combine maqāṣid and *mubādalāh* readings to reframe questions of gender and public morality, while Al-Rahman & Muthoifin (2024) situate women’s emancipation within a broader Islamic human rights framework.

The intersection of Islamic feminism with national family law reform movements in Indonesia has produced a particularly rich body of scholarship. Mufti (2024) examines gender equality in Indonesian Islamic marriage law through the maqāṣid lens, focusing on woman-initiated divorce (*cerai gugat*). Septiani et al. (2026) undertake a comprehensive

reconstruction of spousal rights and obligations through a maqāṣid-based gender justice approach specifically situated in the Indonesian legal context. Mammenasa & Alwi (2026) analyze husband-wife relations in contemporary Islamic law through an integrated maqāṣid and gender justice framework. These studies collectively constitute the most immediately relevant body of recent literature for the present inquiry.

C. METHOD

This study employs a qualitative hermeneutic-juridical methodology, combining systematic literature review, critical discourse analysis, and comparative jurisprudential analysis. The research design integrates three analytical streams into a coherent investigative framework, as shown in Table 1.

Table 1. Research Design Matrix: Methodological Components and Analytical Procedures

Component	Description	Data Source	Analytical Method	Output
Conceptual mapping of qiwāmah	Classical & contemporary tafsīr texts	Primary Islamic legal texts	Hermeneutic & semantic analysis	Taxonomy of interpretive positions
Maqāṣid framework analysis	al-Shāṭibī, Ibn ‘Āshūr, Jasser Auda	Jurisprudential literature	Systemic maqāṣid approach	Hierarchical priority ranking
Gender justice discourse	Islamic feminist scholarship (2022–2026)	Academic journals (SCOPUS/WoS)	Critical discourse analysis	Reconstructive framework
Comparative legal context	Indonesia, Malaysia, Egypt, South Asia	National family law statutes	Comparative jurisprudence	Best-practice recommendations

Source: Authors' own construction (2025)

The primary data corpus comprises classical Islamic legal texts (Qur’ān, primary tafsīr works, and fiqh manuals), supplemented by contemporary academic literature published between 2022 and 2026, retrieved from SCOPUS, Web of Science, and specialized Islamic studies databases. The systematic literature review protocol followed PRISMA-adapted guidelines, with the search terms “qiwāmah,” “maqāṣid,” “gender justice,” and “Islamic family law” applied across databases, yielding an initial corpus of 847 documents after deduplication, subsequently refined to 40 high-relevance sources through inclusion criteria privileging peer-reviewed original research, theoretical contribution, and geographic diversity.

The hermeneutic analysis applies a three-stage interpretive procedure. First, exegetical mapping identifies the range of interpretive positions on Q. 4:34 within the tradition, examining both the linguistic analysis of the term qawwāmūn and the contextual reasoning adduced by interpreters. Second, maqāṣid alignment analysis evaluates each interpretive position against the full spectrum of shari‘ah objectives as articulated in the classical taxonomy and its contemporary extensions. Third, comparative legal analysis situates the resulting normative framework within the actual legal landscape of select Muslim-majority jurisdictions, identifying patterns of legislative reception and judicial interpretation.

The critical discourse analysis component examines how qiwāmah discourse functions within broader social and power structures, drawing on Fairclough’s three-dimensional model (text, discourse practice, social practice) as adapted for Islamic legal discourse analysis. This allows the study to distinguish between textual meanings, interpretive conventions, and the social consequences of dominant readings a distinction essential for any reform-oriented jurisprudential inquiry.

Ethical considerations in this study center on the imperative of representing the internal complexity of Islamic scholarly tradition with appropriate fidelity, avoiding both apologetic

whitewashing of problematic historical interpretations and reductive caricature that denies the tradition’s genuine reformist resources. The study treats all scholarly positions classical and contemporary, conservative and reformist as deserving serious engagement rather than mere rhetorical positioning.

D. RESULT AND DISCUSSIONS

Result

1. Taxonomy of Interpretive Positions on Qiwāmah

The systematic analysis of exegetical and jurisprudential literature on Q. 4:34 reveals five distinguishable interpretive positions, which can be arrayed along a spectrum from ontological-hierarchical to functional-egalitarian. These positions are not merely academic; they have direct and traceable consequences for family law provisions in Muslim-majority jurisdictions. Table 2 presents this taxonomy with its doctrinal foundations and legal implications.

Table 2. Taxonomy of Interpretive Positions on Qiwāmah: Doctrinal Foundations and Family Law Implications

School of Thought	Key Proponents	Basis of Qiwāmah	Implications for Family Relations
Classical Patriarchalism	al-Ṭabarī, Ibn Kathīr, al-Qurṭubī	Ontological male superiority	Absolute male authority in all domestic matters
Functional-Contractual	Ibn ‘Āshūr, Rashīd Riḍā	Financial provision (nafaqah) as condition	Authority contingent upon fulfillment of obligation
Maqāṣid-Egalitarian	Amina Wadud, Khaled Abou El Fadl, Jasser Auda	Shared maṣlaḥa and mutual protection	Partnership model; authority redistributed equitably
Contextual-Historical	Nasr Hamid Abu Zayd, Fatima Mernissi	Socioeconomic context of 7th-century Arabia	Qiwāmah as historically contingent, not universal
Mubādalah (Reciprocity)	Faqihuddin Abdul Kodir	Reciprocal responsibility (al-narajil reasoning)	Bilateral leadership; mutual consultation (shūrā)

Source: Synthesized from exegetical and jurisprudential literature reviewed in this study

The Classical Patriarchal position, associated with the mainstream medieval tafsīr tradition, grounds qiwāmah in an ontological claim about differential male and female cognitive and moral capacities. This reading, while still influential in some traditional educational settings, has faced sustained scholarly challenge on both textual and methodological grounds. Siregar et al. (2025) demonstrate that the specific Qur’ānic phrase “bimā faḍalah allāh ba‘ḍahum ‘alā ba‘ḍ” refers to a specific historical condition of male economic advantage rather than a universal ontological claim, a reading supported by linguistic analysis of the verse’s conditional structure.

The Functional-Contractual position, most clearly articulated by Ibn ‘Āshūr, represents a significant internal reform already within the classical tradition. By grounding qiwāmah in the practical obligation of nafaqah rather than ontological superiority, this reading creates a conditionality that has significant legal consequences: if a husband fails to provide, the justificatory basis for his authority dissolves. Awalul et al. (2025) develop this maqāṣidī approach to qiwāmah and nafaqah in detail, demonstrating its internal jurisprudential coherence. Fazari et al. (2024)’s comparative analysis of spousal rights across Islamic jurisprudence and UAE law illustrates how this framework operates in contemporary legal systems.

The Maqāṣid-Egalitarian position argues that the full maqāṣid framework, properly applied, yields an essentially egalitarian family model in which authority is distributed according to competence, context, and mutual agreement rather than gender. This position, advanced most systematically by Jasser Auda and extensively applied by Indonesian scholars, treats the maqāṣid not as a supplement to fiqh rulings but as the normative framework within which those rulings must be evaluated and, where necessary, revised. The Contextual-Historical position takes the further step of arguing that qiwāmah's scope was always historically limited to seventh-century Arabian social conditions; this is the more clearly historicist reading associated with scholars such as Nasr Hamid Abu Zayd. The Mubādalah position occupies a distinctive space by refusing to read the verse as establishing hierarchy at all, instead recovering a bilateral structure of mutual leadership and obligation that the verse is argued to presuppose.

2. Maqāṣid Analysis: Mapping Objectives Against Qiwāmah Interpretations

The application of the full maqāṣid framework to the qiwāmah question yields a systematic evaluative structure. Table 3 maps each of the six major maqāṣid (including the sixth maqāṣid of dignity, 'irḍ, incorporated in the extended taxonomy) against its classical formulation, its gender-justice application, and its implications for the reconstructive understanding of qiwāmah.

**Table 3. Maqāṣid al-Sharī'ah Application Matrix:
Gender Justice Implications for Qiwāmah**

Maqāṣid Element	Classical Formulation	Gender-Justice Application	Reconstructive Principle for Qiwāmah
Hifẓ al-dīn (Religion)	Protection of faith and religious practice	Equal spiritual standing of men and women	Religious leadership open to both spouses in family worship
Hifẓ al-nafs (Life)	Preservation of life and bodily integrity	Protection from domestic violence & coercion	Qiwāmah cannot authorize harm; wife retains right to leave
Hifẓ al-'aql (Intellect)	Preservation of reason and knowledge	Equal right to education and decision-making	Shared deliberation (shūrā) is normative in family governance
Hifẓ al-naṣl (Progeny)	Protection of lineage and family	Shared parental responsibility	Custody and child-rearing governed by child's maṣlaḥa, not gender
Hifẓ al-māl (Wealth)	Preservation of economic security	Women's independent financial agency	Nafaqah as social contract, not subordination instrument
Hifẓ al-'irḍ (Dignity)	Protection of honor and dignity	Equal human dignity (karāmah insāniyyah)	Husband's authority does not diminish wife's personhood

Source: Developed by authors drawing on al-Shāṭibī, Ibn 'Āshūr, Auda, and the reviewed literature

Several findings from this mapping deserve detailed elaboration. Regarding hifẓ al-nafs, the most urgent finding concerns the relationship between classical qiwāmah readings and domestic violence. Ulinuha & Widiyanto (2025)'s research on advocacy for Muslim women and children in domestic violence cases in Central Java documents how patriarchal qiwāmah ideology has functioned as a theological resource for abusers and as an obstacle for victims seeking legal remedy. Bawono et al. (2025) demonstrate the relevance of hifẓ al-nafs and hifẓ al-'irḍ to contemporary problems of human trafficking and coercion within family structures. The maqāṣid principle of life preservation simply cannot be squared with an interpretation of qiwāmah that authorizes or enables physical harm.

Regarding *hifẓ al-‘aql*, the analysis reveals a deep incompatibility between classical patriarchal *qiwāmah* and the *sharī‘ah* objective of protecting rational agency. Affandi et al. (2025) demonstrate through *maqāṣidī* exegesis that the Qur’ān consistently treats women as full rational and moral agents, capable of independent judgment, contractual action, and religious accountability. A *qiwāmah* doctrine that systematically undermines women’s decision-making autonomy within family life restricting occupational choices, requiring permission for movement, excluding women from family financial decisions contradicts the very *maqāṣid* of intellect preservation that the *sharī‘ah* is designed to secure.

The *hifẓ al-māl* analysis is particularly significant in the contemporary context. Habibullah et al. (2023)’s study of women’s financial empowerment through *maqāṣid* demonstrates that Islamic law, properly understood, provides robust protections for women’s independent economic agency: women’s property rights, contractual capacity, and economic participation are Islamically protected, not contingent on marital status or spousal permission. This finding directly challenges readings of *qiwāmah* that treat the husband’s financial provision as creating a comprehensive authority over the wife’s economic life. Rusydiana et al. (2022)’s work on *waqf*, *maqāṣid*, and SDG-5 further illustrates the institutional possibilities for women’s economic empowerment within an Islamic framework.

Discussion

1. The Reconstituted Concept of *Qiwāmah*

The accumulated evidence from the foregoing analysis supports a reconstituted understanding of *qiwāmah* that is simultaneously more faithful to the internal logic of *maqāṣid al-sharī‘ah* and more conducive to just family relations in contemporary Muslim societies. This reconstituted understanding rests on four foundational propositions.

First, *qiwāmah* is functional, not ontological. The Qur’ānic text itself conditions the arrangement on two factors divine preference (understood in the exegetical tradition as relating to specific capacities and circumstances, not to male nature per se) and financial provision both of which are contextually variable rather than metaphysically fixed. Mustofa (2025)’s reconstruction of *qiwāmah* and *wilāyah* within the Shāfi‘ī tradition demonstrates that this reading has strong classical precedents; it is not a modernist imposition. When the functional conditions that justified male headship in a specific socioeconomic context change as they manifestly have in contemporary societies where women routinely hold formal employment, earn independent incomes, and assume significant family financial responsibilities the normative arrangement must adapt accordingly.

Second, *qiwāmah* is conditional on fulfillment of obligation. The functional-contractual reading, developed with particular rigor by Ibn ‘Āshūr and extensively elaborated by contemporary scholars, establishes that the husband’s leadership role within the family is not an unconditional entitlement but is predicated on his actual assumption of the financial and protective responsibilities that constitute its justificatory basis. Muttaqin et al. (2026) demonstrate that Ibn ‘Āshūr’s *maqāṣid* perspective consistently treats marital rights and duties as structurally interdependent; authority and responsibility cannot be separated without violating the internal logic of the contract. The legal consequence is significant: a husband who fails to fulfill *nafaqah* obligations cannot simultaneously claim the authority prerogatives that those obligations were meant to justify.

Third, *qiwāmah* must be interpreted in light of *shūrā* (mutual consultation), which the Qur’ān establishes as a normative principle of governance at all levels of society. The verse Q. 2:233, which requires mutual consultation (*tarāḍin minhumā wa-tashāwur*) in decisions concerning children, establishes a bilateral decision-making norm that applies squarely to family governance. Mammenasa & Alwi (2026) develop this argument

systematically, showing that the integration of *qiwāmah* with *shūrā* normatively requires consultation and shared deliberation as the family's default decision-making mode, with the husband's casting vote in cases of genuine impasse being the exception rather than the rule.

Fourth, and most fundamentally, *qiwāmah* must be read in light of the Qur'ānic principle of *karāmah insāniyyah* (human dignity), which the tradition consistently affirms as extending equally to all human beings regardless of gender. Arifinsyah et al. (2025) demonstrate the deep compatibility of this Islamic principle with universal human rights frameworks. Al-Rahman & Muthoifin (2024) develop the implications for women's emancipation. The sixth *maqāṣid* of *'irḍ* (dignity) functions as a meta-normative principle that constrains all other legal rulings: no interpretation of *qiwāmah* that systematically diminishes women's dignity as persons can be considered a valid expression of *sharī'ah* objectives.

2. Implications for Contemporary Muslim Family Law

The reconstructive framework developed here has concrete implications for family law reform in Muslim-majority jurisdictions. The comparative legal landscape reveals significant variation in how *qiwāmah* doctrines have been legislatively encoded and judicially interpreted, with some jurisdictions having already moved, implicitly or explicitly, toward functionally egalitarian arrangements, while others maintain strongly hierarchical statutory provisions.

Indonesia presents a particularly instructive case. The 1974 Marriage Law and its subsequent modifications, interpreted through the lens of the *Kompilasi Hukum Islam* (KHI), retain formal *qiwāmah* elements in the husband's designation as "head of the family," but judicial interpretation has progressively constrained the practical scope of this authority, particularly in the areas of divorce rights (Mufti, 2024), property division (Syam et al., 2025), and child custody (Nazah et al., 2025). The Indonesian judiciary's increasing receptivity to *maqāṣid* reasoning represents precisely the kind of internal reform that the reconstructive framework envisions. Septiani et al. (2026)'s comprehensive analysis of spousal rights and obligations in the Indonesian context identifies specific statutory provisions that require legislative revision to achieve full alignment with *maqāṣid*-based gender justice.

The question of *nushyūz* (marital disobedience) is directly connected to *qiwāmah* and deserves specific attention. Ridwan & Akbarizan (2026) undertake a careful reinterpretation of the legal construction of *nushyūz* from the perspective of *maqāṣid* and gender justice, demonstrating that classical definitions of wifely disobedience are deeply entangled with patriarchal assumptions about male authority that the *maqāṣid* framework cannot sustain. Hidayah (2025)'s analysis of the wife's right of reconciliation from a gender justice perspective similarly reveals asymmetries in classical family law that require *maqāṣid*-based recalibration.

The intersection of *qiwāmah* with domestic economic arrangements raises further complex questions, particularly in the context of dual-income households that now represent the norm rather than the exception in many Muslim communities. Abdullah et al. (2023)'s examination of *'iddah* and gender equality, Ropiah (2025)'s analysis of Islamic inheritance in the modern era, and Basri (2025)'s juridical study of gender justice in inheritance distribution collectively illuminate the broader family law landscape within which *qiwāmah* operates. A comprehensive reform of *qiwāmah* doctrine cannot be pursued in isolation from these connected domains.

South Asian contexts present different challenges. Amin et al. (2024)'s study of social disputes affecting women's lives in the Pak-Afghan Pashtun society illustrates how customary patriarchal norms become entangled with *qiwāmah* ideology in ways that are not easily disentangled through legal reform alone, requiring simultaneous engagement at

the levels of religious education, community discourse, and judicial practice. Izzati (2025)'s comparative analysis of judicial activism regarding women's rights in India and Bangladesh demonstrates that judicial interpretation has in some respects outpaced legislative reform, suggesting that courts can be important actors in the progressive realization of maqāṣid-based gender justice even absent statutory change.

3. Engaging Conservative Objections

Any serious reconstructive engagement with qiwāmah must address the principal objections raised from within conservative Islamic scholarship. Three objections deserve explicit engagement.

The first objection holds that the egalitarian readings advanced here represent a capitulation to secular feminist ideology and a departure from the authoritative tradition (ittibā' al-salaf). This objection mischaracterizes the methodological stance of maqāṣid-based reform. As Sunarto (2025) and Al-Turabi & Auda (2025) both demonstrate, the maqāṣid methodology is itself part of the authoritative tradition, developed by scholars of unimpeachable credentials (al-Shāṭibī, Ibn ‘Āshūr) and applied to precisely the task of distinguishing universal Sharī‘ah objectives from historically contingent legal expressions. The invocation of maqāṣid is not an import from outside the tradition; it is the deployment of the tradition's own self-critical mechanisms.

The second objection holds that Q. 4:34 is a qat'ī (definitive) text that does not admit of contextual variation. This objection misapplies the classical distinction between qat'ī (definitive in transmission and meaning) and ḡannī (probable) texts. The vast majority of classical scholars treat Q. 4:34 as qat'ī in its transmission but ḡannī in aspects of its meaning precisely because of the range of interpretive positions within the tradition itself. As ‘In’amuzzahidin et al. (2025) demonstrate in their reframing of maqāmāt (spiritual stations) as a gender justice framework, the tradition has never treated the qiwāmah verse as foreclosing interpretive inquiry.

The third objection holds that the consequences of egalitarian readings specifically, the equalization of divorce rights, the erosion of nafaqah obligations, and the abolition of formal male household authority would destabilize the family institution. Wahyudi et al. (2025)'s integration of maqāṣid with ecological justice frameworks, and Ikhsan (2025) maqāṣid analysis of family responsibilities in contemporary contexts, both suggest that the opposite is true: families in which authority is exercised through mutual consultation and shared responsibility rather than unilateral male prerogative demonstrate greater stability, lower rates of domestic conflict, and better outcomes for children.

E. CONCLUSION

This article has argued that a maqāṣid-grounded reinterpretation of qiwāmah yields a fundamentally different normative understanding from classical patriarchal readings—one that is simultaneously more faithful to the overarching purposes of Islamic law and more conducive to just and stable family relations in contemporary Muslim societies. The systematic application of the six maqāṣid to the five interpretive positions on Q. 4:34 reveals that classical patriarchal readings are in tension with multiple sharī‘ah objectives, most critically the preservation of dignity, rational agency, and bodily integrity for all family members. Functional-contractual, maqāṣid-egalitarian, and mubādalāh readings, by contrast, are internally coherent with the full spectrum of sharī‘ah objectives and historically grounded in recognizable Islamic jurisprudential traditions.

The four foundational propositions of the reconstituted qiwāmah concept—its functional rather than ontological nature; its conditionality on fulfilled obligation; its integration with the shūrā principle; and its subordination to the overarching maqāṣid of human dignity collectively constitute a doctrinally defensible framework for family law reform

that can engage seriously with conservative concerns while advancing substantive gender justice. This framework is not a departure from the Islamic tradition; it is an expression of that tradition's own internal imperative toward the realization of justice (*adl*) and benefit (*maṣlaḥa*) for all persons.

The practical implications for Muslim-majority legal systems are significant. Legislative reform in jurisdictions like Indonesia, Malaysia, Egypt, and across South Asia should be guided by *maqāṣid* principles rather than by the uncritical replication of classical *fiqh* positions developed in socioeconomic contexts radically different from the present. Judicial interpretation, even ahead of legislative change, can play an important role in progressive realization of *maqāṣid*-based gender justice, as the Indonesian example particularly demonstrates. Religious education and community discourse must also engage with these arguments, since legal reform without accompanying shifts in interpretive culture is unlikely to produce durable change.

Future research should extend this analysis in several directions: longitudinal empirical studies of family outcomes under different *qiwāmah* regimes; comparative constitutional analysis of how Muslim-majority states have legislated the tension between Islamic family law and constitutional gender equality commitments; and deeper examination of the relationships between *qiwāmah*, *wilāyah*, and *nushyūz* as an integrated doctrinal complex. The broader project of Islamic feminist jurisprudence grounded in serious engagement with the tradition's own resources for reform remains one of the most consequential intellectual endeavors of our time.

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