

The Nature of Qiwāmah and the Jurisprudential–Legal Feasibility of Its Transfer, Waiver, and Extinguishment

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The concept of *qiwāmah* has, throughout the centuries, been regarded by scholars as one of the most important grounds for recognizing men's responsibility for the management of family affairs and has been examined from both Islamic jurisprudential and family-law perspectives. This article, which aims to investigate the legal and jurisprudential nature of *qiwāmah*, examines its status under different circumstances, particularly with respect to the possibility of transferring *qiwāmah* to another person and the possibility of its extinguishment or waiver. The study employs a descriptive–analytical method and examines whether *qiwāmah* constitutes a right or a legal ruling (*ḥukm*), as well as the conditions and elements from which it arises. By elucidating the nature of *qiwāmah*, the present study considers it a basis for men's responsibility arising from two necessary conditions, one inherent and the other acquired. Accordingly, under no circumstances can *qiwāmah* be transferred to another person; nor can a man divest himself of it, and it is not susceptible to waiver. Consequently, if a man, for any reason, refuses to assume this responsibility or fails to perform the duties arising therefrom, the rules established in Islamic jurisprudence and law require him to provide the requisite conditions and fulfill his obligations; otherwise, upon the wife's request and by order of the competent judicial authority, he may be required to divorce his wife.

Keywords: *Qiwāmah, qiwāmah as a legislative rationale, non-transferability of qiwāmah, non-waivability of qiwāmah.*

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1. Introduction

Qiwāmah is a concept that, in every era and period, has received attention in Islamic jurisprudence and law in relation to family matters and the mutual rights of spouses. A man's responsibilities, and consequently the rights he has in relation to the family and particularly his wife, are among the issues significantly influenced by the meaning attributed to the term *qawwāmūn*. In view of the meanings assigned to *qawwāmūn*, the temporal development of the term, as

one of the factors contributing to changes in its meaning, should not be overlooked when assessing its jurisprudential and legal implications. Identifying the nature of *qiwāmah* in Islamic jurisprudence and family law, as well as determining whether it is transferable or non-transferable and waivable or non-waivable, is therefore important. A review of the relevant studies and works conducted to date, including books, theses, and scholarly articles, indicates that the term *qawwāmūn* has been examined from various jurisprudential, legal,



exegetical, and psychological perspectives, and numerous issues concerning it have been discussed.

Studies concerning *qiwāmah* have addressed its effects on the rights of spouses, exegetical analyses of the term and its meaning, the historical development of exegetes' views regarding the concept of *qiwāmah*, and the legal and psychological dimensions of the term and its effects within the family.

This article seeks, through an explanation of the lexical meaning of *qawwāmūn*, to examine the influence of historical development on its meaning and to determine its legal and jurisprudential nature. It further considers whether, in cases where a man deliberately refuses to fulfill his responsibilities or where another impediment exists, *qiwāmah* may be transferred to another person or to the wife, or whether a man may, for any reason, divest himself of this responsibility. It also examines whether, if such a possibility exists, other rights, such as the right of divorce, permission to leave the marital home, and similar matters, would likewise cease to belong to the man. Finally, it investigates the jurisprudential and legal grounds, if any, for such transfer or waiver and the consequences arising therefrom.

2. The Meaning of *Qawwāmūn*

Various and differing meanings have been attributed to the term *qawwāmūn* in light of the context of the verse, the circumstances of its revelation, and changes occurring over time and within society. The meaning of this term has attracted the attention of lexicographers, exegetes, jurists, and legal scholars throughout most historical periods. Lexicographers have examined its meaning with reference to the grammatical structure of the verse and the words surrounding it. Exegetes have interpreted it on the basis of the vocabulary and contextual structure of the verse, whereas jurists and legal scholars have proposed different meanings by reference to the Qur'anic verses containing legal rulings and lexical considerations. Historical developments and transformations within Islamic societies have also affected the meaning of *qawwām*, constituting another factor contributing to semantic variation in the term.

2.1. *The Meaning of Qawwāmūn from the Perspective of Scholars*

To explain the meaning of *qawwāmūn* and examine it from jurisprudential and legal perspectives, it is first necessary to consider its lexical meaning and the views expressed by scholars.

2.1.1. *Qawwāmūn in Lexicography*

Lexically, *qawwām* is an intensive form derived from *qiyām* and has been described as encompassing three meanings: standing in relation to a person, standing in relation to a thing, and steadfastly maintaining a determination. (Mustafavi, 1982) Standing in relation to a person may arise either through domination or through voluntary assumption of responsibility, whereas standing in relation to a thing denotes its preservation and rectification. In *Mufradāt Alfāz al-Qur'ān*, standing in relation to a person is understood as a man's voluntary undertaking of matters relating to a woman's life. (Raghib Isfahani, 1991) It is also stated, with respect to the grammatical construction of the term, that when *qawwām* is followed by the preposition 'alā, it signifies protection and guardianship. (Ibn Manzur, 1993) In another definition, *qawwām* means that a man is required, in a manner commensurate with the woman's social status, to provide her maintenance and assume responsibility for her financial affairs. (Himiyari, 1999; Ibn Manzur, 1993) *Qawwām* has also been defined as making the woman aware of the man's position in terms of reason, physical strength, and similar characteristics. (Mustafavi, 1982) This status is regarded as an inherent distinction attributed to men. (Qurashi, 1991) Accordingly, based on the foundations and meanings proposed by lexicographers for the term *qawwām*, most definitions emphasize the man's position, the woman's awareness of what is regarded as his inherent status, and his responsibility for the woman's financial and personal affairs. In this approach, the man is considered to possess an elevated position that is regarded as inherent and as constituting a particular merit attributed to him.

2.1.2. *Qawwāmūn from the Perspective of Exegetes*

In interpreting the meaning of *qawwām*, some exegetes have emphasized the notion of frequently or continuously undertaking responsibility. (Balaghi) Others have regarded *qiwāmah* as indicating men's

authority over women for the purpose of directing them toward obedience to God and exercising discipline, guidance, command, and prohibition. (Faydi, 1996; Tabarsi, 1991, 1993; Tusi) Some exegetes have regarded being *qawwām* as an indication of men's superiority over women. (Sha'rani, 2007) It has also been stated that, so long as spouses live together, men are required, on the basis of nature, religious law, and established norms, to exercise care and supervision over women. (Balaghi) In another interpretation, *qawwāmūn* has been rendered as those who administer and undertake women's affairs so that such affairs may be properly conducted. (Kashani) It has further been interpreted as requiring men to assume responsibility for financial matters. (Kashani, 2002)

Other interpretations understand *qiwāmah* as referring to the man's responsibility for the woman's maintenance, clothing, and similar needs. (Rawandi, 1985) From this perspective, authority over the woman is regarded, at the first level, as deriving from an inherent divine gift and merit, while at the second level it is regarded as acquired by virtue of the financial expenditure undertaken by the man. The basis of this authority is said to be men's greater rational capacity and physical strength, which have been bestowed upon them. (Ardabili; Kazemi) On this basis, *qawwāmūn* is understood as the husband's authority over the wife by virtue of a divine endowment granted to him for managing her financial, economic, and educational affairs through reason and physical capability; this is consequently viewed as a basis for his precedence over the woman.

According to another view, mere rationality is insufficient to qualify a person for a managerial role; rather, the individual must possess the intellectual capacity and judgment necessary for *qayyūmiyyah* and the assumption of responsibility. (Javadi Amoli, 2009) Based on the meanings adopted by exegetes, the significance of *qiwāmah* lies in what is viewed as a natural distinction between men and women and the differences existing in the natural order, together with the man's authority to manage the woman's affairs, assume responsibility for her, care for her, and provide support. He must therefore possess the capacity to manage the affairs of family life.

2.1.3. *Qawwāmūn from the Perspective of Jurists*

Jurists have proposed various meanings and concepts for *qawwām* in accordance with the verse and its context. These interpretations may be classified into four different semantic categories.

According to the first interpretation, *qawwāmūn* denotes authority or dominance. (Najafi, 1984) There are, however, different interpretations regarding the nature and scope of such authority. According to the second interpretation, *qawwām* means a person who bears responsibility and provides protection. (Ardabili, 2002) The third interpretation, based on the intensive morphological form of the word, refers to the man's undertaking of responsibility toward the woman and the extent and effect of guardianship or authority. (Various) This interpretation also concerns the extent to which a wife must comply with her husband's marital rights. Finally, *qawwāmūn* has been understood as denoting management. Because the man bears financial responsibility within the family, decision-making authority is also attributed to him; from this perspective, the man is responsible for family affairs and decisions but is not the owner of the woman. (Makarem Shirazi, 2004)

On this basis, earlier jurists generally understood *qiwāmah* in terms of the man's authority over the woman. As time passed, however, and transformations occurred in family structures and responsibilities within societies, a clear shift in the interpretation of the term became apparent. Some jurists came to regard *qiwāmah* as a form of responsibility assumed by the man toward the woman, requiring him to care for and protect her and to manage matters pertaining to her.

2.1.4. *The Term Qawwāmūn in Law and Legislation*

In light of verse 34 of Surah al-Nisā', and within the legal system of the Islamic Republic of Iran, whose enacted laws derive from the Qur'an and the tradition of the Ahl al-Bayt, headship within the marital relationship and family is attributed to the husband. Article 1105 of the Iranian Civil Code provides accordingly. Among the legal consequences of this headship are the husband's authority in determining the marital residence, the father's compulsory guardianship over children, and his responsibility for family expenses, as reflected in Articles 1180 and 1199 of the Civil Code. In the same context, a

husband may prohibit his wife from engaging in an occupation or profession that is incompatible with family interests or with the dignity of either spouse, pursuant to Article 1117 of the Civil Code. The justification advanced for such legal rules and principles is the perceived necessity of having a person responsible for directing the family unit. (Emami) In light of what is stated in the verse, the man is regarded as possessing the requisite conditions for family headship.

2.2. The Semantic Evolution of the Term *Qawwāmūn*

The effect of historical development on variations in the meaning of *qawwāmūn* merits careful consideration. Different historical circumstances, together with variations in culture, social structures, and women's roles in society, have influenced this semantic development. Over time, the nature of women's activities and their social roles have affected not only the meaning of the term but also the scope of the rights and duties attributed to the person considered *qawwām*. These factors have accordingly produced changes in perspectives concerning the meaning of the term and differences in the respective rights and duties of spouses across historical periods.

The semantic evolution of *qawwām* may broadly be divided into the period before the eighteenth century CE and the period thereafter. Based on lexical understandings, most Islamic scholars before the eighteenth century CE, when women generally participated less extensively in public life and were, in some contexts, considered to occupy lower levels of formal knowledge, interpreted *qawwām* as undertaking a woman's affairs. (Ibn Manzur, 1993; Raghīb Isfahani, 1991) It was also interpreted as men's authority over women in terms of guardianship and discipline. (Tabarsi, 1993; Tusi) Another interpretation viewed it as authority over women arising from divine endowment, perfection, and strength. These interpretations extended to the point that the man was, in some formulations, regarded as superior in rank to the woman, (Majlisi II, 1984) and his authority was compared to that of a ruler over subjects. (Fayd Kashani, 1994)

From the eighteenth century CE onward, women's presence in social and scholarly spheres, and gradually also in economic activities, became increasingly visible and extensive. Correspondingly, the meaning of *qawwām* also underwent changes. The term came to be

understood as referring to one who administers a woman's affairs and supports her, (Kashani) as well as to the man's undertaking of responsibility for matters concerning the woman. (Various) Where the meaning of authority was retained, some interpretations restricted it to three matters: permission to leave the marital home, marital obedience, and divorce. (Mughniyah, 2004) In certain approaches, the scope of male headship and authority has been further subjected to changing circumstances, and it has been argued that, if *qiwāmah* depends upon specific operative causes and the man lacks or fails to fulfill the required conditions, namely merit and financial support, he is no longer considered *qawwām* within the family. Under this view, his *qiwāmah* in relation to the woman and the family ceases. In the absence of the conditions of *qiwāmah*, no distinction is made between their absence resulting from deliberate refusal and their absence resulting from incapacity. (Javadi Amoli, 2009; Makarem Shirazi, 2004; Qandahari, 2003)

Accordingly, what may be inferred from this semantic development is that social and cultural conditions, women's activities in society, and their increasing social and cultural participation have led to a new approach to the application of *qawwāmūn* in relation to rights and legal rulings both within and outside the family. These developments have reduced the emphasis on the husband's authority over the wife and have instead placed greater emphasis on cooperation and partnership between spouses in family affairs. Under certain specific circumstances, legal and jurisprudential sources also allow contractual restrictions to be imposed on men through stipulations incorporated into the marriage contract so as to prevent undue hardship in other matters.

3. Conditions of *Qiwāmah* and Their Legal and Jurisprudential Foundations

According to the verse, the person possessing *qiwāmah* must satisfy two conditions: merit or divine favor (*faql*) and financial expenditure (*infāq*). The first condition is divine and inherent, while the second is acquired in the sense that the person must fulfill the necessary requirements. It is upon the basis of this merit and expenditure that responsibility for managing and administering women's affairs is entrusted to the *qawwām*. Regarding the lexical meanings of *faql* and

infāq, some lexicographers maintain that *faḍl* signifies an excess of goodness and beneficence beyond what is ordinarily due to a person or thing. (Mustafavi, 1982) It is stated that this merit is specifically granted to prophets and men in accordance with the obligations and responsibilities entrusted to them. Thus, obligation corresponds to the existence of capacity and aptitude in an individual and is, in this respect, regarded as a merit. Capacity is granted in relation to a particular mission, and differences in the capacities granted result in differences in the responsibilities imposed. (Mustafavi, 1982) The terms *infāq* and *nafaqah* likewise signify giving or providing something, including something beyond what is otherwise due to an individual. Such expenditure may be financial or non-financial and may be obligatory or recommended, while maintenance provided to the family must be sufficient to meet their needs. (Mustafavi, 1982) Accordingly, God has granted men a form of merit consisting of inherent aptitude and capacity, as well as another form of advantage reflected in property, financial capability, social standing, and power. Furthermore, because the preposition *‘alā* follows *qawwāmūn* in the verse, it indicates action and undertaking on the part of the man with respect to the woman’s affairs. Semantically, the preposition *‘alā* also conveys a notion of protection and sustained responsibility, unlike the preposition *bi*, which does not itself convey the same association with undertaking and action. (Mazandarani, 2008) Another issue concerns whether *qiwāmah* is the cause of *faḍl* and *infāq* or whether *faḍl* and *infāq* constitute the causes of *qiwāmah*. It is argued that, given the causal function of the preposition *bi* in *bimā*, *qiwāmah* is connected causally with *faḍl* and *infāq*, such that these two factors constitute the grounds of *qiwāmah*. (Turayhi, 1995) Thus, merit and financial expenditure constitute two conditions of *qiwāmah* and entail greater responsibility for men.

3.1. Whether *Qiwāmah* Constitutes an Operative Cause or a Legislative Rationale

There are differing views as to whether the conditions associated with *qiwāmah* constitute operative causes or merely the legislative rationale underlying the rule. Some opinions support the view that they represent the rationale or wisdom (*ḥikmah*) underlying *qiwāmah*, whereas others treat them as operative causes (*‘illah*). According to the latter view, if *faḍl* and *infāq* constitute

causes of *qiwāmah*, then where the husband deliberately refuses to fulfill them or is incapable of doing so, his *qiwāmah* ceases and he may no longer benefit from the rights that arise from this position within the family. By contrast, others maintain that *faḍl* and *infāq* constitute merely the legislative rationale underlying the man’s *qiwāmah*. Under this interpretation, even if these qualities are absent or, for any reason, are not realized in practice, the man’s *qiwāmah* remains unaffected. Their absence merely gives the woman the right to apply to the competent religious judge so that the man may be compelled to provide maintenance or, alternatively, to divorce her. This view does not accept that *qiwāmah* can be removed from the man, extinguished, or transferred to the woman herself; rather, it maintains that the man remains responsible for the woman’s *qiwāmah* in all circumstances and that this status is not subject to waiver.

3.1.1. Operative Cause, Legislative Rationale, and the Distinction Between Them

Lexicographers, jurists, and exegetes have expressed different views regarding the meanings of operative cause and legislative rationale.

Lexically, *ḥikmah* means soundness, knowledge, and awareness, and a wise person is called *ḥakīm* because he performs matters firmly and soundly. (Qurashi, 1991) An operative cause, by contrast, is a reason or, technically, the criterion upon which a ruling depends. This means that the existence or non-existence of the ruling follows the existence or non-existence of the cause, and operative causes may be divided into substantive and evidentiary categories. The distinction is that, in the case of an operative cause, the ruling exists when the cause exists and ceases when the cause does not exist, whereas a legislative rationale is a consideration that motivates the enactment of a ruling but upon which the continuing existence of the ruling does not depend. In other words, legislative rationale refers to the reason underlying the establishment of the ruling and corresponds to what is sometimes described as the purposes or causes underlying religious legislation. (Raghib Isfahani, 1991) In another formulation, the criterion upon which a ruling depends is called its operative cause. The dependence of a ruling upon its cause means that wherever the cause exists, the ruling exists, and wherever the cause is absent, the ruling is likewise absent. By contrast, a criterion

upon which the ruling does not directly depend is termed a legislative rationale. Such a rationale is not a standard upon which the ruling legally turns, nor has the Lawgiver necessarily provided it to the legally responsible person as a controlling criterion; rather, it may be mentioned for other purposes, such as demonstrating that the relevant consideration generally exists in most cases. Accordingly, an operative cause is the criterion upon which the ruling itself depends, whereas a legislative rationale is the reason underlying the enactment of the ruling.

3.1.2. Scholarly Views on Whether *Qiwāmah* Is Based on an Operative Cause or a Legislative Rationale

Scholars have expressed differing views regarding whether the conditions associated with *qiwāmah* constitute an operative cause or a legislative rationale. Earlier jurists and the majority of later and contemporary jurists and scholars maintain that *qiwāmah* is based on legislative rationale rather than an operative cause and that no circumstance can negate men's responsibility within the family. According to this view, because of men's inherent and acquired advantages, they are regarded as occupying a position of precedence over women and as being responsible for administering their affairs. (Rawandi, 1985) Men are consequently required to assume responsibility for women's financial and non-financial rights. (Bahrani) From this perspective, the man's authority over the woman is regarded as a divine endowment that cannot be denied. Another formulation states that women's rights are imposed as obligations upon men because men assume responsibility for women in financial and other matters; consequently, the authority to divorce has been assigned to men, and men have also been given authority in relation to the implementation of certain legal punishments and disciplinary measures. (Bahrani) Elsewhere, it is stated that the man is placed in a position of authority over the woman and that a contrary arrangement would be inconsistent with legislative wisdom. (Hilli, 1984) In other statements by jurists and exegetes, *qiwāmah* is similarly characterized as being exclusively vested in men because of what they consider men's natural superiority and their authority over women. (Tabarsi, 1993)

In contrast, some exegetes and jurists maintain that, if *faḍl* and *infāq* constitute operative causes of *qiwāmah*,

then the absence of either condition, whether resulting from the husband's incapacity or deliberate refusal, causes his *qiwāmah* to cease. Under this approach, the man can no longer act as *qawwām* within family life or remain responsible for the woman's affairs. (Javadi Amoli, 2009; Makarem Shirazi, 2004; Qandahari, 2003) On this basis, the woman may apply to the competent religious judge to compel the husband to fulfill his responsibilities or, alternatively, to obtain a divorce from him. (Mughniyah, 2003)

In this regard, Ayatollah Makarem Shirazi states that, if the conditions of *qiwāmah* are treated as operative causes and the man does not possess them, his *qiwāmah* would cease. (Makarem Shirazi, 2004) Elsewhere, however, in response to the question whether a marriage would be invalid and whether the husband would lack *qiwāmah* where a poor man marries a wealthy woman who bears all household expenses, he states that "all of these are legislative rationales, not operative causes capable of invalidating the marriage." (Makarem Shirazi, 2004) In his explanation, he further states that, having regard to contemporary society, *qawwām* should be understood as meaning management; accordingly, the husband undertakes responsibility for the woman's affairs but does not own her. It therefore appears that Ayatollah Makarem's position ultimately regards the conditions of *qiwāmah* as legislative rationales, while his discussion of their being operative causes is merely hypothetical. Similarly, Ayatollah Javadi Amoli states that "if" *qiwāmah* is assumed to depend upon an "operative cause" and the man lacks the relevant conditions, he would not be *qawwām* within the family. (Javadi Amoli, 2009) Thus, his statement likewise does not expressly establish that *qiwāmah* and its conditions constitute operative causes; rather, he presents the matter hypothetically. Qandahari similarly states that, where the husband fails to provide financial support because of incapacity or deliberate refusal, he does not possess *qayyūmiyyah*, provided that all natural advantages and financial expenditure together are treated as the operative cause of *qayyūmiyyah*, rather than each being regarded independently. Here too, the proposition is conditional upon treating the entirety of these advantages as constituting the operative cause, rather than merely assuming that some of them are absent, and the matter is therefore presented hypothetically. (Qandahari, 2003) Accordingly, in light of

the foregoing and the views expressed by other jurists and scholars, there is substantial support for the position that the conditions underlying a man's *qayyūmiyyah* constitute legislative rationale. Even when those conditions are absent, the man's status as *qawwām* is not thereby impaired in such a way that the ruling may be transferred to another person, lose its validity and cease to operate, or be voluntarily waived by the man himself.

3.2. *Whether Qiwwāmah Is a Right or a Legal Ruling*

With respect to whether *qiwwāmah* constitutes a legal ruling or a right, whether it is capable of waiver, and whether it may be transferred to another person, jurists and exegetes have expressed various views and relied upon arguments that warrant examination.

3.2.1. *Right and Legal Ruling and the Distinction Between Them*

Lexically, *ḥaqq* is a verbal noun meaning establishment or fixedness and is defined as the opposite of falsehood. (Ibn al-Athir) In civil-law terminology, a right is an authority granted by law to individuals enabling them to perform an act, while leaving them free to perform or refrain from performing that act. (Emami) In Islamic jurisprudence, a right is a form of legally recognized authority over property, another person, or an incorporeal matter. On this basis, a right may be regarded as a form of ownership, although it does not attain the full degree of ownership and occupies a lower legal rank. (Bahr al-Ulum, 1983; Tabatabaei Yazdi, 2000) The term *ḥukm*, as a verbal noun, lexically signifies judgment and prevention of injustice. (Abu al-Husayn, 1984; Jawhari, 1989) Technically, a religious ruling denotes the Lawgiver's demand that a legally accountable person perform or refrain from an act, or the attribution of a legal effect to a matter under religious law. On this basis, a legal ruling is not subject to waiver, and the agreement of individuals to disregard rulings concerning matters such as usury and excessive uncertainty has no effect on the operation of those rulings. (Tabatabaei Hakim)

One distinction between a right and a legal ruling is that a right is generally characterized by its susceptibility to waiver. Some scholars rely in this respect on a Prophetic tradition and the principle of dominion. (Majlisi II, 1989) This differs from a legal ruling, which is not subject to

waiver. Although three characteristics are generally attributed to a right—waivability, assignability, and transmissibility—there are differing opinions regarding the universality of these features. (Ansari, 1994) Some scholars therefore maintain that certain interests described as rights which cannot be waived are not, properly speaking, rights at all but rather legal rulings. Thus, if paternal authority cannot be waived, it is not in fact a waivable right but a religious ruling, and, as stated above, its non-waivability results from its legal character. (Na'ini, 1954)

A second distinction is that a right may be assigned, whether for consideration or gratuitously, through sale, settlement, or other contractual arrangements. (Na'ini, 1954) A third distinction is that a right may also be transmitted from one person to another.

Accordingly, rights and legal rulings are generally distinct legal categories and ordinarily stand in a relationship of mutual exclusivity. In exceptional circumstances, however, the relationship may be one of partial overlap, particularly where the complete legal cause giving rise to a right renders that right incapable of waiver, assignment, or transmission.

3.2.2. *Doubt as to Whether a Matter Constitutes a Right or a Legal Ruling and Its Transferability*

Where uncertainty exists as to whether a matter constitutes a right or a legal ruling, scholars and jurists have proposed several approaches.

According to the first view, distinguishing a right from a legal ruling depends upon the totality of the religious proofs from which the legal institution has been derived, and one cannot rely solely on their consequences, such as whether they are waivable, assignable, or transmissible. (Bahr al-Ulum, 1983)

According to the second view, in addition to relying on the consequences of a right or legal ruling in order to distinguish between them, scholars have referred to consensus, the contextual structure of the relevant evidence, and appropriate practical principles, such as the presumption of non-waiver. (Tabatabaei Yazdi, 2000)

According to the third view, another method is to resort to practical legal principles, including the principle of continuity (*istiṣḥāb*). (Ansari, 1994)

Based on the foregoing, some scholars maintain that no legal ruling is capable of waiver, whereas all rights are, in

principle, susceptible to waiver and assignment. (Na'ini, 1954) A right may be financial or non-financial and, from this perspective, may either be waivable or non-waivable and either transferable or non-transferable. Where the source of a right constitutes a complete legal cause, as in the case of guardianship, waiver or transfer is impossible because the legal effect cannot depart from its complete cause. If a right is specifically attached to a particular individual, it may be waivable but not transferable, which distinguishes it from a legal ruling. A right that is not personally attached to a specifically designated individual may be susceptible to waiver, assignment, and transmission. (Bahr al-Ulum, 1983)

3.2.3. Scholarly Views Regarding the Possibility of Transferring *Qiwāmah*

Regarding whether *qiwāmah* constitutes a right or a legal ruling, the position that emerges from juristic writings is that *qiwāmah* constitutes a legal ruling rather than a personal right. Consequently, its assignment, waiver, or transmission by inheritance is not accepted. (Hosseini Shirazi; Subhani Tabrizi, 2003)

4. Conclusion

The meaning of *qiwāmah* in verse 34 of Surah al-Nisā' is among the most influential concepts in the interpretation of the verse and in defining the rights and obligations arising within the family. As demonstrated by the foregoing discussion, *qiwāmah* has been assigned specific meanings from different perspectives within the religious and legal sciences, and each interpretation has correspondingly affected the rights and duties of family members, particularly those of spouses. One of the factors contributing to changes in the meaning of the term is its historical and temporal development. Transformations occurring within societies, together with changes in the nature and extent of women's activities and social participation, have resulted in differences in scholarly approaches to the meaning of the term. Women's increased social participation and growing familiarity with contemporary issues have significantly affected the interpretation of legal rulings and rights, such that the man's role within the family has gradually shifted in meaning from authority over the woman toward cooperation with her.

Through the causal function of the preposition *bi* in the term *bimā, qiwāmah* is connected with *faḍl* and *infāq*, and according to the views of most scholars, *faḍl* and *infāq* represent two forms of advantage, one inherent and the other acquired, attributed to the man in relation to the woman. Exegetes and lexicographers have likewise described *faḍl* and *infāq* as concepts involving the conferral of an additional benefit or bounty. *Faḍl*, in particular, refers to something granted to an individual beyond what is ordinarily required, and this additional endowment consequently gives rise to a corresponding difference in responsibility.

The writings of earlier, later, and contemporary jurists indicate that they generally regard the conditions underlying *qiwāmah* as legislative rationale rather than operative cause. Under this approach, the man's responsibility for managing the woman's affairs remains established under all circumstances, and he remains responsible for her protection, guidance, and related matters. In the writings of certain jurists, the characterization of these conditions as operative causes appears only hypothetically, such that, if they were treated as operative causes and ceased to exist, the basis of *qiwāmah* would likewise cease. However, according to the available formulations, such causality has generally been advanced only as a hypothetical proposition, and these jurists appear ultimately to accept the legislative-rationale character of *qiwāmah*.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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