

## Research Proposal

# Rights Without Responsibilities: Toward a Unified Framework of Inheritance Entitlement and Corresponding Duties in Islamic Law

Submitted to:

Submitted by: Dr. Mamdouh Salama

Date:

## 1. Background and Motivation

The Quranic verses on inheritance (primarily Surah Al-Nisa 4:11-12 and 4:176) represent one of the most precisely legislated systems in religious law. Shares are fixed, conditions are defined, and the rules for priority among heirs are elaborated in extraordinary detail across fourteen centuries of jurisprudential scholarship.

Yet the Quranic and prophetic tradition consistently frames rights within a moral economy of mutual obligation. The Quran pairs entitlements with accountability throughout: the right to inherit is situated within a broader network of relational duties that the same surah establishes, including maintenance (*nafaqa*), guardianship (*wilaya*), and kinship solidarity (*silat al-rahim*).

When scholars are asked whether Islamic jurisprudence addresses the responsibilities of heirs, they typically affirm that it does. And they are partially correct. The relevant duties are discussed across classical literature. However, a careful review of the major works reveals that this treatment is consistently fragmented, dispersed, and never unified into a single framework that maps each inheritance right to its corresponding obligation. The following survey of primary sources demonstrates this gap.

### 1.1 Survey of Existing Literature

#### A. Classical Works on Inheritance Law (*Kutub al-Mawarith*)

##### 1. Ibn Qudama al-Maqdisi, *Al-Mughni* (12th century, Hanbali)

The most comprehensive classical fiqh encyclopedia in the Hanbali tradition devotes an entire volume to inheritance (*Kitab al-Fara'id*) and separate sections to *nafaqa* (financial maintenance). Ibn Qudama explicitly acknowledges that the son's financial duty toward his mother is grounded in the same relational bond that gives him an inheritance share.

However, he treats these as legally separate chapters with no unified framework connecting entitlement to duty. The reader must cross-reference two separate books to reconstruct the connection.

## **2. Al-Nawawi, *Minhaj al-Talibin* (13th century, Shafii)**

A foundational Shafii reference, structured in the classical *abwab* format. Inheritance and *nafaqa* are treated in separate chapters with no systematic linkage. Al-Nawawi's commentary tradition (*Rawdat al-Talibin*) expands on both topics but similarly does not produce an integrated framework.

## **3. Ibn Abidin, *Radd al-Muhtar ala al-Durr al-Mukhtar* (19th century, Hanafi)**

The definitive late Hanafi reference work. Ibn Abidin discusses at length the financial obligations of family members and the inheritance system, and in places acknowledges the moral logic connecting them. However, the rights-responsibilities link is noted as an ethical observation, not developed as a jurisprudential framework. His discussion of cases where an heir's conduct affects their inheritance claim is limited to the classical bars to inheritance: murder of the deceased, apostasy, and difference of religion.

## **4. Al-Dardir, *Al-Sharh al-Kabir with Hashiyat al-Dasuqi* (18th century, Maliki)**

The Maliki tradition, which historically gave judges (*qadis*) the most discretionary authority among the four madhabs, contains the strongest seeds of a responsibilities-linked approach. Al-Dardir and al-Dasuqi discuss cases where family obligations affect legal standing, but this is not synthesized into a unified inheritance framework.

## **5. Al-Sijistani, *Sunan Abi Dawud, Kitab al-Fara'id***

Hadith collections document the Prophet's direct rulings on inheritance distribution, and several hadith establish the principle that financial responsibility and inheritance entitlement are linked. However, the most foundational hadith on this linkage appears not in Abi Dawud's inheritance chapter but in *Sahih Muslim, Kitab al-Rada'* (Book of Breastfeeding and Nursing). The Prophet's statement, "*upon the heir is the same obligation*" (*ala al-warith mithl dhalik*), was made in the context of a nursing mother's maintenance during the waiting period (*idda*). Jurists derived the broader inheritance-responsibility principle from it by implication. The hadith's placement in the context of family obligation rather than inheritance law is itself significant: it demonstrates that the Prophet understood these two domains as parts of a single relational framework, even though subsequent jurisprudential classification separated them. This separation in classification is precisely the gap the proposed study addresses.

## B. Classical Works on Financial Maintenance (*Kutub al-Nafaqat*)

### 6. Ibn Hazm, *Al-Muhalla* (11th century, Zahiri)

Ibn Hazm takes a characteristically strict textual approach and explicitly connects the duty of maintenance to the relational bonds that also determine inheritance priority. His treatment is among the most direct in classical literature on this linkage. However, his Zahiri school had limited institutional influence, and his framework was not adopted by the majority jurisprudential tradition.

### 7. Al-Kasani, *Bada'i al-Sana'i* (12th century, Hanafi)

A sophisticated Hanafi legal encyclopedia that discusses the gradation of maintenance obligations across family members. Al-Kasani notes that proximity in inheritance shares corresponds generally to proximity in maintenance obligation, which is the closest any classical Hanafi work comes to articulating the linkage this proposal examines. It remains, however, an observation rather than a developed theory.

## C. Contemporary Encyclopedic Works

### 8. Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* (20th century)

The most comprehensive modern survey of Islamic law across all four madhabs. Al-Zuhayli covers both inheritance and family financial obligations in extraordinary detail and in places explicitly notes that the two systems are morally and legally connected. This is the reference most likely to be cited by contemporary jurists when they claim the issue has been addressed. However, even al-Zuhayli does not produce a unified matrix of rights and corresponding responsibilities. He notes the connection; he does not systematize it.

### 9. Muhammad Abu Zahra, *Al-Ahwal al-Shakhsiyya* (20th century)

A foundational Egyptian work on personal status law that integrates inheritance and family obligations within a modern legal framework. Abu Zahra is sensitive to the social justice dimensions of inheritance law and notes cases where mechanical application produces inequitable outcomes, but does not resolve the framework gap.

### 10. Yusuf al-Qaradawi, *Fiqh al-Zakah* and related works

Al-Qaradawi's extensive work on financial obligations in Islam approaches the ethics of wealth distribution and family responsibility comprehensively but does not specifically address the inheritance-responsibility matrix.

## D. The Critical Observation

A jurist citing any of the above works is correct that the topic has been discussed. But discussion is not the same as systematic treatment. The existing literature resembles a building whose architectural elements exist but have never been assembled into a coherent structure. The inheritance rules are in one room. The maintenance obligations are in another. The guardianship duties are in a third. No work has drawn the floor plan that shows how they connect.

This is the specific scholarly contribution the proposed study would make.

## 1.2 Legal Precedents: When Courts Link Inheritance to Unfulfilled Responsibility

Classical Islamic law establishes only three formal bars to inheritance:

1. Killing the deceased (*qatl*)
2. Difference of religion (*ikhtilaf al-din*)
3. Slavery (*riqq*, now obsolete)

Failure to fulfill family responsibilities is not a classical bar to inheritance in any of the four madhabs. This is precisely the gap this research addresses. However, several important legal mechanisms exist where courts have engaged with this tension.

### 1. Enforcement of Nafaqa as a Separate Legal Claim

In most Muslim-majority jurisdictions with codified personal status law, a mother or any dependent can sue an heir for unpaid maintenance independently of the inheritance question. The court will not strip the son of his inheritance, but it will:

- Issue a judgment requiring him to pay back maintenance (*nafaqa muta'akhhira*)
- Garnish his wages or assets
- In some jurisdictions, impose criminal penalties for abandonment of a dependent family member

Key jurisdictions with relevant codification:

- **Egypt, Personal Status Law (amended through Law No. 100 of 1985):** Provisions on *nafaqa* allow courts to compel maintenance payments from sons toward mothers, with enforcement mechanisms. Egyptian courts have

issued rulings where sons were ordered to pay significant back maintenance while simultaneously holding inheritance claims. The two proceedings are legally parallel, not integrated.

- **Jordan, Personal Status Law No. 36 of 2010:** Codifies the son's maintenance obligation toward his mother and grants courts enforcement authority, separate from inheritance proceedings.
- **Morocco, Moudawwana (Family Code, reformed 2004):** One of the more progressive Muslim family law codes, it strengthens enforcement of maintenance obligations and gives judges broader discretionary authority, reflecting Maliki jurisprudential flexibility.
- **Pakistan, Muslim Family Laws Ordinance 1961:** While primarily addressing marriage and divorce, Pakistani courts have in practice engaged with maintenance obligations of heirs and exercise wide discretionary authority in family matters.
- **Malaysia, Islamic Family Law (Federal Territories) Act 1984:** Syariah courts have authority to compel maintenance payments and have issued rulings against sons who neglected mothers, though this remains separate from inheritance proceedings.

## 2. The Maliki Doctrine of Judicial Discretion (*Ijtihad al-Qadi*)

The Maliki school, dominant in North and West Africa, grants judges the broadest discretionary authority of any madhab. Maliki judges historically had the authority to consider the conduct and circumstances of heirs when adjudicating family disputes. While this did not formally extend to stripping inheritance rights, it created space for judges to:

- Delay transfer of inheritance pending resolution of maintenance claims
- Offset inheritance amounts against proven maintenance debts
- Issue injunctions preventing disposal of inherited assets until maintenance obligations were satisfied

This Maliki practice is the closest historical precedent to the rights-responsibilities linkage this study proposes to systematize.

### 3. The Principle of *Al-Gharim* (Debtor Offsetting)

Classical fiqh establishes that any debt owed by an heir to the deceased's estate is offset against their inheritance share before distribution. This principle is documented in foundational classical sources: Ibn Qudama's *Al-Mughni* in the chapter on inheritance (*Kitab al-Fara'id*), Al-Kasani's *Bada'i al-Sana'i* in his treatment of offsetting between heir and estate, and Ibn Abidin's *Radd al-Muhtar* in his affirmation of this ruling within the Hanafi school.

This proposal suggests that applying analogical reasoning (*qiyas*) to this principle opens a promising jurisprudential avenue: unpaid maintenance obligations neglected by an heir toward a dependent, such as a mother, could be treated as a cognizable debt and offset against that heir's inheritance share before distribution. This line of reasoning has not yet been developed into a complete jurisprudential framework, nor has it been formally adopted by any court system as binding doctrine. It therefore represents one of the most fertile and consequential questions this research proposes to address.

### 4. Contemporary Reform Proposals

- **Tunisia** has historically been the most progressive Muslim-majority country in family law reform and has explored linking inheritance entitlement to demonstrated family responsibility in academic and legislative discussions, though no formal law has enacted this linkage.
- **The Arab League's Model Personal Status Law** drafts have included discussions of heir responsibilities but have not produced binding provisions on this question.
- **The International Islamic Fiqh Academy (Jeddah)** has issued resolutions on inheritance-adjacent questions but has not specifically addressed the rights-responsibilities integration.

## Summary Table: Legal Mechanisms Available When an Heir Fails Responsibilities

Mechanism	Jurisdiction	Effect on Inheritance
Nafaqa enforcement judgment	Egypt, Jordan, Pakistan, Malaysia	No effect on inheritance; parallel claim
Asset garnishment for unpaid maintenance	Most codified Muslim family law systems	Can attach inherited assets post-distribution
Maliki judicial discretion	North/West Africa	May delay or offset but not formally strip
Debt offsetting ( <i>al-gharim</i> analogy)	Academic proposal, no binding adoption	Proposed reduction of share by maintenance debt
Criminal abandonment penalties	Some jurisdictions	Separate criminal matter, no inheritance effect

## 2. Research Objectives

This study aims to:

1. Identify every class of heir recognized in the Quranic and Sunnah-based inheritance system
2. Map, for each heir class, the specific duties and responsibilities that were either explicitly stated or structurally implied as the basis for their entitlement
3. Examine whether classical jurists acknowledged this rights-responsibilities linkage, and if so, how they treated it
4. Analyze what happens legally and ethically when an heir claims a right while failing the corresponding responsibility
5. Propose a unified jurisprudential framework that presents Islamic inheritance as a rights-responsibilities matrix rather than a rights-only distribution table
6. Explore whether contemporary Islamic courts and family law can incorporate responsibility-conditioned inheritance claims
7. Examine existing legal mechanisms in Muslim-majority jurisdictions where courts have engaged with the failure of heirs to fulfill corresponding responsibilities, and assess whether any jurisdiction has formally linked inheritance entitlement to demonstrated duty, with a view to developing model provisions that could be adopted in contemporary family law codes

### 3. Central Research Questions

1. Does classical Islamic jurisprudence recognize an implicit contract between inheritance entitlement and corresponding duty, and if so, how explicitly is this articulated?
2. Which responsibilities are legally enforceable (*wajib*) versus morally recommended (*mustahabb*) for each heir class?
3. Under what conditions, if any, does a failure of responsibility affect the right to inherit in existing fiqh?
4. Is there precedent within any of the four major madhabs for conditioning, reducing, or contesting inheritance claims on the basis of unfulfilled obligations?
5. What reform, clarification, or codification would bring the inheritance system into alignment with the Quranic principle that rights and responsibilities are inseparable?

### 4. Significance of the Study

This research addresses a gap that is both scholarly and practical.

**Scholarly significance:** No existing monograph systematically presents the Islamic inheritance system as a unified rights-responsibilities framework. Such a work would make a foundational contribution to the literature of *fiqh al-usra* (Islamic family law).

**Practical significance:** Muslim communities globally face situations where the mechanical application of inheritance rules produces outcomes that contradict the spirit and intent of the Quranic system. Scholars, judges, and family counselors need a reference that allows them to reason from the full moral architecture, not just the distribution table.

**Contemporary relevance:** As Muslim-majority countries modernize their family law codes and as Muslim minorities in Western contexts navigate estate planning, the question of whether inheritance entitlement can or should be linked to demonstrated responsibility is increasingly urgent.

## 5. Scope and Methodology

**Scope:** The study will cover all primary heir classes under the *fard* (fixed share) and *asaba* (residuary) systems, as well as *dhawul arham* (distant kindred) where relevant.

### **Primary heir classes to be analyzed:**

- Spouse (husband and wife)
- Sons and daughters
- Father and mother
- Paternal grandfather and grandmother
- Full, consanguine, and uterine siblings
- Sons of full and consanguine brothers
- Paternal uncles and their sons
- Daughters in the absence of sons (and the residuary implications)

### **Methodology:**

1. Textual analysis of Quranic verses on inheritance and their relationship to adjacent verses on family obligations
2. Hadith analysis focusing on prophetic statements that link financial and protective duties to family relationships
3. Classical fiqh survey across the four Sunni madhabs (Hanafi, Maliki, Shafii, Hanbali) and Jafari fiqh, examining how each treated the duties of heirs
4. Thematic synthesis to construct the rights-responsibilities matrix
5. Contemporary case review of selected Muslim family court decisions where responsibility failures were raised in inheritance disputes
6. Comparative legal review of personal status codes from Egypt, Jordan, Morocco, Malaysia, and Pakistan for relevant provisions and case law

## 6. Expected Outputs

1. A comprehensive rights-responsibilities matrix covering all heir classes
2. A monograph or scholarly paper suitable for publication in a peer-reviewed journal of Islamic law

3. A practical reference document usable by Islamic scholars, family courts, and community counselors
4. Recommendations for how this framework can be integrated into contemporary Muslim family law reform discussions

## 7. Proposed Scholar Profile

This research requires a scholar with:

- Advanced specialization in *fiqh al-mawarith* (Islamic inheritance law)
- Comparative knowledge across at least two of the four Sunni madhabs
- Familiarity with contemporary Muslim family law in practice
- Ideally, experience with Islamic court proceedings or fatwa work

## 8. Note on Originality

A preliminary review of existing literature confirms that while inheritance law and family obligations are each treated extensively in isolation, no existing work presents them as a unified framework in the manner proposed here. This study would be, to the researcher's knowledge, the first systematic attempt to do so.

## 9. Proposed Timeline

Phase	Activity	Duration
Phase 1	Textual and hadith analysis	Months 1-2
Phase 2	Classical fiqh survey across all madhabs	Months 3-5
Phase 3	Contemporary case and legal code review	Months 6-7
Phase 4	Synthesis and construction of rights-responsibilities matrix	Months 8-9
Phase 5	Drafting of monograph and peer review	Months 10-12

Total estimated duration: 12 months

## 10. Funding and Arrangements

This is a commissioned research project. Honorarium, institutional support, and funding arrangements are to be discussed and confirmed upon the scholar's acceptance of participation.