



Foundations of the Legitimacy of the General Muslims' Intervention in Managing the Properties of the Incapacitated and the Absent in Imāmī Fiqh

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Article Info	ABSTRACT
Article type: Review Article Article history: Received 14 June 2023 Received in revised form 23 July 2023 Accepted 04 September 2023 Available online 22 June 2025 Keywords: legitimacy of intervention, fudūlī, properties of the mahjūrīn and ghā'ibīn, Imāmī Fiqh, foundations and evidence of proof	Based on the sources of Imāmī fiqh, wilāyah at its highest level is established for the Prophet (s) and the Imams ('a), and a level of it can also be proven for the faqīh. Similarly, a lower level of it is established for the father and grandfather with respect to their offspring. The present study, which has been written using a descriptive-analytical method, has reached the conclusion that if referral to the shar'ī judge causes hardship or the forfeiture of the rights of the incapacitated (mahjūrīn) and the absent (ghā'ibīn), then the responsibility for managing their properties and rights is permissible for just believers (mu'minīn 'ādilīn); otherwise, the responsibility falls upon the general Muslims, who should not intervene in their non-essential matters. However, performing essential matters is obligatory upon all Muslims in the manner of wājib kifā'ī. On this basis, a Muslim may, upon the fulfillment of the conditions, intervene in managing the properties and affairs of the mahjūrīn and ghā'ibīn, and if it is in their best interest, intervene as fudūlī. Of course, the eligibility of the one assuming the responsibility is of importance, because in the absence of eligibility, the responsibility for managing others' properties is substantively negated. The fiqhī evidence, including the qā'idah ihsān and the qā'idah ḍarūrah, can be cited as indicators proving this responsibility for the general public. However, the scope of this responsibility is not absolute but contingent upon the fulfillment of conditions so that the nature of the subject and its scope—whether financial or non-financial—may be specified.

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Introduction

In every human society, there exist individuals who, despite possessing financial assets, are incapable of managing their own affairs. In Islamic jurisprudential literature, these individuals are termed "*mahjūrīn*" (legally incompetent persons). Legal incompetence (*hajr*) primarily pertains to financial transactions, designating a status wherein an individual loses the right or ability to exercise their will over their property. This category includes minors (*ṣighār*), the insane (*majānīn*), and the profligate (*sufahāʾ*). Alongside this group is the category of the "*ghāʾib mafqūd al-athar*" (the missing person), which refers to an individual who has been absent from their place of residence for a prolonged period with no information available as to whether they are alive or deceased. This absence creates significant legal and social challenges, particularly regarding the preservation and administration of their assets.

Imāmī jurisprudence (*fiqh*) has long established detailed mechanisms for the protection of the assets of these vulnerable groups. This is of critical importance as their property is susceptible to loss and misappropriation. This research addresses a fundamental jurisprudential question: **in circumstances where the legitimate Islamic ruler (*ḥākim sharʿ*) or their appointed legal guardians are inaccessible, does the general Muslim populace (*ʿumūm al-muslimīn*) possess the authority—or duty—to intervene and manage these assets?** If so, what are the scriptural and rational foundations (*mabānī fihiyya*) that legitimize such an intervention? In an era marked by new instances of legal incompetence and absence due to complex migration patterns, communication breakdowns, and unforeseen calamities, clarifying these foundations is crucial for both legal and social reasons: to define the parameters of unauthorized intervention (*taṣarruf fuḍūlī*) and to foster a spirit of cooperation (*taʾāwun*) and benevolence (*iḥsān*) within the Muslim community.

Methodology

This research employs a **descriptive-analytical methodology**. It is predicated on a direct examination of authoritative sources within Imāmī jurisprudence, including seminal legal texts, narrations (*riwāyāt*), and established legal maxims (*qawāʾid fihiyya*). Data were systematically gathered from the works of prominent Imāmī jurists and specialized academic literature. The collected data were subsequently analyzed and evaluated through the prism of established principles of Islamic legal theory (*uṣūl al-fiqh*) to derive coherent and well-substantiated conclusions regarding the central research question. The study aims to elucidate the jurisprudential underpinnings of the public's role in asset management and the specific conditions that govern such interventions.

Findings

A thorough examination of Imāmī jurisprudential sources yields several key findings regarding the intervention of the general Muslim populace in the assets of the legally incompetent and the missing:

1. **The Basis of Legitimacy:** When access to the Islamic ruler or their official representatives is impossible, the administration of the assets of the *maḥjūrīn* and *ghā'ibīn* becomes a **collective obligation (*wājib kifā'ī*)** upon the Muslim community. The legitimacy of this intervention is primarily supported by two foundational legal maxims:

The Principle of Benevolence (*qā'idat al-iḥsān*): This principle, which promotes virtuous and altruistic conduct, legitimizes actions taken to aid others and protect their interests.

The Principle of Necessity (*qā'idat al-ḍarūrah*): This principle permits certain otherwise prohibited actions in exigent circumstances to prevent greater harm.

2. **Conditions for Permissible Unauthorized Intervention (*taṣarruf fuḍūlī*):** An intervention in another's property without explicit authorization is rendered permissible only when a specific set of conditions is met concurrently:

The primary intent of the intervenor must be purely benevolent (*iḥsān*) and aimed at serving the owner's best interest (*maṣlaḥah*), devoid of any personal gain.

The owner or their legal guardian (*walī*) must be practically inaccessible at the time.

Any delay in intervention would result in demonstrable and significant harm or loss to the assets in question.

3. **The Scope and Limits of Responsibility:** The responsibility placed upon Muslims in such situations is not absolute. It is strictly circumscribed by necessity, applying only when inaction would lead to the damage or loss of property. The nature of the intervention must remain within the bounds of the owner's best interest and be fully compliant with the dictates of the Sharī'ah.
4. **Legal and Ethical Implications:** If an intervenor adheres to all religious and ethical prerequisites and acts without negligence (*taqṣīr*), they are not held liable for any accidental damages or losses. This act is not merely a legal duty but also carries significant positive ethical and social consequences, reinforcing a collective spirit of cooperation, social responsibility, and adherence to moral values within the Islamic community.

Conclusion

This research concludes that Imāmī jurisprudence, leveraging foundational principles such as **benevolence** (*iḥsān*), **necessity** (*ḍarūrah*), and the **Guardianship of the Just Believers** (*wilāyat ‘udūl al-mu’minīn*), offers a robust and practical framework for the management and protection of assets belonging to vulnerable individuals. This legal mechanism not only prevents the financial disenfranchisement of those unable to manage their own affairs but also cultivates a collective ethic of altruism and mutual support. The principle of preventing harm to others (*daf‘ al-ḍarar ‘an al-ghayr*) is central to this framework; when inaction would lead to certain loss for the property owner, the public’s intervention transforms from a mere option into a religious and moral imperative.

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