

Comparative Analysis of Spousal Rights in Imami Jurisprudence, Iranian Law, and Selected Countries

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According to the Iranian Civil Code, as soon as a marriage contract is validly concluded, marital relations are established between the parties, and the rights and duties of the spouses toward each other are defined. These rights and duties vary significantly across the laws and legal systems of different countries. This study employs a descriptive-analytical method to examine the comparative rights of spouses under Iranian law, rooted in Imami jurisprudence, and the laws of selected countries (such as Canada, the United States, and European countries like France and the United Kingdom). The findings reveal fundamental differences between spousal rights in Iran and the selected countries, except for areas such as the mutual obligation for good conduct and child custody rights. One significant difference lies in *mahr* (dowry), which is a critical financial right of spouses in Iran, where the wife owns the *mahr* as a debt owed by the husband. In contrast, countries like the United States, Canada, and many European nations do not recognize the concept of *mahr* but instead apply marital property division laws. Additionally, rights such as the husband's authority as head of the family, the wife's right to work, and the unilateral right of divorce (exclusively held by the husband) differ from the selected countries, which base spousal rights on gender equality, granting equal and shared rights and responsibilities to both spouses.

Keywords: *Spousal Rights, Imami Jurisprudence, Iranian Family Law, Selected Countries.*

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1. Introduction

Marriage, as the beginning of a shared life, legally establishes various rights and obligations for both parties. Both the husband and wife can enjoy specific rights outlined in the statutory laws and regulations. Often, these rights and obligations are upheld through mutual agreement and cooperation, allowing the couple to continue their shared life without disputes over marital rights. After marriage, both spouses have duties and responsibilities toward each other. The marital covenant creates an emotional and spiritual bond between husband and wife, and upon the conclusion of the marriage contract, a legal relationship

under the title of "marriage" is established. Each spouse, therefore, has rights and obligations toward the other (Katouzian, 2008).

Marriage grants rights and duties to the spouses and serves as the sole legal framework for creating affinal kinship, which may extend to their relatives. These rights and obligations may include:

- Granting control over sexual services, labor, and property of the spouse to the husband/wife or another family.
- Assigning liability for a spouse's debts to the husband/wife.



- Granting visitation rights to a spouse when the other is hospitalized or incarcerated.
- Assigning control of a spouse's affairs to the husband/wife when the spouse is incapacitated.
- Appointing a secondary legal guardian for a child.
- Establishing a shared financial account for children.
- Creating kinship ties between the families of the spouses.

In Islam and the Civil Code of the Islamic Republic of Iran, specific duties are defined for the husband and wife, which they are obligated to fulfill. Under the Civil Code, some of these rights and duties are mutual. According to Article 1103, spouses are required to treat each other with kindness and respect, while Article 1104 stipulates that they must cooperate to strengthen the family foundation and raise children.

Some rights and duties are exclusive to women. One such right is the entitlement to *mahr* (dowry) and alimony upon the conclusion of the marriage contract. Under Article 1114, a wife must reside in her husband's home unless the marriage contract grants her the right to choose her residence. Furthermore, Article 1115 allows a wife to live separately if residing in her husband's home poses a risk of physical, financial, or reputational harm, while the husband remains obligated to pay her alimony. Article 1118 grants a wife independent control over her assets, affirming her financial independence.

Men also have exclusive rights and duties. According to Article 1105, "in marital relations, the husband is the head of the family." Article 1005 states that a wife's domicile, except in specific circumstances, is the same as her husband's. The husband is responsible for providing alimony for the family and is considered the legal guardian of the couple's children. Other rights include the wife's obligation to comply with marital duties and restrictions on employment contrary to family interests. The most significant responsibilities of a husband are providing alimony and paying the *mahr*. Payment of alimony is conditional on the wife's compliance; if she unjustifiably refuses her marital duties, she forfeits her right to alimony.

These are the principal legal provisions concerning spousal rights in Iran, rooted in Imami jurisprudence. However, these rights and duties vary significantly across different societies and social groups (Leach et al.,

1968). For instance, in early French law, the principle of shared domicile governed marital relations, whereas contemporary French spouses may have separate residences (Saljoughi, 2009). Similarly, in German and Scandinavian laws, spouses may maintain separate domiciles (Hassani, 2005).

The primary issue in this research is the comparative analysis of spousal rights in Imami jurisprudence, Iranian law, and selected countries.

2. Spousal Rights in the Quran

In Islam, specific rights have been prescribed for both men and women toward each other, referred to as spousal rights. These rights are described in the Quran with a profound and comprehensive expression: "And women shall have rights similar to the rights against them according to what is equitable" (Quran, 2:228).

Men and women, as members of society, possess similar civil rights. However, within the familial structure, they are not considered separate individuals but rather complementary to each other: "They are clothing for you, and you are clothing for them" (Quran, 2:187). Consequently, their rights are not identical but can be balanced.

Given that every system, including the family system, requires a leader and manager, this responsibility has been assigned to men. The Quran states: "And for the men is a degree over them" (Quran, 2:228) and "Men are the protectors and maintainers of women" (Quran, 4:34). According to the Iranian Civil Code, once a marriage contract is validly concluded, marital relations are established between the parties, and the rights and obligations of the spouses toward each other are determined. Some of these rights and duties are exclusive to women, some are exclusive to men, and others are shared between the husband and wife.

3. Shared Rights and Duties of Spouses in Iranian Jurisprudence and Law

Under Article 1103 of the Civil Code, spouses are obligated to treat each other with kindness and respect. Article 1104 further stipulates that they must cooperate in strengthening the foundation of the family and raising children.

A) Good Conduct:

Article 1103 of the Civil Code states: "The husband and wife are obligated to treat each other with good conduct." This right, a moral obligation, must be upheld by both spouses. It is so significant that even during divorce, it should be observed. The Prophet Muhammad (PBUH) said: "When a man looks at his wife, and she looks at him, God looks at them with mercy." Another narration states: "The best of you is the one who is best to his family, and I am the best among you to my family. No one honors women except a noble person, and no one demeans them except a contemptible one" (Tonekaboni, 2003).

God Almighty says: "O you who believe, it is not lawful for you to inherit women by compulsion, nor should you treat them with harshness so that you take away part of the dower you have given them—except where they have been guilty of open lewdness. And live with them on a footing of kindness and equity. If you dislike them, it may be that you dislike something wherein God has placed much good" (Quran, 4:19).

B) Cooperation in Strengthening the Family and Raising Children:

According to Article 1104 of the Civil Code: "Spouses must cooperate in strengthening the foundation of the family and raising their children." Cooperation in this regard entails efforts by the husband and wife to understand each other's ethics and habits to solidify their marital relationship. This transforms the legal institution of marriage into a natural, unbreakable family unit rooted in love and affection.

Although this directive is advisory and moral, it reflects a broader principle. For the wife, this cooperation is part of compliance; failure to fulfill it results in forfeiture of alimony. For the husband, if his behavior becomes so harmful that the wife cannot continue the marriage, she can petition the court to compel him to divorce her (Emami, 1995).

Jurists assert that, religiously, domestic work and service are not obligatory for women, and men cannot compel their wives to perform them (Bani Hashemi, 2003, p. 478). However, attention must be paid to the cultural and moral foundations of society and the family. Responsibilities should be divided between the spouses to share the burden of life. Household chores and raising children should be carried out collaboratively, not as a duty but in the spirit encouraged by Islam. The Prophet

Muhammad (PBUH) said: "There is no man who helps his wife at home but that God will reward him for each hair on his body with the reward of fasting during the day and praying at night for an entire year. God will grant him the rewards of patience and the prophets David, Jacob, and Jesus" (Naraqi & Mojtavavi, 1987).

4. Exclusive Rights and Duties of Women

One of the primary rights of women is the entitlement to *mahr* (dowry) and alimony upon the conclusion of the marriage contract. According to Article 1114 of the Civil Code, a wife must reside in her husband's house unless granted the right to choose her residence in the conditions stipulated in the marriage contract. Alternatively, as per Article 1115, if living in her husband's home poses a risk of physical, financial, or reputational harm, she may choose separate accommodation, in which case the husband remains responsible for providing alimony. Furthermore, Article 1118 states that a wife has independent authority over her property, confirming her financial independence under the law.

A) Dowry (*Mahr*):

God commands: "And give women their dowries as a free gift, but if they, of their own good pleasure, remit any part of it to you, take it and enjoy it with good cheer" (Quran, 4:4). Article 1084 of the Civil Code establishes that as soon as the marriage contract is concluded, the wife becomes the owner of the dowry, which becomes a debt upon the husband. The wife has the right to claim or forgo it.

B) Leadership and Maintenance of the Family:

Article 1105 of the Civil Code states that "in marital relations, leadership of the family is a characteristic of the husband." This obligation is delicately expressed in Quran 4:34: "Men are protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means."

Family leadership is not a privilege but a duty placed upon men by God. Women, due to their delicate and emotional nature, prefer to have someone they can rely on during life's difficulties. Without this support, women are more likely to face anxiety, exhaustion, and distress. Islam acknowledges the need for even the smallest societal unit—a family—to have a leader to ensure peace

and stability. This responsibility is assigned to men due to two attributes:

1. Their rational judgment often outweighs emotional responses.
2. Their economic and physical capabilities enable them to bear the financial responsibilities of the family.

If this responsibility were placed on women, it would undermine the family's harmony and vibrancy.

C) Conjugal Relations and Co-residence:

A man cannot neglect his wife to the extent that she is left neither in the state of being married nor unmarried. However, it is not obligatory for the husband to stay with his wife every night. Many jurists hold that a husband must spend at least one night with his wife every four nights. Additionally, he cannot abstain from intimacy with his wife for more than four months unless she consents. If there is a risk that abstinence might lead the wife to sin, it is obligatory for the husband to prevent such circumstances (Bani Hashemi Khomeini, 2003).

5. Exclusive Rights and Duties of Men

The rights and duties of men are divided into material and non-material categories, with leadership being the most important. Article 1105 of the Civil Code affirms that "in marital relations, leadership of the family is a characteristic of the husband."

1. Residence:

Article 1005 of the Civil Code stipulates that the wife's domicile is the same as the husband's, except in certain cases. If the husband has no fixed domicile or if the wife, with her husband's consent or court permission, resides separately, she may have an independent domicile.

Upon the dissolution of the marriage, the unity of domicile ceases. In cases such as *lian* (mutual cursing) or annulment of marriage, the unity of domicile never existed. However, until the invalidity of the marriage is proven, the wife's domicile remains that of her husband's. Granting the wife the right to choose a residence under Article 1114 does not imply she can reside apart from her husband but rather that the couple must live together in the chosen location (Hassani, 2005).

A wife may choose an independent residence under three circumstances:

a) When the husband has no fixed domicile.

b) When she selects separate housing with the husband's consent, which may arise from a condition in the marriage contract or a separate agreement.

c) When the court permits her to live separately due to harm to her body, finances, or reputation (Article 1115 of the Civil Code).

2. Maintenance (Alimony):

Article 1199 of the Civil Code assigns the obligation to provide maintenance for the family to the father. The term *maintenance* (Arabic: *nafaqah*), which has been incorporated into Iranian legal terminology, refers to the costs of living for the wife and children. Article 1107 defines maintenance as including housing, clothing, food, and household items appropriate to the wife's status. If the wife is accustomed to having a servant or requires one due to illness or disability, the husband must also provide for this. Legal scholars emphasize that maintenance should not be limited to the enumerated items but must include all necessities for the wife's survival and well-being during marriage (Emami, 1995). Lifestyle changes continuously introduce new needs, which cannot be confined within rigid definitions and must be determined based on social norms (Katouzian, 1987, 2008, 2009).

The obligation of maintenance has its roots in Islamic teachings. The Quran explicitly mandates maintenance in several verses:

- "Mothers shall nurse their children for two whole years, for those who wish to complete the term of nursing. And upon the father is their provision and clothing according to what is acceptable..." (Quran, 2:233).
- "Lodge them where you dwell, according to your means..." (Quran, 65:6).
- "Let a man of wealth spend from his wealth, and he whose provision is restricted, let him spend from what Allah has given him..." (Quran, 65:7).
- "Men are protectors and maintainers of women because Allah has given the one more (strength) than the other, and because they support them from their means" (Quran, 4:34).

These verses place the financial responsibility for the wife and children upon the husband, obligating him to strive to provide for their livelihood according to his capacity.

6. Types of Maintenance in Iranian Law

In Iranian law, influenced by its jurisprudential foundations, two types of maintenance are recognized: spousal maintenance (*nafaqah-e-zoujeh*) and maintenance for relatives (*nafaqah-e-aqarib*).

Regarding spousal maintenance, the legislator first defined it in the Marriage and Divorce Act of 1931. By examining Article 1107 of the Civil Code and Article 9 of the 1931 Act, it becomes evident that the legislator relied on societal norms to define maintenance and listed certain items that the husband is obligated to provide at different times. These items, however, are not exhaustive but illustrative, leaving the determination of what constitutes maintenance to societal customs.

In Volume II of the Civil Code, under Book Nine, titled *Obligation to Provide Maintenance*, Articles 1195 to 1206 detail the rules governing maintenance for relatives. Regarding this, the law obliges relatives to provide maintenance only for those related by direct vertical lineage (e.g., parent and child, grandparent and grandchild). Maintenance between other relatives exists only when one is directly descended from the other, either without intermediaries (e.g., father and son) or with intermediaries (e.g., grandfather and grandchild).

The determination of the amount of maintenance is based on the family status of the wife, the customs and habits of the region's inhabitants, and the husband's financial capacity. If the spouses disagree on the amount, the court intervenes to decide.

7. The Father as the Legal Guardian of the Joint Children

According to Article 1180 of the Civil Code, the father is the legal guardian (*vali-e-qahri*) of joint children.

In Persian, *wilayah* refers to authority, governance, and stewardship (Tabatabaei & Antoine, 2005). The term derives from the Arabic root *wali*, signifying proximity or succession without any intervening separation, implying closeness and connection. Linguistically, the term encompasses meanings such as love, support, obedience, and guardianship, with their common element being spiritual proximity.

Ibn Manzur (1414 AH, p. 407) defines a guardian (*wali*) as one who manages the affairs of an orphan (Ibn, 1994), while Ibn Athir (1988, p. 232) states that *wilayah* entails authority, administration, and action. For one to be considered a guardian, they must fulfill these three conditions (Ibn Athir, 1988).

Legally, guardianship (*wilayah*) is defined similarly to its jurisprudential understanding, as "the authority and power granted by law to an individual to manage the affairs of another." This person is referred to as the guardian (*vali*) (Taheri, 2013).

In civil law, guardianship is categorized into:

1. **General Guardian (*vali-e-amm*):** A general guardian oversees matters concerning the public within legal boundaries. This role is typically held by a judge or prosecutor, appointed by a competent authority, with specific responsibilities such as issuing rulings on presumed death, divorce of absent spouses, guardianship for the mentally incapacitated, or managing the affairs of absentees and fetuses (Emami, 1995, p. 202).
2. **Special Guardian (*vali-e-khas*):** A special guardian manages the affairs of specific individuals as defined by law. Article 1194 of the Civil Code specifies that "the father, paternal grandfather, and their designated executor are considered the special guardians of the child." Special guardianship is further divided into:
 3. **Mandatory Guardianship (*wilayah-e-qahri*):** This applies exclusively to the father and paternal grandfather. It is termed *mandatory* because it is imposed directly by law without requiring court intervention. As soon as a child is born, they automatically fall under the father's guardianship. However, while the paternal grandfather's guardianship is legally equivalent, societal norms often limit its application to situations where the father's guardianship is absent (Katouzian, 2009).

The father and paternal grandfather hold equal guardianship rights and must jointly manage the affairs and protect the rights of the ward. According to Article 1182 of the Civil Code, if one of them becomes incapacitated or legally restricted from managing the ward's assets, their guardianship is revoked, and the other retains authority. However, this incapacity does not permanently revoke guardianship; it suspends it until the condition is resolved, at which point the guardianship can be reinstated (Katouzian, 2008).

Article 1180 of the Civil Code states: "A minor child is under the mandatory guardianship of their father and paternal grandfather. Similarly, this applies to those who

are non-discerning or insane, provided their condition began during minority." Thus, wards under mandatory guardianship fall into three categories:

1. **Minors:** Individuals who have not reached the age of maturity, defined as nine lunar years for girls and fifteen lunar years for boys.
2. **Fools (Safi):** Those who exhibited imprudent financial behavior before reaching maturity and continue to do so afterward. A *safi* is someone whose financial dealings are irrational.
3. **Insane Individuals:** Those whose insanity began before reaching maturity and continues thereafter.

If an individual becomes insane before reaching the age of majority (nine lunar years for girls and fifteen lunar years for boys), and this condition persists beyond that age, they remain under *wilayah qahri* (mandatory guardianship). However, if the lack of maturity or insanity does not originate from childhood, the individual will not fall under mandatory guardianship because such guardianship terminates once the person reaches maturity and their legal incapacity is lifted (Safae, 2023; Safae & Emami, 2023).

8. Duties and Powers of the Mandatory Guardian

The mandatory guardian acts as the legal representative of the ward (*moula alaih*) and is obligated to manage their assets, care for their person, and protect their rights and interests. If the ward is intellectually deficient (*safih*), the guardian's authority is limited to financial matters. The guardian is permitted to engage in transactions involving the ward's property, provided these actions align with the ward's best interests.

The law grants broad powers to the guardian for managing the ward's affairs, but these powers are limited by the principles of welfare and benefit for the ward. The guardian is prohibited from actions that contradict the ward's interests or cause them harm (Safae & Emami, 2023).

Both the father and paternal grandfather can independently enter into agreements on behalf of the ward, such as selling, leasing, or purchasing property. As long as these transactions prioritize the ward's welfare, the opposing party cannot contest or annul the agreements. Article 1183 of the Civil Code explicitly states: "In all matters related to the property and financial rights of the ward, the guardian serves as their

legal representative." While this article focuses on financial matters, it is universally accepted that the guardian's duties extend to personal care and well-being (Safae & Emami, 2023).

9. Removal of the Mandatory Guardian

Article 1184 of the Civil Code outlines the conditions under which a mandatory guardian may be removed. If a guardian acts against the ward's interests or engages in actions detrimental to the ward, the court—at the request of a relative or the judicial authority—can remove the guardian and appoint a suitable trustee to manage the ward's financial affairs.

If the guardian becomes unable to fulfill their duties due to advanced age, illness, or similar circumstances, and fails to appoint a replacement, the court will assign a trustee to assist them. The concept of *in'azal* (disqualification of the guardian) refers to situations where mandatory guardianship is terminated due to a legal reason, such as the guardian's incapacity. Unlike removal, which requires a court ruling and takes effect upon its issuance, *in'azal* occurs automatically when a legal cause exists (e.g., insanity or intellectual deficiency of the guardian).

Articles 1182 and 1185 specify the circumstances under which a guardian may be disqualified. If a mandatory guardian becomes legally incapacitated—due to insanity or intellectual deficiency—the guardianship is terminated, as an incapacitated individual cannot oversee another's affairs.

10. Obedience (*Tamkeen*) of the Wife (Article 1108 of the Civil Code)

In Islamic jurisprudence, *tamkeen* refers to the wife granting her husband legitimate sexual access. In legal contexts, *tamkeen* also encompasses broader aspects, such as accepting the husband's authority over the family and respecting his decisions in familial matters, known as *general obedience (tamkeen-e-am)* (Safae & Emami, 2023).

Since the era of Sheikh Tusi, the concept of *tamkeen* has been discussed in jurisprudential texts (Ebrahimi, 2023). The Civil Code incorporates these rulings into law, with jurists frequently mentioning *tamkeen* in other areas of jurisprudence, alluding to granting others authority over something.

Jurists state that *tamkeen* requires the wife to make herself available to her husband at all times and places unless excused by law (e.g., during illness or religious prohibitions). A wife who fails to fulfill her marital obligations is considered *nashiza* (disobedient). This term refers to a wife who refuses to fulfill the marital rights owed to her husband under the marriage contract. In civil law, *tamkeen* entails the wife's obedience to her husband, not limited to marital relations. For example, leaving the marital home without the husband's permission constitutes disobedience (*nashooz*). *Tamkeen* has two aspects:

1. **General Obedience (*tamkeen-e-am*):** Living in the husband's designated residence, not leaving the home without his permission, maintaining good conduct, and respecting his authority.
2. **Specific Obedience (*tamkeen-e-khas*):** Fulfilling marital relations.

If a wife fails to fulfill either form of obedience without a valid excuse, she is considered disobedient (*nashiza*) and forfeits her right to maintenance (*nafaqah*). However, a wife retains her right to maintenance if she withholds *tamkeen* due to lawful reasons, such as not receiving her dowry (*mahr*). Article 1085 of the Civil Code states: "A wife may refuse to fulfill her marital obligations until she receives her dowry, provided the dowry is due and immediate. This refusal does not forfeit her right to maintenance" (Movahedian, 2007).

Article 1115 further specifies: "If living with the husband in the same residence endangers the wife's physical, financial, or reputational well-being, she may choose a separate residence. If such harm is proven, the court will not compel her to return to the husband's residence, and the husband remains responsible for her maintenance." If a husband's behavior endangers his wife's physical or mental health—through abuse, mistreatment, or allowing disreputable individuals into the marital home—the wife may live separately. The court may not compel her to return, and she retains her right to maintenance during this time.

11. Prohibiting the Wife from Employment Contrary to Family Interests (Article 1117 of the Civil Code)

One of the husband's primary obligations is to provide maintenance and pay the dowry. Maintenance is conditional on the wife's obedience; if she unjustifiably

refuses her marital duties, she forfeits her right to maintenance.

In temporary marriages, a wife is entitled to the dowry only if she complies throughout the marriage term (Najafi al-Jawhari & Ghochani, 1983). In permanent marriages, dowry and obedience are independent of one another (Bahrani & Al-Irwani, 1987). According to prominent jurists, a husband must provide maintenance for an obedient wife, as it constitutes a debt upon him, regardless of whether the wife claims it or not (Khomeini, 2011).

Several opinions exist regarding the relationship between obedience and dowry:

1. If the dowry is immediate, the wife may refuse to obey until she receives it, provided consummation has not occurred (Najafi, 1983, p. 42).
2. If the husband can afford the dowry but its payment is undetermined, the wife may still refuse obedience until consummation.

12. Right to Employment

In Iran, Article 28 of the Constitution states: "Every individual has the right to choose any occupation they wish, provided it does not conflict with Islam, public interests, or the rights of others." This emphasizes the freedom to choose a profession without coercion. Additionally, Article 1117 of the Civil Code stipulates: "The husband can prevent his wife from engaging in a profession or trade that contradicts family interests or her dignity or his." Similarly, Article 18 of the Family Protection Law of 1974 includes this provision but extends the same right to the wife, allowing her to petition the court if her husband's occupation is similarly detrimental.

In France, Article 233 of the current Civil Code provides that both spouses have the right to engage freely in an occupation, receive their income, and manage their earnings independently after covering family expenses. Furthermore, Article 225 specifies that both spouses can independently manage, mortgage, or transfer their personal property, ensuring equal rights between men and women and eliminating gender-based legal disparities (Chatenet, 2009). In the United Kingdom, there is no legal distinction between men and women regarding employment rights, and both are treated equally under the law.

In Canada, promoting gender equality falls under human rights laws. With the introduction of the Canadian Human Rights Act in 1977, individuals employed by the federal government, Indigenous governments, or federally regulated private companies, as well as those receiving services from them, are protected from discrimination. This act ensures equal rights, opportunities, and fair treatment in an environment free from discrimination based on gender, sexual orientation, marital status, or family status.

The Canadian Charter of Rights and Freedoms, established in 1982, comprises two sections that protect human rights and prevent discrimination. Section 15 guarantees equal protection and benefit of the law without discrimination based on race, national or ethnic origin, color, religion, gender, age, or mental or physical disability. Section 28 ensures that all rights in the Charter apply equally to men and women (Fodden et al., 1999). Similarly, in the United States, both spouses are free to choose their professions, occupations, and places of residence under Article 2 of the Civil Code.

13. Good Conduct

Article 1103 of the Iranian Civil Code requires spouses to treat each other with good conduct. In family life, spouses must carefully choose their words and actions to foster lasting and positive effects. Imam Sajjad (AS) stated, "Good words make a person beloved among their family" (Saduq, 1983). Good conduct, mutual kindness, and forgiveness for each other's shortcomings are key preventive measures that protect marital life from the issues of *nashooz* (disobedience) and *shiqaq* (discord), safeguarding against the breakdown of marriage through divorce (Nik, 1996).

The Quran emphasizes this moral responsibility with gentle metaphors and encouragements. In Surah An-Nisa, men are instructed: "And live with them in kindness" (Quran, 4:19). It adds: "If you dislike them, it may be that you dislike a thing and Allah brings through it much good." This verse advises patience and forbids hasty decisions for separation or mistreatment based on minor dislikes (Nik, 1996).

French family law emphasizes moral integrity within families. French legal texts allow divorce for only four specific reasons: adultery, severe punishment of one spouse, persistent misconduct such as violence or abusive language, and irreconcilable differences. Good

conduct, defined as mutual respect, is central to family law. Respect fosters personal growth, healthy interactions, and the flourishing of love within relationships (Henaghan, 2008). Similarly, in the UK, good conduct is highly valued; behaviors that make cohabitation intolerable—such as violence, neglect of financial obligations, drug or alcohol addiction, threats, or physical abuse—can justify divorce.

In Canadian divorce law, infidelity or behaviors causing physical or emotional harm that make marital life unbearable provide grounds for divorce. The Personal Relationships Law of Canada outlines specific instances of misconduct, such as inhumane or abusive behavior jeopardizing the spouse's health, as grounds for legal separation. The Canadian legal system prioritizes individual rights and focuses on protecting them.

According to Article 51 of Canada's Family Law, spouses are required to show mutual respect and affection, support the family's welfare, and maintain positive relationships with each other's close relatives. Failure to meet these obligations may lead to court-mandated resolutions. If reconciliation through arbitration fails, and the court finds no possibility of compromise, a formal divorce may be granted upon insistence by both spouses.

A comparative study of family law in Iran and Canada reveals significant differences rooted in the underlying principles. In Iran, family laws, including employment rights, guardianship, and divorce, are based on Islamic jurisprudence and religious principles. In contrast, Canada's family law emphasizes civil and human rights, focusing on individual freedoms. Similarly, in the United States, marital relationships are built on mutual respect, shared responsibilities, and the equitable division of duties, with each spouse retaining the right to resolve personal matters independently.

14. Right to Divorce

In Iranian law, influenced by Imami jurisprudence, three methods of divorce are recognized. The first method is initiated by the husband. Article 1133 of the Iranian Civil Code states: "A man can divorce his wife whenever he wishes." The second method is when the wife petitions the court for divorce, and the third is mutual consent between the spouses, known as *khul* and *mobarrah*

divorce, which are specific types with distinct conditions (Safae & Emami, 2023).

In Iran, a man may file for divorce by fulfilling the legal requirements and applying to the court. However, this right is not absolute for women and is subject to specific conditions such as the husband's absence, non-payment of alimony, or extreme hardship. In contrast, French law grants equal divorce rights to both spouses. To exercise this right, conditions must be met, such as mutual consent, acknowledgment of marital breakdown, irreparable harm to the marriage bond, or fault-based grounds (Safae & Emami, 2023).

In Iranian law, the financial independence of spouses in owning, managing, and utilizing their assets is recognized. Upon divorce, except in limited cases where temporary alimony is provided to the wife, women often face economic hardship, particularly if the divorce is initiated by or attributed to them. While some civil laws in other countries include provisions to support women post-divorce, the Iranian Civil Code remains silent on this matter. Recently, a clause in marriage contracts requiring the husband to share half of his assets with the wife upon divorce has been introduced, partially addressing this issue. In many European legal systems, assets accumulated during the marriage are considered shared property, divided equally upon dissolution of the marriage, ensuring economic equity for both spouses (Anahid & Shadman, 2022).

In France, the termination of marriage through divorce does not eliminate the obligation of spousal maintenance. According to Article 270 of the French Civil Code, this obligation continues for one year following a spouse's death. In both Iranian and French legal systems, maintenance obligations are considered matters of public order, meaning spouses cannot agree otherwise in their marriage contracts (Heydari et al., 2011).

The concept of divorce in Iranian and English legal systems, while superficially similar, differs significantly in nature. In Iran, divorce is a unilateral act (*iqa'*) initiated by the husband. In English law, divorce is a court-issued decree equally available to both spouses. In Iran, when a husband files for divorce, court involvement is largely procedural. Conversely, when a wife initiates divorce, the process is adjudicative, requiring her to prove legal grounds. In England, both spouses must equally substantiate their claims for divorce, and irreconcilable behavior aligns closely with the Iranian

concept of extreme hardship (*osr wa haraj*) (Heydari et al., 2011).

In the United States, married couples can end their marriages either on fault-based or no-fault grounds. Historically, most states allowed only fault-based divorces. However, today, all states recognize some form of no-fault divorce, which usually cites irreconcilable differences or irreparable breakdown of the marriage. Fault-based divorces require one spouse to prove the other's misconduct, such as adultery, cruelty, desertion, or imprisonment.

In Iran, divorce remains a unilateral act controlled by the husband, while in Canada, divorce is a court-issued decree available equally to both spouses. Grounds for divorce in Iran and Canada are similar in substance, with unreasonable behavior in Canada resembling the concept of extreme hardship in Iran.

15. Right to Child Custody

Iranian law considers custody (*hezanat*) both a right and a duty for parents, granting equal responsibility to mothers and fathers for the care, upbringing, and education of their children, unlike financial matters, which are solely assigned to the father (Article 1168 of the Civil Code). Article 1169 specifies that for children whose parents are separated, custody is prioritized with the mother until the child reaches seven years of age, after which custody transfers to the father.

In Iran, custody after the father's death is granted to the paternal grandfather, reflecting the mandatory nature of guardianship as defined by Islamic jurisprudence. In contrast, in England, custody after the parents is determined by the court, which appoints a guardian. Custody in Iranian law appears to be a right for the mother but both a right and duty for the father. In both Iranian and English law, the primary consideration in custody decisions is the child's welfare. If parents are deemed unfit or morally inadequate, custody may be revoked and assigned to a qualified individual chosen by the court (Norzad & Qayumzadeh, 2017).

French family law underwent significant reforms in the 1860s, redefining family relationships and emphasizing the principle of equality among children. The concept of custody was removed, and family judges now determine which parent the child should primarily reside with, considering agreements between the parents and the

child's preferences, which are heard starting at the age of 13 (Benghazi, 2001).

In the United States, custody decisions in divorce cases involving children prioritize the child's best interests. Considerations include the child's relationship with each parent, their needs, and overall well-being. Custody arrangements include joint custody, where both parents share responsibilities and rights, and sole custody, where one parent is granted primary custody while the other retains visitation rights. Custodial decisions vary by state and must adhere to court rulings.

In Canada, there is no presumption favoring mothers for custody of young children. In cases where both parents work full-time, fathers increasingly gain custody rights. Courts often avoid disrupting a stable home environment or separating siblings. Third parties, such as aunts or uncles, may also petition for custody or visitation rights. The Divorce Act of 1985 emphasizes maintaining contact between the child and both parents without mandating joint custody, providing flexibility based on the circumstances (Johnson & Garry, 1996).

16. Conclusion

Marriage today grants spouses certain rights and responsibilities, which sometimes extend to their relatives, as it is the only structure that creates kinship through marriage. These rights and responsibilities vary significantly across different societies and communities and between the legal systems of different countries. In Islam, specific rights are assigned to both men and women in their marital relationship, collectively known as spousal rights. According to the Civil Code, once a marriage is validly concluded, a marital relationship is established between the parties, along with mutual rights and obligations. Some of these rights and obligations are exclusive to men, others to women, while some are shared.

The findings from this comparative study of spousal rights in Iranian law and the legal systems of selected countries (including Canada, the United States, and European nations such as France and England) highlight several key points:

1. Financial Rights and Dowry (*Mahr*):

In Iran, Article 1084 of the Civil Code establishes that upon the conclusion of the marriage contract, the wife becomes the owner of the dowry, which is treated as a debt upon the husband. In contrast, European countries,

the United States, and Canada do not recognize the concept of dowry. However, these countries have legal provisions that provide rights comparable to dowry, such as the division of marital assets. In most of these countries, the legal framework mandates the equal division of marital assets upon divorce, closely resembling the dowry system.

2. Family Leadership:

In Iran, one of the husband's key rights is family leadership, which includes decision-making authority on significant family matters. This is also referred to as the right to obedience. In France, imposing the husband's citizenship on the wife was deemed unreasonable, and such provisions were abolished in the 1972 law. Canada emphasizes absolute equality between spouses, and in the United States, women enjoy equal rights with men.

3. Right to Employment:

In Iran, Article 1117 of the Civil Code allows a husband to prevent his wife from engaging in an occupation or trade that contradicts family interests or dignity. Article 18 of the Family Protection Law of 1974 includes a similar provision but also grants the wife the right to petition the court for a similar restriction on her husband's occupation. In France, Article 233 of the Civil Code stipulates that both spouses have the freedom to choose a profession, receive income, and manage their earnings independently after covering family expenses. Similarly, in the United Kingdom, Canada, and the United States, there is no legal distinction between men and women regarding employment rights, ensuring equal freedoms for both spouses.

4. Good Conduct:

Article 1103 of the Iranian Civil Code obligates spouses to treat each other with good conduct. Within family life, care should be taken in both the content and manner of communication to ensure lasting and positive effects. French law places significant emphasis on family moral integrity, while Canadian divorce law allows a spouse to seek divorce if the other commits adultery or engages in behavior causing physical or emotional harm. In the United States, marital relationships are based on mutual respect, cooperation, and equitable division of responsibilities. Spouses also have the right to address personal interests independently.

5. Right to Divorce:

In Iranian law, based on Imami jurisprudence, there are three methods of divorce:

- **Initiation by the husband:** Article 1133 of the Civil Code states that "a man may divorce his wife whenever he wishes."
- **Petition by the wife:** A wife may petition the court for divorce under specific conditions such as the husband's absence, non-payment of alimony, or extreme hardship.
- **Mutual consent:** Known as *khul* and *mobarrah* divorces, these are based on mutual agreement between spouses.

In contrast, divorce in France and England is a court-issued decree equally accessible to both spouses. In the United States, divorce can be fault-based or no-fault, with all states now recognizing no-fault divorces. Similarly, in Canada, divorce is a court-issued decree with equal access for both spouses.

6. Child Custody:

In Iran, custody rights are shared between the parents, with mothers having priority until the child reaches the age of seven, after which custody transfers to the father. After the father, custody passes to the paternal grandfather, reflecting mandatory guardianship as defined by Islamic jurisprudence. In England, custody is determined by the court, and guardians are appointed after the parents. In France, family judges determine the parent with whom the child will primarily reside, considering parental agreements and the child's preferences starting at age 13. In the United States, custody decisions prioritize the child's best interests, including their relationship with each parent and their overall needs. Canada does not automatically assign custody to mothers of young children; instead, courts consider various factors, including each parent's employment and the stability of the home environment. The 1985 Divorce Act encourages contact between children and both parents, without mandating joint custody.

The study reveals that Iranian family law is heavily influenced by Islamic jurisprudence, shaping rights related to employment, guardianship, and divorce. In contrast, family laws in countries such as Canada, the United States, and European nations are grounded in civil and human rights principles, emphasizing individual freedoms, gender equality, and shared responsibilities.

Authors' Contributions

Authors contributed equally to this article.

Declaration

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

Transparency Statement

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