

# A Comparative Examination of the Position and Role of Legal Paternalism in Iranian and French Criminal Law

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Legal paternalism, as a basis for state intervention in individual behavior with the aim of protecting persons from their own harmful decisions, constitutes one of the most controversial concepts in the philosophy of criminal law. The legal systems of Iran and France, grounded in distinct cultural, historical, and philosophical traditions, have adopted different approaches to this principle. The present study aimed to comparatively examine the position of legal paternalism in the criminal justice systems of Iran and France, analyze its jurisprudential and philosophical foundations, and identify challenges and reform strategies for maintaining a balance between individual liberty and public interests. This research was conducted using a descriptive–analytical method and a comparative approach. Data were collected through documentary analysis of legislation, judicial decisions, jurisprudential and philosophical texts, and scholarly articles, and were examined using qualitative content analysis. The findings indicated that, within the Iranian legal system, legal paternalism occupies a central and extensive position based on jurisprudential foundations such as public interest (*maslahah*), preservation of religion, the doctrine of *Velayat-e Faqih* (Guardianship of the Islamic Jurist), and the principle of no harm (*La Darar*), leading to the criminalization of a broad range of self-regarding harmful behaviors. In contrast, within the French legal system, paternalism is justified through concepts such as human dignity, public order, and the protection of vulnerable individuals and is generally confined to exceptional circumstances. The principal challenges identified in both systems include tensions with individual autonomy, conceptual ambiguity, the limited effectiveness of purely criminal-law approaches, high implementation costs, and the gap between formal and informal norms. Despite fundamental differences in the foundations and scope of paternalism, the legal systems of Iran and France share certain core values, including human dignity, public order, and the protection of vulnerable persons, which may provide a basis for dialogue and mutual learning.

**Keywords:** *Legal paternalism, criminal law, public interest (maslahah), self-harm, harm to others.*

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## 1. Introduction

Today, the issue of legal paternalism, as a fundamental principle in the analysis of criminal law, has received increasing attention from jurists and criminologists, because this concept concerns the legitimacy of state intervention in citizens' lives in order to prevent harm to oneself or to others, even when the

conduct in question harms only the individual concerned. The concept of legal paternalism refers to the enactment and enforcement of norms that restrict individual liberties with the aim of protecting the person from foreseeable and harmful risks in life. In the field of criminal law, paternalism is manifested when the state, through penal instruments, criminalizes and punishes conduct that may result in harm to the person or to



society in order to prevent the occurrence of harm, even if the individual has consented to that conduct (Martinelli, 2025). In recent decades, debates concerning the limits of the legitimacy of state intervention in citizens' private lives have become one of the central issues in the philosophy of criminal law, attracting growing scholarly attention at the international level. The question of the extent to which the state may intervene to protect individuals from potential harm to themselves has always been accompanied by tension between the conflicting values of individual liberty and public interest (Lassen & Mahler, 2023).

In the Iranian legal system, due to its jurisprudential and traditional foundations, state intervention in citizens' individual lives in cases that may lead to self-harm, such as drug use or suicide, is legitimized with reference to ethical and social principles and is prohibited and punished through criminal laws. This approach reflects a paternalistic interpretation of the rule concerning harm to oneself and society, according to which the state is responsible for preventing such conduct. In other words, Iranian criminal law, in certain domains, treats self-harm—not merely harm to others—as a basis for criminalization, which itself constitutes a clear instance of legal paternalism (Nobahar & Nobahari Tehrani, 2022). On the other hand, the French criminal legal system, with its more secular and liberal background, although operating within the framework of the principles of legality of crimes and punishments, may in some cases enter the domain of legal paternalism on the basis of public-interest-oriented justifications and the prevention of harm to oneself and society. In French criminal law, state restrictions and interventions in certain areas may be justified from the standpoint of protecting public order and public health; however, such interventions must be interpreted within the framework of the principles of equality and fundamental freedoms in order to prevent unjustified encroachment upon individual rights.

Despite the fundamental importance of legal paternalism in determining the limits of criminalization and penal intervention, comparative studies in this field, particularly between legal systems with different intellectual foundations, still face significant gaps. The first gap is the lack of comprehensive research on how religious and jurisprudential foundations influence the formation of paternalistic approaches in Iranian criminal

law in comparison with secular and liberal foundations in the French legal system. The second gap concerns the shortage of precise analyses of how individual liberty and collective interests are balanced in both legal systems. The third gap is the absence of sufficient studies on the practical effects of paternalistic approaches on citizens' fundamental rights in specific domains such as drug use, suicide, and gambling. The fourth gap concerns the need for a critical examination of the criteria that legitimize state intervention in both systems and the possibility of proposing a more desirable model. These gaps indicate that the present study, by adopting a comparative-analytical approach, can enrich the existing literature in this field and provide a deeper understanding of the various dimensions of legal paternalism in the legal systems of Iran and France. Therefore, this research seeks to examine the position and role of legal paternalism in Iranian and French criminal law.

## 2. Research Method

The method of the present study is descriptive-analytical and based on library documents, in which data collection is carried out through the study of scientific sources and note-taking. The required information was collected using books, articles, theses, and documents available in libraries, as well as by searching numerous domestic and international scientific databases, including Elsevier, ScienceDirect, Noormags, Magiran, the Scientific Information Database of Academic Center for Education, Culture and Research, and the Iranian Research Institute for Information Science and Technology, and was then analyzed using qualitative content analysis. Through a careful examination of existing sources and research records in scientific and research centers, a comprehensive analysis of the position of legal paternalism in the criminal justice systems of Iran and France was provided.

## 3. Results

### 3.1. Conceptualization and Typology of Legal Paternalism

#### 3.1.1. Hard and Soft Paternalism

The distinction between hard and soft paternalism, as one of the most important conceptual classifications in the theory of legal paternalism, provides an appropriate

theoretical framework for analyzing different types of paternalistic state interventions in the sphere of individual liberties and has found wide application as an analytical tool in comparative studies of criminal law. In general terms, hard paternalism refers to an intervention that is carried out despite the individual's opposition and lack of consent, with the aim of protecting the person from harms arising from their own decisions, whereas soft paternalism refers to an intervention undertaken solely to ensure that the individual's decisions are informed and voluntary.

Hard paternalism is based on the assumption that even when an individual knowingly and voluntarily decides to engage in conduct that harms themselves, the state has the right to intervene in that decision in order to protect their welfare and interest. In this approach, the criterion for decision-making is not the individual's will and preference, but their objective interests, as determined by the state or society. Mandatory helmet use for motorcyclists, the prohibition of suicide and assisted suicide, and strict restrictions on abortion are among the instances of this type of paternalism (Vogliotti, 2022). The philosophical basis of hard paternalism may be traced to perfectionist or welfarist views, according to which certain individual interests and goods are so important that they cannot be waived even with the person's consent.

By contrast, soft paternalism permits intervention in individual decisions only when there is evidence of insufficient awareness, the presence of pressures that vitiate the will, or impairment in decision-making capacity. The aim of this type of paternalism is not to impose particular values, but to ensure the necessary conditions for informed and voluntary decision-making. Accordingly, measures such as requiring manufacturers to place health warnings on tobacco products, prohibiting the sale of psychoactive substances to minors, or invalidating contracts concluded under coercion or threat fall within the domain of soft paternalism. This approach is more compatible with liberal theories that emphasize individual autonomy and freedom of choice, because its aim is not to violate individual autonomy but to strengthen the necessary conditions for its genuine exercise (Mahmoudi, 2018).

From the perspective of criminal law, the distinction between hard and soft paternalism has important implications for the criminalization of self-harming

conduct. In legal systems that accept hard paternalism, a broader range of self-harming conduct is criminalized, even assuming the full awareness and consent of the actor. By contrast, systems that regard only soft paternalism as legitimate resort to penal intervention only where there is evidence of a defect in knowledge or will. This difference in approach can be observed in laws concerning drug use, suicide, abortion, or high-risk sexual conduct in different legal systems. In comparative studies between the legal systems of Iran and France, this conceptual distinction assumes particular importance. The Iranian legal system, by following religious and jurisprudential foundations, shows a greater inclination toward accepting hard paternalism, because according to this view, certain values and interests are so important that even individual consent cannot authorize their violation. By contrast, the French legal system, relying on the liberal tradition and republican principles, recognizes a narrower domain for hard paternalism and, in many cases, confines itself to soft-paternalistic measures such as information provision and education (Gil et al., 2024).

### 3.1.2. *The Distinction between Legal Paternalism, the Harm Principle, and Legal Moralism*

The distinction between legal paternalism, the harm principle, and legal moralism, as three principal grounds for criminalization, is among the central debates in contemporary philosophy of criminal law. These three concepts, each of which offers a different justification for state intervention in individual liberties, are often conflated in theoretical and practical debates. The harm principle is based on the idea that the only legitimate justification for the intervention of public power in individual liberty is the prevention of harm to others. According to this principle, conduct that harms only the individual cannot be subject to penal intervention, because each person has sovereignty over their own body and destiny. By contrast, legal paternalism justifies state intervention with the aim of protecting the individual against their own harmful decisions, even if such decisions do not harm others. From this perspective, the state, like a benevolent father, has the right to restrict individuals' freedom in order to protect their interests. Legal moralism, in turn, emphasizes society's right to use penal instruments to reinforce and protect shared moral values, regardless of whether

immoral conduct causes harm to the individual or to others (Khajavand & Soltanian, 2024).

The main distinction between legal paternalism and the harm principle lies in the identity of the victim of harm. Under the harm principle, state intervention is undertaken to protect others, that is, persons other than the actor, whereas under paternalism, the aim of intervention is to protect the actor themselves. This distinction becomes difficult in cases where the individual's conduct harms both themselves and others. On the one hand, the law protects the driver against potential injury, which reflects paternalism; on the other hand, it may be argued that harms resulting from accidents impose socio-economic costs on society and that such regulations are therefore enacted to protect others, namely society, which reflects the harm principle. The concept of "harm to others," developed by Feinberg, provides an appropriate theoretical framework for analyzing these borderline cases by distinguishing between direct and indirect harm.

In many cases, the criminalization of a particular conduct may be justified simultaneously on the basis of all three principles. For example, the criminalization of drunk driving may be justified by reference to the harm principle, due to the danger posed to other road users; paternalism, due to the danger posed to the driver themselves; and even moralism, due to the moral condemnation of drunkenness and irresponsibility. This overlap makes it difficult to identify the primary basis of certain criminalizations and requires a careful analysis of the philosophical foundations and arguments presented by the legislature. Comparing the legal systems of Iran and France in terms of their acceptance of these three principles reveals their fundamental philosophical differences. The French legal system, relying on the liberal tradition and republican principles, gives priority to the harm principle and recognizes a narrower domain for interventions based on paternalism and especially legal moralism. In this system, a tendency toward decriminalizing conduct that harms only the individual or merely conflicts with moral standards has been observable in recent decades. By contrast, the Iranian legal system, by following religious and jurisprudential foundations, assigns a broader place to paternalism and legal moralism. In this system, the protection of moral and religious values, as well as the protection of individuals against their own harmful

decisions, is regarded as a legitimate objective of the penal system (Sadeghpour, 2024).

### 3.1.3. *Types of Paternalism in Modern Legal Systems*

Legal paternalism in contemporary legal systems has taken diverse forms and types, each reflecting the philosophical foundations, cultural values, and socio-political structures of different societies. Understanding this typology provides an appropriate analytical framework for the comparative study of the extent and mode of state intervention in individual liberties. One of the main classifications is the distinction between direct and indirect paternalism. Direct paternalism refers to interventions that directly target the individual's conduct, such as prohibiting drug use or requiring the use of a helmet. By contrast, indirect paternalism refers to restrictions imposed on the conduct of third parties in order to prevent harm to the individual. Another distinction is between pure and impure paternalism. In pure paternalism, restrictions are imposed solely to protect the individual themselves, whereas in impure paternalism, the interests of others or society are also considered in addition to the individual's interests. For example, requiring motorcyclists to use helmets is an instance of pure paternalism, because its main objective is to protect the motorcyclist themselves. By contrast, the prohibition of drug use may be considered an instance of impure paternalism, because, in addition to protecting the health of the user, it also pursues objectives such as reducing drug-related crimes, reducing healthcare costs imposed on society, and protecting families (Nobahar & Nobahari Tehrani, 2022).

From the standpoint of the object of intervention, one may distinguish between physical, economic, moral, and professional paternalism. Physical paternalism refers to restrictions imposed with the aim of protecting individuals' bodily health, such as the prohibition of suicide, compulsory vaccination, or restrictions relating to medical treatments. Economic paternalism includes restrictions enacted to protect individuals' economic interests, such as restrictions on gambling, minimum-wage laws, or the prohibition of exploitative contracts. Moral paternalism refers to interventions undertaken with the aim of protecting individuals' moral and spiritual welfare, such as restrictions on pornography or the prohibition of certain consensual sexual behaviors. Finally, professional paternalism refers to restrictions

imposed in occupational and professional fields, such as the requirement to hold an academic degree or professional certificate in order to engage in certain occupations (Zhi-yu & Xi, 2022).

The comparative study of types of paternalism in the legal systems of Iran and France reveals interesting differences and similarities. In the field of physical paternalism, both systems impose extensive interventions in the form of safety laws, public health regulations, and drug-related rules, although the intensity and scope of these interventions differ. For example, in Iran, the use and possession of any type of narcotic substance is criminalized, whereas in France, there is a more differentiated approach toward different types of substances, and in recent years a tendency toward decriminalizing the use of certain low-risk substances has been observed. In the field of moral paternalism, there are striking differences between the two systems. The Iranian legal system, by following religious and jurisprudential foundations, has criminalized a wide range of conduct contrary to Islamic morality. Conduct such as sexual relations outside marriage, homosexuality, alcohol consumption, and improper dress has been subject to penal intervention with the aim of protecting the moral health of individuals and society. By contrast, the French legal system, relying on the principles of secularism and individual liberties, recognizes a very narrow domain for moral paternalism and has decriminalized many similar behaviors (Mashayekhi et al., 2025).

### 3.2. The Paternalistic Approach in Iranian Criminal Law

#### 3.2.1. The Role of Paternalism in Criminal Laws Based on Shiite Jurisprudence

Legal paternalism in the Iranian legal system is rooted in the Shiite jurisprudential tradition, which has been formulated and developed over many centuries by Imami jurists. This jurisprudential tradition provides a theoretical and argumentative framework for the intervention of the Islamic state in individual liberties in order to protect individuals' material and spiritual interests. Unlike liberal legal systems, which, based on Mill's harm principle, draw a clear boundary between the private and public spheres, Shiite jurisprudence does not accept such a categorical distinction and regards the responsibility of the Islamic government as extending

beyond merely preventing harm to others. This approach is rooted in Qur'anic and hadith-based teachings that regard government as responsible not only for ensuring material security and welfare, but also for the spiritual and moral guidance of society.

The principle of "commanding the good and forbidding the wrong," as one of the most important jurisprudential foundations of paternalism in the Iranian criminal law system, defines a general duty to promote good and prevent evil, which, at the governmental level, is regarded as authorization for legal intervention in individual conduct. This principle, emphasized in numerous verses of the Qur'an and in the traditions of the Infallible Imams, gives the Islamic state the authority to use legal instruments and, where necessary, punishment in order to prevent "wrongdoings," which include sins and conduct contrary to Sharia rulings. The noteworthy point is that, according to this principle, even conduct that harms only the individual may be subject to governmental intervention if it constitutes a "wrong" (Ivand & Shirzadi, 2022).

The jurisprudential maxim "la darar wa la dirar fi al-Islam" (no harm and no reciprocating harm in Islam) is another important foundation of paternalism in Shiite jurisprudence. This maxim, derived from a prophetic hadith, indicates not only the prohibition of harming others but also the prohibition of harming oneself. The concept of "harm" in this maxim has a broad scope, including material, bodily, psychological, eschatological, and even spiritual harms. Accordingly, conduct that leads to bodily harm to oneself, such as suicide or self-injury; psychological harm, such as drug use; or eschatological harm, such as committing major sins, falls within the scope of this maxim, and paternalistic state intervention in these domains is deemed legitimate. The concept of "guardianship" in Shiite jurisprudence functions as another theoretical foundation for legal paternalism. In Shiite political thought, the Guardian Jurist, as the deputy of the Infallible Imam during the period of occultation, possesses broad authority to administer the affairs of Islamic society and manage the material and spiritual interests of the community. This guardianship, which was coherently elaborated in Imam Khomeini's theory of *Velayat-e Faqih* and has been manifested in the Constitution of the Islamic Republic of Iran, provides a justification for extensive state intervention in various

domains of individual and social life (Neshasteriz & Heidari, 2024).

The principle of “preservation of life,” as one of the five objectives of Sharia, constitutes another basis for paternalistic interventions in Iranian criminal law. According to this principle, protecting human life and health is one of the principal aims of Islamic Sharia, and various rulings have been enacted to achieve this aim. In Shiite jurisprudence, the principle of preserving life includes not only the protection of the lives of others, but also the individual’s responsibility toward their own life and health. Accordingly, acts such as suicide, self-injury, or harming one’s own health through the use of drugs or alcoholic beverages are regarded as contrary to this principle, and their prohibition is justified. The Shiite jurisprudential understanding of freedom differs from its liberal conception. In jurisprudential thought, absolute freedom does not exist, and true freedom acquires meaning within the framework of divine rulings and with the aim of spiritual perfection and attaining proximity to God. On this basis, restrictions arising from Sharia rulings are not regarded as deprivation of freedom, but rather as instruments for realizing true freedom and liberation from the captivity of the commanding self and carnal desires (Mehrabi & Allahverdi Meygouni, 2022).

### 3.2.2. *Clear Instances of Paternalism in the Islamic Penal Code*

The Islamic Penal Code, as the most important criminal statute of the Islamic Republic of Iran, reflects the jurisprudential foundations and religious values governing the Iranian legal system. A careful examination of the provisions of this Code reveals numerous instances of legal paternalism in which the state, with the aim of protecting individuals’ material and spiritual interests, imposes restrictions on individual liberties. These paternalistic interventions may be observed at two levels: first, the criminalization of conduct that harms only the individual; and second, the aggravation of punishment or limitation of consent in crimes whose harm is directed toward the individual themselves.

One of the clearest instances of paternalism in the Islamic Penal Code is its position on suicide and participation in it. Although suicide has not been criminalized as an independent criminal act, under

Article 375 of the Islamic Penal Code adopted in 2013, assisting suicide is considered a crime and entails imprisonment from six months to three years. This approach is rooted in the Shiite jurisprudential view of the severe prohibition of suicide, which regards it as one of the major sins. According to jurisprudential foundations, a human being does not own their own life and cannot dispose of it at will; rather, human life is a divine trust that must be protected. This view is in clear conflict with liberal legal systems in which suicide and, in some cases, assisted suicide, subject to certain conditions, have been decriminalized (Sadeghi Ram, 2020).

Drug use is another instance of paternalism in the Iranian criminal justice system that has been criminalized with greater severity. Under the Anti-Narcotics Law adopted in 1997 and its subsequent amendments, drug use entails various punishments, including imprisonment, flogging, and fines. This is while, in many Western countries, a tendency toward decriminalizing the use of certain low-risk substances and adopting treatment-oriented rather than punishment-oriented approaches has been observed. The main justification for criminalizing drug use in Iran is the protection of individuals’ physical and psychological health and the prevention of addiction and its harmful consequences. This approach reflects the paternalistic attitude of the Iranian legislature, according to which the state not only has the right but also the duty to protect individuals against their own harmful decisions. Under Article 15 of the Law Amending the Anti-Narcotics Law adopted in 1997, “addicts to narcotic substances are required to take action for their treatment and rehabilitation in authorized treatment centers. Addicts who take action for their treatment and obtain a certificate of being under treatment or recovery shall be exempt from criminal prosecution.” This article was amended in 2010, according to which addiction to narcotic substances is not a crime, but failure by addicts to attend addiction-treatment centers, or the possession and use of substances, is considered a crime (Al-Saadoun & Montazeri, 2024).

Abortion is another domain in which legal paternalism is clearly observable. Under Articles 718 to 720 of the Islamic Penal Code, abortion, except in exceptional cases such as danger to the mother’s life, is considered a crime and entails serious punishments, including payment of

blood money and imprisonment. This criminalization remains in force even in cases where the abortion is performed with the mother's consent. The jurisprudential view governing the Islamic Penal Code regards the fetus as possessing a right to life independent of the mother and protects this right on the basis of the principle of preservation of life. Compared with many Western legal systems that recognize women's right to choose regarding abortion, this approach is more paternalistic. Alcohol consumption is another instance of paternalism in the Islamic Penal Code. Under Article 264 of this Code, the consumption of intoxicants entails the Sharia-prescribed punishment of eighty lashes. This prohibition applies even where alcohol is consumed in private and without harm to others. The justification for this criminalization, in addition to the Sharia prohibition of intoxicant consumption, is the protection of individuals' physical and psychological health and the prevention of harms resulting from intoxication (Sharafi Masouleh et al., 2023).

Consensual sexual relations outside the framework of marriage constitute another domain in which legal paternalism is strongly applied. Under Articles 221 to 232 of the Islamic Penal Code, conduct such as *zina*, sodomy, lesbian sexual relations, and even kissing and lying together out of lust entail severe punishments, including execution, stoning, flogging, and imprisonment. These criminalizations apply even in cases where such relations take place with the full consent of the parties and without any coercion or deception. The jurisprudential view governing the Islamic Penal Code regards such conduct as contrary to the interest of the individual and society and justifies its criminalization on the basis of the principle of preserving honor and lineage, as one of the five objectives of Sharia. This approach is in clear conflict with liberal legal systems, in which consensual sexual relations between adults have been removed from the domain of penal intervention.

### 3.2.3. *The Relationship between Paternalism, the Principle of Public Interest of the System, and the Preservation of Religious Values*

The principle of public interest of the system and the preservation of religious values are among the most important theoretical and argumentative foundations for justifying and strengthening legal paternalism in

Iran's criminal law system. These two principles, rooted in Shiite political and jurisprudential thought, provide a conceptual and value-based framework for extensive state interventions in individual liberties and play an important role in shaping the criminal policy of the Islamic Republic of Iran. Understanding the relationship between legal paternalism and these two principles is key to understanding the fundamental differences between the Iranian legal system and Western secular legal systems regarding the boundaries of state intervention in individual liberties.

The concept of the public interest of the system, rooted in the jurisprudential principle of "what is indispensable for preserving the system," acquired a special place in Imam Khomeini's political thought and, with the establishment of the Expediency Discernment Council in the Constitution of the Islamic Republic of Iran, was consolidated as one of the main foundations of legislation. According to this principle, preserving the Islamic system and the general interests of the community are among the principal priorities of Islamic government, and in cases of conflict between individual interests and the interests of the system, priority is given to the interests of the system. This view, reflected in Imam Khomeini's well-known principle that "preserving the system is among the most obligatory duties," can provide a justification for extensive paternalistic interventions in the sphere of individual liberties (Bagheri, 2021).

The relationship between the public interest of the system and legal paternalism is complex and multilayered. On the one hand, the principle of public interest of the system can serve as a basis for expanding paternalism, because, by invoking it, restrictions may be imposed on individual liberties that go beyond primary jurisprudential rulings. For example, the prohibition of satellite use or restrictions relating to dress, which may not be explicitly mentioned in primary jurisprudential rulings, are justified by reference to the public interest of the system and the necessity of preserving Islamic values. On the other hand, the principle of public interest can provide grounds for moderating certain strict jurisprudential rulings, because the public interest of the system may sometimes require flexibility in the implementation of certain rulings in order to respond to the requirements of time and place. The preservation of religious values is another principle closely related to

legal paternalism in the Iranian criminal law system. In the Islamic view, religious values such as faith, piety, chastity, and modesty are not merely personal values, but social assets whose preservation and strengthening are among the main duties of Islamic government (Hashemi & Hassanzadeh, 2019).

### 3.3. *The Paternalistic Approach in French Criminal Law*

#### 3.3.1. *Rejection or Limited Acceptance of Paternalism in French Liberal Doctrine after the Revolution*

The French Revolution of 1789 is considered a turning point in the history of Western legal and political thought. With its slogan of liberty, equality, and fraternity, it laid the foundations of the modern political and legal order. Influenced by Enlightenment thought and by the works of thinkers such as Montesquieu, Voltaire, and Rousseau, this revolution led to a fundamental transformation in the relationship between the individual and the state and established principles such as national sovereignty, separation of powers, and the natural rights of human beings as the foundations of the modern French legal system. In this historical context, the understanding of legal paternalism also underwent transformation, and a critical approach to state intervention in the domain of individual liberties emerged, which, despite many fluctuations, has remained one of the fundamental principles of the French legal system to this day.

Post-revolutionary French liberal doctrine, relying on the principle of individual liberty expressly stated in Article 4 of the Declaration of the Rights of Man and of the Citizen of 1789, recognized the human right to self-determination and made legal limitations on this liberty conditional upon the necessity of preserving the rights of others and public security. According to this approach, which was later complemented by John Stuart Mill's harm principle, the state is authorized to intervene in individual liberties only when the exercise of those liberties harms the rights of others. This view, rooted in the thought of philosophers such as Kant as well as in utilitarianism, led to the principled rejection of legal paternalism in French legal doctrine and established non-intervention by the state in the private sphere of individuals as the general rule (Al-Abaydh & Bustami, 2025).

The second half of the twentieth century, particularly the 1960s and 1970s, witnessed a fundamental transformation in the approach of the French legal system to legal paternalism. This period, accompanied by broad social movements for civil liberties, women's rights, and sexual freedoms, led to the revision of many paternalistic criminal laws. The Veil Law of 1975, which legalized abortion under certain conditions, the 1982 law that decriminalized homosexuality, and numerous reforms in laws concerning sexual morality indicate a movement toward limiting paternalism and strengthening individual autonomy. These developments were rooted in the expansion of existentialist and phenomenological ideas in France, which emphasized freedom of choice and individual responsibility (Gil et al., 2024).

#### 3.3.2. *Remaining or Emerging Instances of Paternalism in French Criminal Law*

Despite the general tendency of the French legal system to limit legal paternalism and strengthen individual autonomy, numerous instances of paternalistic interventions can still be observed in the country's criminal laws. These instances, some remaining from the past and others resulting from emerging challenges in contemporary society, demonstrate the complexity of the boundaries between individual liberty and state protection even in liberal systems. In the field of narcotic substances, the French approach has remained largely paternalistic. Under the French Public Health Code, the use, production, purchase, sale, and possession of any illegal narcotic substance is prohibited and may entail severe punishments, including imprisonment for up to one year and a fine of up to 3,750 euros for simple use. These strict laws, rooted in the law of December 31, 1970, indicate the persistence of a paternalistic view that considers the state responsible for protecting citizens' health even against their own harmful actions (Fauzan, 2022).

In the field of abortion, France, after a lengthy process, moved from a completely prohibitive approach toward limited acceptance and then broader acceptance. The Veil Law of 1975 permitted abortion up to the tenth week of pregnancy and subject to certain conditions, including mandatory counseling. This law was amended in 2001, increasing the time limit to 12 weeks and facilitating access to abortion. In 2022, this time limit

was increased to 14 weeks. However, even in this liberal law, traces of soft paternalism can be observed. The requirement of counseling before abortion, the mandatory reflection period, which was removed in 2022, and the time limit for abortion indicate that the French legislature still emphasizes the need to ensure women's full awareness and to protect the fetus in advanced stages of pregnancy (Hayat, 2024).

Sexual conduct is one of the domains in which extensive decriminalization has occurred in France. Homosexuality since 1982, adultery since 1975, and voluntary adult prostitution have long been removed from the scope of criminal law. Nevertheless, some restrictions on certain consensual sexual behaviors remain, which may be considered instances of legal paternalism. For example, sexual relations with close relatives, even between consenting adults, remain prohibited in France. These restrictions are rooted in the concept of "human dignity," which in the French legal system is regarded as a value beyond individual will. In the field of euthanasia and assisted suicide, the French approach remains somewhat paternalistic. Under the Claeys-Leonetti Law adopted in 2016, active euthanasia is prohibited in France, but under certain conditions, discontinuation of treatment for terminally ill patients is recognized as permissible (Hussain et al., 2023).

### 3.3.3. *The Impact of Human Rights Principles and the European Convention on Limiting Paternalism*

Human rights principles, and particularly the European Convention on Human Rights and the case law of the European Court of Human Rights, have had a profound and multilayered impact on limiting legal paternalism in the French legal system. These international instruments, by emphasizing human dignity, individual liberties, and the right to self-determination, have provided a powerful normative framework for evaluating the legitimacy of state interventions in individuals' private sphere. In the French legal system, where, under Article 55 of the Constitution, international treaties, once ratified, have authority superior to domestic laws, the European Convention on Human Rights has become an effective instrument for limiting paternalistic actions by the state.

Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life, has been one of the most important legal

bases for limiting paternalism in the case law of the European Court of Human Rights. This article, which provides that "everyone has the right to respect for his private and family life, his home and his correspondence," has interpreted the concept of "private life" broadly so as to include decisions relating to lifestyle, sexual relations, gender identity, medical measures, and even the use of certain substances (Razak et al., 2024). According to this interpretation, state intervention in these areas is legitimate only when it is "in accordance with the law," "necessary in a democratic society," and pursued for a "legitimate aim." These three criteria, carefully elaborated in the Court's case law, provide a restrictive framework for paternalistic state measures.

In France, this human rights-oriented approach has led to the strengthening of laws that facilitate women's access to abortion and reduce administrative or informational barriers. The 2022 law that removed the mandatory reflection period and extended the permissible period for abortion is an example of this influence. In the field of LGBTQ+ rights, the impact of human rights principles on limiting paternalism in French law has been highly significant. Laws concerning same-sex marriage in 2013, legal gender change in 2016, and access to assisted reproductive technologies for same-sex couples in 2021 are examples of this influence. The French Constitutional Council, in its decision of July 27, 1994, recognized human dignity as a constitutional principle (Chamsi-Pasha et al., 2022).

### 3.4. *Comparative Analysis of the Foundations, Instances, and Consequences of Paternalism in the Two Systems*

#### 3.4.1. *Comparison of Legitimizing Foundations: Religious-Jurisprudential versus Secular-Humanistic*

A comparison of the foundations legitimizing legal paternalism in the legal systems of Iran and France reveals fundamental differences in the legal philosophy of these two systems. The Iranian legal system, relying on religious-jurisprudential foundations, constructs a distinct framework of legitimacy for state interventions in individual liberties, which differs substantively from the secular-humanistic foundations of the French legal system. This distinction extends beyond differences in the instances and modes of applying paternalism and

goes back to deep ontological, epistemological, and axiological differences between the two systems.

The legitimacy of paternalism in the Iranian legal system is rooted in a religious ontology in which the human being is a two-dimensional entity with material and spiritual dimensions, moving toward perfection and proximity to God. In this view, true human ownership over the self and body is limited and takes the form of trusteeship, not absolute ownership. The human being is merely the trustee of their life, intellect, and health and does not have the right of absolute disposal over them. This trust, granted to the human being by God, must be used in line with the purposes of creation and in accordance with divine rulings. Accordingly, paternalistic interventions by the Islamic state to protect human beings against self-harming decisions are, in reality, regarded as protection of a divine trust and derive their legitimacy from this necessity (Mirzaei & Naseri-Moghadam, 2025).

By contrast, the ontology underlying the French legal system is rooted in the humanistic tradition and Enlightenment philosophy, in which the human being is defined as an autonomous being and master of their own destiny. In this view, human beings possess natural and inherent rights that exist before and independently of the formation of the state, one of the most important of which is the right to self-determination. Accordingly, the legitimacy of state intervention in individual liberties does not derive from a transcendent source but from the social contract and the consent of citizens, and it is limited to cases necessary for protecting the rights of others or the common interests of society. The epistemological difference between the two systems also plays an important role in legitimizing legal paternalism (Zhi-yu & Xi, 2022).

#### 3.4.2. Differences in the Scope of Criminalization of Conduct That Does Not Harm Others

A comparative analysis of the scope of criminalization of conduct that does not harm others in the legal systems of Iran and France reveals striking differences in the application of legal paternalism in these two systems. These differences, reflecting the distinct philosophical, religious, and political foundations of the two systems, are observable in various domains of individual conduct and have a profound impact on citizens' everyday lives.

In the field of sexual conduct, the difference between the two systems' approaches is clearly observable. In the Iranian legal system, sexual conduct outside the framework of Sharia marriage, even with the consent of the parties and in private, has been severely criminalized. Under Articles 221 to 241 of the Islamic Penal Code, *zina*, sodomy, lesbian sexual relations, *tafkhez*, and even kissing and lying together out of lust entail severe punishments, including execution, stoning, flogging, and imprisonment. This extensive criminalization is rooted in the jurisprudential view of sexual relations, which permits them only within the framework of Sharia marriage. By contrast, the French legal system has for decades undertaken broad decriminalization in the field of consensual sexual conduct between adults. Adultery, homosexuality, and sexual relations outside marriage have long been removed from the list of criminal offenses (Khajavand & Soltanian, 2024).

In the field of drug and alcohol use, meaningful differences exist between the two systems. In the Iranian legal system, consumption of any alcoholic beverage, under Article 264 of the Islamic Penal Code, entails the Sharia-prescribed punishment of eighty lashes. Similarly, drug use is criminalized under the Anti-Narcotics Law and entails various punishments, including imprisonment, flogging, and fines. This criminalization applies even when consumption takes place in private and without disturbing others. By contrast, in the French legal system, alcohol consumption is not a crime, and only certain behaviors associated with intoxication, such as drunk driving or disturbance of public order while intoxicated, are criminalized. With respect to narcotic substances, although their use remains illegal, a tendency toward relative decriminalization has been observed in recent years.

In the field of suicide and assisted suicide, meaningful differences between the two systems can be observed. In the Iranian legal system, although suicide has not been criminalized as an independent criminal act, under Article 375 of the Islamic Penal Code, assisting suicide is considered a crime and entails imprisonment from six months to three years. Similarly, euthanasia or mercy killing is not accepted under any circumstances and is treated as intentional homicide. By contrast, in the French legal system, attempted suicide is not a crime,

and assisted suicide, under specific circumstances, particularly in cases of incurable illness and severe pain, faces fewer restrictions (Mashayekhi et al., 2025).

### 3.4.3. *Challenges of the Principle of Legal Paternalism and Protectionism*

The challenges of the principle of legal paternalism and protectionism in the criminal law systems of Iran and France, despite the fundamental differences in the philosophical and value foundations of these two systems, have significant commonalities. These challenges may be examined at theoretical, operational, and social levels.

At the theoretical level, the main challenge in both systems is the conflict between paternalism and the principle of individual autonomy. In the Iranian legal system, this conflict appears as a confrontation between principles such as commanding the good and forbidding the wrong, preserving Islamic values, and the public interest of the system, on the one hand, and principles such as human dignity, the right to self-determination, and the prohibition of spying, on the other. This conflict becomes more prominent, especially in cases where the individual, with full awareness and consent, makes a decision that is undesirable from the Sharia perspective. In the French legal system as well, this conflict appears as a confrontation between principles such as human dignity, public order, and the protection of vulnerable persons, on the one hand, and individual liberty, privacy, and the right to self-determination, on the other.

Another theoretical challenge is determining the precise limits of legitimate state intervention. Concepts such as public interest, harm, or wrong are inherently fluid and interpretable, and determining their precise instances is difficult. In the Iranian legal system, the concept of public interest is so broad that it can justify a wide range of interventions. In the French legal system as well, the concept of public order has gradually evolved from a merely material meaning to a broader meaning encompassing fundamental values. This conceptual ambiguity can lead to an excessive expansion of the scope of paternalism and increase the risk of its abuse (Lehto, 2025).

At the operational level, both systems face similar challenges. The first is the inefficacy of a purely criminal approach in dealing with certain social phenomena. Empirical evidence shows that criminalizing certain

behaviors, such as drug use, has not by itself led to their meaningful reduction and has sometimes produced unintended consequences, such as the formation of black markets, increased violence, or the undergroundization of behaviors. In Iran, despite severe punishments, approximately 2.8 million people are addicted to narcotic substances. France also faces a high rate of cannabis use, approximately 11 percent of the adult population. Another challenge is the high cost of enforcing paternalistic laws. In Iran, approximately 30 percent of judicial cases and more than 40 percent of the prison population relate to offenses without a private complainant. In France, the annual cost of combating drugs is estimated at approximately 2 billion euros (Treger, 2023).

Another operational challenge is the conflict between the principle of paternalism and the principle of the prohibition of spying. Criminalizing conduct that mainly occurs secretly and in private requires extensive surveillance of citizens' private lives, which can lead to violations of privacy and the creation of a policing atmosphere. This challenge exists in both systems, but it is more prominent in Iran due to the broader scope of paternalism-based criminalizations.

At the social level, the main challenge in both systems is the gap between formal and informal norms. In societies where a significant proportion of citizens have not internalized formal norms, paternalistic interventions encounter hidden and overt resistance, thereby reducing their effectiveness. This gap has created serious challenges, especially in Iran and among the younger generation. Another challenge is the negative impact of paternalistic interventions on citizens' trust in the legal system. The perception that the state intervenes excessively in individuals' private lives can reduce respect for the law and increase the tendency to evade regulations (Lassen & Mahler, 2023).

Another social challenge is the conflict between legal paternalism and cultural and value pluralism in contemporary societies. In today's multicultural societies, imposing one particular conception of the "good life" on all citizens may lead to discrimination, exclusion of minorities, and the intensification of social tensions. This challenge is more prominent in France due to greater ethnic and cultural diversity, but it is also observable in Iran given its existing religious and cultural diversity.

3.4.4. Comparative Comparison of Key Indicators of Paternalism in the Two Systems

In order to better understand the fundamental differences between paternalistic approaches in the legal systems of Iran and France, Table 1 presents the most important comparative indicators in the two systems.

This table shows the foundations of legitimacy, the position of paternalism, the approach to individual liberty, the role of religion in legislation, and each system’s position in various domains of criminalization, including sexual conduct, alcohol and drug use, suicide, abortion, and dress, as well as supervisory mechanisms and statistics on victimless crimes.

Table 1

Comparative Comparison of Paternalistic Approaches in Iran and France

Indicator	Iranian Legal System	French Legal System
Main foundations of legitimacy	Jurisprudential-religious: public interest, the no-harm rule, <i>Velayat-e Faqih</i>	Secular-humanistic: human dignity, public order
Position of paternalism	Central and extensive	Limited and exceptional
Approach to individual liberty	A limited value within the framework of Sharia	An inherent and autonomous value
Role of religion in legislation	Direct and fundamental	Indirect and limited: the principle of <i>laïcité</i>
Criminalization of sexual conduct	Extensive: <i>zina</i> , sodomy, lesbian sexual relations	Decriminalized, except incest
Consumption of alcoholic beverages	Sharia-prescribed punishment: 80 lashes	Not a crime, except drunk driving
Drug use	A crime with severe punishment	A crime with a treatment-oriented approach
Suicide and assisted suicide	Assisting suicide is a crime	Attempted suicide is not a crime
Abortion	Only in cases of danger to the mother’s life	Permitted up to the 14th week of pregnancy
Dress	Mandatory hijab	Only prohibition of full-face covering
Supervisory mechanism	Guardian Council: conformity with Islam	Constitutional Council: principle of proportionality
Percentage of victimless crimes	Approximately 70 percent	Approximately 25 percent

As can be observed from Table 1, the fundamental differences between the two systems in the foundations legitimizing paternalism are rooted in deep cultural, religious, and philosophical differences. The Iranian legal system, relying on Shiite jurisprudence, has widely accepted paternalism and institutionalized it in its criminal laws. By contrast, the French legal system, relying on liberal and secular principles, has confined paternalism to exceptional cases and, in most domains, has adopted individual liberty as the general rule. These differences are clearly observable in indicators such as the criminalization of sexual conduct, alcohol consumption, dress, and the percentage of victimless crimes.

4. Discussion

The findings of the study indicate that the legal systems of Iran and France, despite fundamental differences in the foundations and scope of paternalism, share certain basic values such as human dignity, public order, and protection of vulnerable persons. This finding is

consistent with the study by Nobahar and colleagues, which examined the impact of paternalistic structures on the formation of laws. Nobahar’s comparative analysis of laws showed that paternalistic structures can lead to excessive criminalization (Nobahar & Nobahari Tehrani, 2022). The findings of the study are also consistent with Maniaci’s study, which defines paternalism as “state intervention in individual decisions to promote the individual’s own good” (Maniaci, 2025). The distinction between hard and soft paternalism in this study has provided an appropriate framework for analyzing different types of interventions in the two systems. In the Iranian legal system, extensive paternalism faces multiple challenges. The first is the formation of underground markets and the increase in law-enforcement costs. The criminalization of drug use, despite severe punishments, has not eradicated this phenomenon but has instead led to the formation of illegal markets. According to official statistics, approximately 2.8 million people in Iran are addicted to narcotic substances, a figure that has increased despite

severe penal responses. This finding is consistent with Lehto's study, which shows that behavioral public policy is inherently paternalistic and that attempts to adopt non-interventionist approaches often fail (Lehto, 2025). The second challenge is the conflict between paternalism and the principle of the prohibition of spying. The third challenge is the gap between formal and informal norms, particularly among the younger generation.

In the French system, despite its more limited approach, challenges also exist. The first is the incomplete effectiveness of the criminal approach in combating drug use. France faces a high rate of cannabis use, approximately 11 percent of the adult population, in Europe, and criminalization has not had a meaningful impact on reducing this behavior. The second challenge is the high cost of enforcing laws, approximately 2 billion euros annually. The third challenge is the conflict between paternalistic interventions and the principle of *laïcité*. This finding is consistent with the study by Lassen and Mahler, which shows that opposition to paternalistic policies is significant but heterogeneous and is related to cognitive ability and preferences for personal autonomy (Lassen & Mahler, 2023).

From the perspective of effectiveness, the extensive paternalistic approach in Iran may lead, in the short term, to an apparent reduction of certain behaviors in public, but in the long term it faces operational and social challenges. Poikolainen's study shows that paternalistic measures in alcohol policy can be effective but raise concerns regarding individual liberty (Poikolainen, 2021). By contrast, the limited paternalistic approach in France, relying on non-penal solutions, entails lower enforcement costs, but may lead to an increase in certain risky behaviors in the short term. Long's study shows that self-exclusion agreements in gambling, unlike compulsory paternalistic measures, prioritize gamblers' autonomy (Long, 2023).

One of the most important findings of this study is the identification of common points between the two systems in fundamental values. Both systems pay attention to the concepts of human dignity, public order, and protection of vulnerable persons, although their definitions and implications differ. These commonalities can provide a basis for dialogue and mutual learning. The study by Mashayekhi and colleagues shows that a balanced approach to human dignity can be constructive (Mashayekhi et al., 2025). Similarly, the study by

Mashdurohatun and colleagues points to the possibility of reassessing punishments in both systems (Mashdurohatun et al., 2026).

The comparative analysis of legitimizing foundations shows that the differences between the two systems are rooted in deep ontological, epistemological, and axiological differences. In the Iranian system, the human being is a divine trustee, whereas in the French system, the human being is autonomous and master of their own destiny. This fundamental difference affects the entire structure of criminal law. Nevertheless, both systems in practice face similar challenges, indicating that paternalism, regardless of its theoretical foundations, encounters common practical problems.

## 5. Conclusion

Legal paternalism, as one of the bases for state intervention in individual liberties, has always been the subject of complex theoretical debates in legal philosophy and criminal policy. The legal systems of Iran and France, as representatives of two distinct legal traditions—Islamic-jurisprudential and secular-liberal—have adopted different approaches to this principle. The results of this study indicate that in the Iranian legal system, legal paternalism occupies a central and extensive position and is recognized as one of the principal bases of state intervention in individual liberties. This prominent position is rooted in jurisprudential foundations and in the specific Islamic understanding of concepts such as freedom, responsibility, and felicity. By invoking concepts such as the public interest of the system, preservation of Islamic values, commanding the good and forbidding the wrong, and the no-harm rule, the Iranian legislature has criminalized a broad range of conduct lacking direct harm to others. These criminalizations, which even include individuals' private conduct in seclusion, indicate the strong and explicit support of the Iranian legal system for the principle of paternalism.

By contrast, in the French legal system, legal paternalism occupies a more limited and exceptional position and is generally placed in tension with liberal principles such as individual liberty, autonomy, and privacy. This limited position is rooted in the philosophical tradition of the Enlightenment and the Revolution of 1789, which emphasize individual liberty and the limitation of state power. Nevertheless, the French legal system does not

completely reject the principle of paternalism and accepts paternalistic interventions in exceptional cases. These exceptions, which are mainly observed in domains such as drug use, the sale and purchase of human organs, or certain specific sexual behaviors, are justified not by direct reference to religious teachings, but by reference to concepts such as human dignity, public order, and protection of vulnerable persons.

The main challenges in both systems include conflict with individual autonomy, conceptual ambiguity, the ineffectiveness of a purely criminal approach, high enforcement costs, the gap between formal and informal norms, and conflict with cultural pluralism. In response to these challenges, both systems have made efforts to moderate and reform paternalistic approaches. In Iran, the distinction between crimes involving divine rights and crimes involving the rights of persons, emphasis on the principle of concealment and prohibition of spying, and the development of treatment-oriented approaches in dealing with phenomena such as addiction indicate efforts to moderate excessive paternalism. In France, the principle of proportionality, the requirement of rational justification for interventions, and the use of non-penal instruments such as education and regulation have been strategies for maintaining a balance between paternalism and individual liberty.

The legal systems of Iran and France, despite their fundamental differences, share certain basic values, such as human dignity, public order, and protection of vulnerable persons, which can provide a basis for dialogue and mutual learning. For the Iranian legal system, it is recommended to strengthen the principle of proportionality in evaluating criminal laws, draw a more precise distinction between private and public conduct in criminalization, adopt a harm-reduction approach rather than a merely punitive approach in cases of self-harming conduct, develop independent supervisory mechanisms to assess the necessity of paternalistic interventions, and strengthen educational and cultural programs instead of relying solely on penal instruments. For the French legal system, it is recommended to pay greater attention to the concept of collective responsibility and public interest in areas such as the environment and public health, adopt a more balanced view of human dignity both as a limit on and a guarantee of freedom, draw inspiration from the restorative justice approach found in Islamic jurisprudence, strengthen the

role of informal institutions such as family and community in crime prevention and offender rehabilitation, and distinguish between sin and crime in order to strengthen moral norms through non-penal mechanisms.

Research suggestions for future studies include conducting a comparative study of the effect of religious and secular teachings on the justification of penal paternalism, examining Iranian and French citizens' attitudes toward paternalistic state interventions using survey methods, conducting a cost-benefit analysis of paternalism-based criminalizations in the two systems, examining the historical evolution of the concept of paternalism in Iranian and French criminal law, and studying the impact of globalization and cultural exchanges on paternalistic attitudes in legislation.

### **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**

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

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The authors report no conflict of interest.

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In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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