

Women's Rights in Divorce from the Perspectives of Imami and Hanafi Jurisprudence: With Particular Reference to Contemporary Challenges

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Divorce, as one of the most important institutions of family law in Islamic jurisprudence, has far-reaching consequences for women's legal and social status. Imami and Hanafi jurisprudence, as two major schools of Islamic jurisprudence, have established different rules concerning women's rights in divorce; however, in the contemporary era, these rules have encountered challenges arising from social transformations and human rights discourse. This study aims to comparatively examine women's rights in divorce from the perspectives of Imami and Hanafi jurisprudence and to analyze the extent to which each school protects women, as well as the challenges confronting such protection under contemporary conditions. This study employs a descriptive-analytical approach and is based on library research. The data were collected from authoritative jurisprudential and legal sources and contemporary scholarly studies and were analyzed through a comparative examination of Imami and Hanafi jurisprudence. The study also investigates the interpretive and ijtihād-based capacities of both schools in responding to emerging needs. The findings indicate that, in both schools, the principal authority to initiate divorce is vested in the husband; nevertheless, various mechanisms have been established to protect women. In Imami jurisprudence, institutions and doctrines such as hardship and distress ('usr wa ḥaraj), stipulations incorporated into the marriage contract, delegated authority to initiate divorce, and judicial divorce play an important role in protecting women. In Hanafi jurisprudence, khul' divorce, delegation of the power of divorce, and dissolution of marriage under specific circumstances are likewise recognized as protective mechanisms. Nevertheless, the practical implementation of these mechanisms in the contemporary era faces challenges such as the difficulty of proving hardship and distress, women's economic vulnerability following divorce, child-custody issues, and tensions with certain human rights approaches. Both jurisprudential systems possess capacities for protecting women in divorce; however, the effective utilization of these capacities requires dynamic interpretation, reform of civil legislation, and attention to contemporary social conditions. Strengthening progressive ijtihād, enhancing women's legal awareness, and promoting convergence between Islamic jurisprudence and modern legal systems may contribute to greater justice in divorce proceedings and more effective protection of women.

Keywords: women's rights, divorce, Imami jurisprudence, Hanafi jurisprudence, comparative study

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1. Introduction

Divorce, as one of the mechanisms through which the institution of the family is dissolved, has always occupied a central position in legal and jurisprudential systems. In Islamic societies, this institution derives from religious texts and legally authoritative practice, and its rules are inferred and explained within the framework of Islamic jurisprudence (Hakimi, 2003). Nevertheless, far-reaching social, economic, and cultural transformations in the modern era have generated unprecedented questions and challenges concerning the status and rights of women in the divorce process. The growing level of legal awareness, changes in gender roles, women's increasing participation in public life, and the emergence of global discourses on human rights and equality have all made it necessary to reconsider, analyze, and adapt traditional approaches to family rights, particularly the institution of divorce, in light of changing contemporary circumstances (Barikloo, 2011). In this context, Islamic jurisprudence, by relying on its dynamic sources of *ijtihad* and overarching legal principles, possesses considerable interpretive and adaptive capacities for responding to these needs (Hosseini Shirazi, 1988). Among the influential schools of Islamic jurisprudence are Imami and Hanafi jurisprudence, which, despite sharing many general principles, display significant differences in the detailed rules, methods of legal inference, and mechanisms available for protecting women in divorce. These differences have not only influenced the legal systems of countries adhering to these schools but have also determined the extent and quality of protection afforded to women at the critical point of marital dissolution. A comparative examination of these two jurisprudential systems is not merely a historical comparison or an exercise in comparative jurisprudence; rather, it is an essential approach to understanding the capacities, limitations, and possibilities for developing family law in the contemporary world. Such a study can clarify the strengths and weaknesses of each school in confronting emerging issues and propose solutions for strengthening women's status within a framework consistent with Islamic principles. The central question is this: in view of the jurisprudential foundations and principles of legal inference in the Imami and Hanafi schools, what

mechanisms have been envisaged to protect women's rights in divorce? To what extent have these mechanisms functioned effectively in confronting contemporary challenges, such as evidentiary difficulties, women's economic circumstances after separation, and demands for equality in the authority to dissolve marriage?

This article adopts a descriptive-analytical approach and a library-based method to examine these questions. The research data were collected from authoritative jurisprudential and legal sources and contemporary studies relating to both schools and were analyzed comparatively. The objective is not merely to identify jurisprudential differences, but also to analyze the effects of these differences on women's legal and social status and to identify the internal capacities of each school for expanding protection through dynamic *ijtihad* and attention to the objectives of the *Shari'a*.

2. Jurisprudential Foundations of Women's Rights in Divorce

An examination of women's rights in divorce under Islamic jurisprudence, particularly Imami jurisprudence and the Sunni schools, is impossible without understanding their jurisprudential foundations. Jurisprudential foundations refer to the body of principles, rules, and sources according to which jurists define the rights and obligations of women and men in the process of marital dissolution (Diani, 2000). These foundations are derived from the principal sources of the *Shari'a*, namely the Qur'an, the Sunnah, consensus, and reason, as well as general jurisprudential rules and the objectives of the *Shari'a*. Understanding these foundations demonstrates that women's rights in divorce are not merely products of positive law, but are rooted in the fundamental principles of Islamic jurisprudence. The first and most important jurisprudential foundation of women's rights in divorce is the Qur'an. Numerous Qur'anic verses address divorce, women's financial rights, the waiting period, maintenance, and the obligation to treat women justly. For example, verse 231 of *Surat al-Baqara* emphasizes the necessity of treating women properly at the time of divorce and instructs men either to retain them on equitable terms or to release them in a proper manner. This verse reflects the principle prohibiting abuse of the right to divorce and the requirement of justice in the dissolution of marriage (Darvishi Hoveyda, 2004; Safaei

& Rahimi, 2016). The verses of Sūrat al-Ṭalāq, particularly verses 1 and 6, likewise emphasize women's financial and subsistence rights following divorce, including the right to accommodation during the waiting period and the payment of maintenance. Verse 229 of Sūrat al-Baqara, by referring to the possibility of khul', also demonstrates that when a wife has an aversion to continuing marital life, a mechanism for separation in exchange for financial consideration is available. These verses have constituted the principal foundation on which jurists have determined women's financial and non-financial rights in divorce. The Sunnah of the Prophet of Islam and the Imams constitutes another important source for explaining women's rights in divorce (Safaei, 1990). In addition to setting out the rules of divorce, the traditions emphasize fairness, justice, and the prohibition of oppression against women (Alaei Novin, 2012). For example, Shi'i traditions indicate that where a woman experiences hardship and distress, the Islamic judge may compel the husband to divorce her. These traditions provide the jurisprudential basis for judicial divorce and for the protection of women in difficult circumstances. Conversely, traditions describing divorce as reprehensible demonstrate the cautious approach of Islamic jurisprudence toward the dissolution of the family (Feyz, 1997). This approach has led jurists, while recognizing divorce, to develop mechanisms to protect women and prevent abuse of the right to divorce (Mohaghegh Damad, 2018).

3. Consensus of Jurists, Reason, and Ijtihād

Consensus, as one of the sources of jurisprudential inference, has played a role in many rules relating to divorce. Imami and Sunni jurists agree on the basic legitimacy of divorce, the obligation to pay the dower and maintenance, and certain financial rights of women. Although differences exist concerning the details and scope of these rights, consensus on the principle of protecting women's financial rights at the time of divorce constitutes an important jurisprudential foundation (Lotfi, 2010). In Imami jurisprudence, reason occupies a distinctive position as one of the sources of the inference of legal rules. Through reason and principles of ijtihād, jurists infer rulings in cases where no explicit textual authority exists or where a new interpretation is required. With respect to women's rights in divorce, rational principles such as justice, the prohibition of

harm, and the protection of family interests have played an important role in the development of protective rules. For example, the expansion of the concept of hardship and distress and the recognition of judicial divorce for women have, to a considerable extent, been based on rational reasoning and attention to social conditions (Mohaghegh Damad, 2018). General jurisprudential maxims are among the most important foundations of women's rights in divorce. The principal maxims include the following:

The no-harm maxim: Under this maxim, no legal rule should impose abnormal or excessive harm on individuals. Relying on this maxim, jurists have recognized the possibility of divorce at the wife's request when continuation of the marital relationship causes her serious harm.

The maxim negating hardship and distress: This maxim provides that legal obligations must not result in severe hardship. Accordingly, where marital life subjects the wife to intolerable difficulty, the judge may issue a divorce decree.

The principle of justice: Justice in family relations requires that women's rights be respected upon divorce and that abuse of the power of divorce be prevented.

The principle of fidelity to contractual stipulations: This principle provides the basis for the validity of stipulations incorporated into the marriage contract and enables a woman to secure her rights in the event of divorce by including protective conditions in the contract (Katouzian, 1999; Mehrpour, 2000; Mokhtari Afrakati & Dari, 2015).

Another jurisprudential foundation of women's rights in divorce is attention to the general objectives of the Shari'a. Preservation of the family, protection of human dignity, prevention of oppression, and realization of justice are among the objectives considered by jurists when deriving rules relating to divorce. Under this approach, the rules of divorce must be interpreted in a manner that both protects the foundation of the family and prevents the violation of women's rights (Mohammadi, 2001). Islamic jurisprudence, particularly in contemporary ijtihād-oriented approaches, also takes account of custom and social circumstances. Changes in women's social roles and economic and cultural transformations have led some jurists to emphasize the necessity of reconsidering interpretations of divorce rules and strengthening legal protection for women

(Mehrpour, 2000). This demonstrates that the jurisprudential foundations of women's rights in divorce, in addition to resting on fixed sources, are also capable of adaptation to temporal circumstances. In fact, the jurisprudential foundations of women's rights in divorce comprise a body of sources and principles, including the Qur'an, the Sunnah, consensus, reason, jurisprudential maxims, and the objectives of the Shari'a, which together shape the framework for protecting women during marital dissolution. These foundations demonstrate that Islamic jurisprudence, while recognizing the right to divorce, has also envisaged mechanisms to prevent injustice and protect women. In light of contemporary social transformations, reliance on these foundations and their dynamic interpretation can strengthen women's rights and promote justice in family relations (Hedayatnia, 2004; Mohaghegh Damad, 2008; Nouri, 2006).

4. Divorce in Imami Jurisprudence

In Imami jurisprudence, divorce is recognized as one of the most important means of dissolving a permanent marriage and is governed by specific definitions, conditions, elements, and legal effects derived from the Qur'an, the Sunnah, consensus, and reason. Imami jurists regard divorce as an exceptional remedy and a last resort when continuation of marital life is no longer possible; accordingly, they have established rules and restrictions to prevent its abuse (Mokhtari Afrakati & Dari, 2015). In Imami jurisprudence, divorce is generally defined as "the removal of the bond of permanent marriage through a specific formula." Al-Muhaqqiq al-Hilli defines divorce as "al-ṭalāq izālat qayd al-nikāḥ bi-ṣiġhatin makhṣūsa," meaning the dissolution of the marital bond through a specific verbal formula (Al-Hilli, 1991). Accordingly, divorce applies only to permanent marriage, whereas temporary marriage is dissolved through the expiration of its term or the husband's relinquishment of the remaining term, rather than through divorce. The legitimacy of divorce in Imami jurisprudence is grounded in Qur'anic verses, traditions, and juristic consensus. At the same time, numerous traditions emphasize the reprehensibility of divorce, including the well-known saying, "The most detestable of lawful acts before God is divorce." Although the chain of transmission of this tradition has been debated, it is cited in jurisprudential texts as supporting the

reprehensibility of divorce (Al-Amili; Araki, 1998; Makarem Shirazi, 1990). In Imami jurisprudence, divorce is classified as a unilateral legal act, meaning that it is brought into effect through the husband's intention and, unlike a contract, does not require acceptance by the other party. Nevertheless, this unilateral character is not absolute, because in certain cases, such as where the wife holds delegated authority to divorce or where judicial divorce is granted, the wife or the Islamic judge also plays an effective role in bringing about the divorce (Al-Amili). Imami jurisprudence prescribes several conditions for the validity of divorce, the most important of which are as follows:

Legal capacity of the divorcing party: The husband must have reached legal maturity, possess mental capacity, act voluntarily, and intend the legal effect. A divorce pronounced by a minor, a person lacking mental capacity, or a coerced individual is invalid.

Intention and voluntariness: Divorce must be pronounced with a genuine intention to create the legal effect of divorce; a statement made in jest or under coercion is not valid.

Pronouncement of the divorce formula: Divorce must be pronounced through an Arabic formula containing the word "divorce" or an equally explicit expression and must occur in the presence of two just male witnesses. This is a distinctive requirement of Imami jurisprudence that differentiates it from certain Sunni schools.

Condition of the wife: At the time of divorce, the wife must be in a period of purity during which no sexual intercourse has occurred; that is, she must not be menstruating or experiencing postnatal bleeding, and the husband must not have had intercourse with her during that period of purity, except in exceptional cases such as pregnancy or the husband's prolonged absence (Jafari Langroudi, 1997; Katouzian, 2016). Imami jurisprudence divides divorce into several categories:

1. **Revocable divorce:** In this form of divorce, the husband has the right to resume the marital relationship during the waiting period, and the marital bond is not completely severed during that time.
2. **Irrevocable divorce:** In this form of divorce, the husband has no right to return to the wife after the divorce unless a new marriage contract is concluded. Khul' divorce, mubārāt divorce, divorce before consummation, and the divorce

of a postmenopausal woman are among the forms of irrevocable divorce.

3. *Khul'* and *mubārāt* divorce: In these cases, because of her aversion toward the husband, the wife transfers property to him in exchange for the divorce.
4. Judicial divorce: Where continuation of marital life is difficult for the wife, such as in cases of hardship and distress, the husband's absence, or failure to provide maintenance, the Islamic judge may issue a divorce decree at the wife's request. Although the initial authority to divorce is vested in the husband under Imami jurisprudence, the wife also has access to various legal mechanisms for release from marital life. These mechanisms include delegated authority from the husband to divorce, stipulations incorporated into the marriage contract, applications for judicial divorce in cases of hardship and distress, and *khul'* and *mubārāt* divorce (Lotfi, 2010; Mohaghegh Damad, 2008; Mohammadi, 2001).

Relying on maxims such as the no-harm rule and the negation of hardship and distress, Imami jurists have recognized the authority of the judge to intervene in order to protect the wife, and this principle has been reflected in the civil legislation of certain jurisdictions based on Imami jurisprudence (Mohaghegh Damad, 2018). Imami jurisprudence regards divorce as legally permissible but reprehensible and understands its purpose as preventing the continuation of a marital relationship that results in harm or moral or social corruption. Accordingly, while recognizing divorce, it establishes mechanisms to restrict its use and protect women's rights. The requirement of witnesses, specific temporal conditions, and the possibility of intervention by the Islamic judge all seek to balance the right to dissolve marriage with preservation of the family institution (Mohaghegh Damad, 2018; Motahhari, 1995). In fact, divorce in Imami jurisprudence is a legal-jurisprudential institution of a unilateral nature that takes effect only under specific conditions. Although the husband holds the primary authority to divorce, jurisprudential rules and protective institutions permit women, in defined circumstances, to obtain release from marital life. This structure reflects an attempt by Imami jurisprudence to balance preservation of the family with

protection of the rights of both parties, particularly women, when serious family conflict arises (Allahmoradi & Ahadi, 2015; Mehrpour, 2000).

5. Women's Rights in Divorce from the Perspective of Imami Jurisprudence

In Imami jurisprudence, divorce is a legal institution of a unilateral nature whose primary exercise lies with the husband. At the same time, however, a range of financial, non-financial, and protective rights has been recognized for women in order to prevent their rights from being violated during marital dissolution (Hedayatnia Ganji, 2006). These rights are grounded in the Qur'an, the Sunnah, jurisprudential maxims such as the no-harm principle and the negation of hardship and distress, and juristic *ijtihad*. Although the general rule in Imami jurisprudence is that divorce takes effect through the husband's will, a woman may, under specific circumstances, apply to a court or the Islamic judge for divorce. The principal grounds include:

1. Hardship and distress: If continuation of marital life causes the wife severe hardship, the judge may compel the husband to divorce her.
2. Failure to provide maintenance: Where the husband refuses to pay maintenance and cannot be compelled to do so, the wife is entitled to seek divorce.
3. Prolonged absence of the husband: Where the husband is missing and the applicable legal conditions are satisfied, judicial divorce is available.
4. Stipulations incorporated into the marriage contract: The wife may include a stipulation granting her delegated authority to divorce or other protective conditions in the marriage contract.
5. Delegated authority to divorce: If the husband grants the wife authority to act as his agent in divorce, she may procure her own divorce (Fahimi, 2006; Feyz, 1997; Safaei & Emami, 1999).

These mechanisms demonstrate that, contrary to a common perception, Imami jurisprudence provides avenues through which women may play an active role in dissolving marriage. Financial rights constitute one of the most important forms of protection afforded to women in divorce under Imami jurisprudence. The wife

owns the dower, and upon divorce she is, as a general rule, entitled to receive it in full. In a revocable divorce, the wife is entitled to maintenance during the waiting period. Remuneration for domestic services and consolatory payment, in contemporary legal systems based on Imami jurisprudence, have also been recognized as forms of compensation for the wife's services during married life. The wife may remain in the marital residence until the expiration of the waiting period (Al-Tusi, 1967).

With respect to non-financial rights, the mother has priority in custody during the child's early years. The husband is required to refrain from harassing or harming the wife during divorce. During the waiting period, the wife receives financial and social protection, and this period is intended to preserve lineage and provide an opportunity for reconciliation in cases of revocable divorce (Hedayatnia Ganji, 2006). One of the important characteristics of Imami jurisprudence is its recognition of the role of the Islamic judge in divorce. Where the wife is placed in a harmful situation, the judge may intervene and may even issue a divorce decree. This reflects the considerable protective capacity of Imami jurisprudence for women in specific circumstances (Allahmoradi & Ahadi, 2015; Mehrpour, 2000; Mokhtari Afrakati & Dari, 2015).

6. Divorce in Hanafi Jurisprudence

In Hanafi jurisprudence, divorce is defined as one of the means of dissolving marriage within a framework of specific rules and principles. This school, which is among the oldest and most widely followed Sunni schools, recognizes the husband's primary authority to effect divorce while also providing mechanisms and institutions intended to protect women during separation. An examination of these rights demonstrates that Hanafi jurisprudence, relying on Islamic sources and its own jurisprudential principles, seeks to establish a balance between the husband's authority to dissolve the marriage and the protection of the wife's financial and religious rights (Makarem Shirazi, 1990; Mousavi Bojnourdi, 1993). The foundations of women's rights in divorce under Hanafi jurisprudence are rooted in the Qur'an, the Prophetic Sunnah, consensus, and analogical reasoning. Verses such as verse 229 of Sūrat al-Baqara, which addresses divorce and khul', and the verses of Sūrat al-Ṭalāq concerning women's financial rights

constitute the principal textual foundations for legal inference (Fahimi, 2006; Feyz, 1997; Safaei & Emami, 1999). Jurisprudential principles such as the prevention of harm and recognition of custom also play an important role in interpreting and adapting legal rules to social conditions. Through the principle of istihsān, namely preference for a solution that better secures justice and public interest, Hanafi jurisprudence displays a measure of flexibility in legal inference (Al-Hilli, 1991; Al-Jaziri, 2003; Hosseini Shirazi, 1988).

Authority to Divorce and the Status of Women

In Hanafi jurisprudence, divorce is regarded as a unilateral legal act brought about by the husband's will and verbal pronouncement. This means that the primary and principal authority to initiate divorce rests with the husband. Nevertheless, this does not mean that the wife is completely deprived of the possibility of separation. Hanafi jurisprudence provides several avenues through which a woman may leave the marriage under specific circumstances. The most important are as follows:

1. **Khul'**: The wife may offer financial consideration, generally by relinquishing all or part of her dower or transferring other property, and request that the husband pronounce a khul' divorce. In such a case, the divorce is irrevocable, and the husband has no right of return.
2. **Delegation of divorce**: The husband may delegate the authority to divorce to the wife or another person. In that event, the wife may exercise the delegated authority and divorce herself at an appropriate time.
3. **Annulment of marriage**: In limited and specified circumstances, the wife may petition a judge to annul the marriage. The principal grounds include the husband's impotence, contagious or incurable disease, failure to pay maintenance, and prolonged absence causing harm. Nevertheless, the grounds for annulment in classical Hanafi jurisprudence are narrower than the broader concept of hardship and distress in Imami jurisprudence (Al-Amili; Araki, 1998; Hosseini Shirazi, 1988).

Hanafi jurisprudence prescribes specific financial protection for women at the time of divorce. The wife acquires ownership of the dower upon conclusion of the marriage contract. If divorce occurs after consummation,

she is entitled to the full dower; if it occurs before consummation, she is entitled to half. In a revocable divorce, the wife is entitled to maintenance throughout the waiting period. In an irrevocable divorce, including *khul'*, maintenance is generally payable only if the wife is pregnant. The wife is entitled to remain in the marital residence during the waiting period following a revocable divorce. Classical Hanafi jurisprudential texts do not extensively recognize concepts such as remuneration for the wife's domestic services. Nevertheless, the civil legislation of some Hanafi-majority jurisdictions, including Egypt and Pakistan, has introduced additional financial protection for women under the influence of contemporary legal developments. With respect to child custody, Hanafi jurisprudence gives priority to the mother. The mother has the right to custody of a son until the age of seven and of a daughter until puberty, often regarded as nine years of age. Thereafter, custody transfers to the father. The costs of maintaining the child while in the mother's custody remain the responsibility of the father. Nevertheless, Hanafi jurisprudence possesses internal capacities for adaptation (Bojnourdi, 1998; Hosseini Shirazi, 1988). Mechanisms such as delegated divorce can be strengthened through modern standardized marriage contracts. Similarly, an objectives-based interpretation of the *Shari'a*, focused on justice and the prevention of harm, together with attention to changing custom, can provide a basis for conceptually expanding the grounds of annulment and adopting a broader understanding of harm. Many Hanafi-majority jurisdictions have reformed their family laws by relying on these capacities. In the field of women's rights in divorce, Hanafi jurisprudence provides a system based on basic financial rights, including dower, maintenance, and custody, together with limited but defined mechanisms through which women may seek separation, namely *khul'*, delegated divorce, and annulment in specified cases (Mohaghegh Damad, 2018; Motahhari, 1995; Shobeiri Zanjani, 1901). By relying on principles such as public interest and custom, this school possesses the capacity for flexibility and adaptation to changing circumstances. Effective use of this capacity requires progressive *ijtihad*, reform of civil legislation to provide broader financial and judicial protection for women, and increased legal awareness within society.

7. Comparative Examination

Imami and Hanafi jurisprudence, as two major jurisprudential systems in the Islamic world, display both similarities and differences concerning women's rights in divorce. A comparative study of these perspectives can clarify the protective capacities of each and facilitate analysis of contemporary challenges. In Imami jurisprudence, divorce is a unilateral legal act, and the general rule is that the husband possesses the authority to divorce. Nevertheless, relying on maxims such as the negation of hardship and distress and the no-harm principle, Imami jurists recognize the possibility of intervention by the Islamic judge in specific cases. Consequently, a woman may apply to a court for divorce in cases such as failure to provide maintenance, severe mistreatment, the husband's prolonged absence, or hardship and distress. It is also possible to incorporate a stipulation of delegated authority to divorce into the marriage contract, thereby giving the woman a more active role. In Hanafi jurisprudence, the primary authority to divorce likewise rests with the husband, and divorce is regarded as the husband's right. A woman does not possess a direct right to divorce, but may obtain separation through institutions such as *khul'*, delegated divorce, and judicial annulment. Nevertheless, the scope of judicial intervention in divorce at the wife's request is narrower in Hanafi jurisprudence than in Imami jurisprudence and is generally accepted only in specified circumstances, such as impotence or failure to pay maintenance.

Accordingly, both schools confer the primary authority to divorce on the husband, but Imami jurisprudence provides women with broader opportunities to seek divorce through the development of judicial divorce and stipulations incorporated into the marriage contract.

8. Women's Financial Rights

(a) Dower: In both schools, the dower is an established right of the wife, and she acquires ownership of it upon conclusion of the marriage contract. If divorce occurs after consummation, the wife is entitled to the full dower; if it occurs before consummation, she is entitled to half. There is no significant difference between the two schools in this respect.

(b) Maintenance: In a revocable divorce, the wife is entitled to maintenance during the waiting period. This

rule is accepted in both schools. In an irrevocable divorce, maintenance is generally payable only if the wife is pregnant.

(c) Supplementary financial rights: In legal systems based on Imami jurisprudence, concepts such as remuneration for domestic services and consolatory payment have been recognized as additional financial protection for women. Such concepts are not extensively developed in classical Hanafi jurisprudence, although comparable financial protection has been introduced in the contemporary legislation of some Islamic countries. Comparative conclusion: The two schools are highly similar with respect to principal financial rights, including dower and maintenance, but Imami jurisprudence possesses greater capacity for developing supplementary financial protection.

9. The Wife's Right to Seek Divorce

Under Imami jurisprudence, the wife may seek divorce on the grounds of hardship and distress, failure to provide maintenance, the husband's absence, severe mistreatment, stipulations incorporated into the marriage contract, and delegated authority to divorce. The Islamic judge plays a prominent role in examining such cases and may issue a divorce decree where the relevant conditions are established. Under Hanafi jurisprudence, the wife may obtain separation through *khul'*, involving financial consideration paid to the husband, delegated divorce, or annulment in limited circumstances. Nevertheless, divorce at the wife's request is generally more difficult to obtain and requires either the husband's consent in *khul'* or proof of specified grounds before a judge. Consequently, Imami jurisprudence recognizes a broader range of grounds on which a wife may seek divorce, whereas the principal mechanism available to women in Hanafi jurisprudence is *khul'*, which is generally accompanied by a financial payment.

10. Custody and Children's Rights

In both schools, the mother has priority in custody during the child's early years. In Imami jurisprudence, custody remains with the mother until a specified age and then transfers to the father. Hanafi jurisprudence likewise grants the mother custody until defined ages. Financial and legal guardianship of the child in both

schools generally remains with the father. There are considerable similarities between the two schools with respect to custody, and both attribute an important role to the mother during the child's early years. One of the significant differences between the two schools concerns the role of the judge in divorce. Under Imami jurisprudence, the judge may intervene in cases of hardship and distress or failure to provide maintenance and may even issue a divorce decree. Under Hanafi jurisprudence, the judge's role is more limited and is generally exercised through annulment in specified circumstances. This difference has resulted in broader judicial protection for women under legal systems based on Imami jurisprudence.

11. The Extent of Protection Afforded to Women in Divorce under Imami and Hanafi Jurisprudence

Assessing the extent of protection afforded to women in divorce under Imami and Hanafi jurisprudence requires examination of several principal indicators: the right to seek divorce, financial protection, the role of the courts, stipulations incorporated into the marriage contract, custody, and the capacity of *ijtihad* to adapt the law to contemporary circumstances. Both schools provide principles for the protection of women within the framework of Islamic jurisprudence; however, the extent and scope of these protections are not identical, and structural differences exist between them.

12. Protection of a Woman's Right to Leave a Harmful Marriage

Under Imami jurisprudence, although the primary authority to divorce rests with the husband, several mechanisms protect women in difficult circumstances. The most important include judicial divorce on the ground of hardship and distress, compelling the husband to divorce where he fails to provide maintenance, divorce in cases of prolonged absence, stipulations incorporated into the marriage contract, including delegated authority to divorce, and the wife's right to apply directly to the Islamic judge. Broad recognition of hardship and distress enables women to seek divorce in a variety of circumstances. This is one of the most significant protective features of Imami jurisprudence. Under Hanafi jurisprudence, protection of the wife's right to leave the marriage is more limited. The wife may seek separation through *khul'*, involving financial

payment, delegated divorce, or annulment in specified cases. However, the scope of judicial annulment is narrower, and *khul'* generally requires the husband's consent. Consequently, leaving a harmful marital relationship may be more difficult for women in certain cases. In terms of the wife's ability to seek divorce, Imami jurisprudence provides broader protection than Hanafi jurisprudence.

Similarities

Both schools provide women with basic financial rights, including the dower, maintenance during the waiting period, child maintenance, and the right to accommodation during the waiting period. These rights demonstrate that both schools provide a minimum level of economic protection for women following divorce.

Differences

In legal systems based on Imami jurisprudence, particularly under contemporary interpretations, supplementary forms of financial protection, such as remuneration for domestic services and consolatory payment, have also been recognized. These forms of protection are not extensively found in classical Hanafi jurisprudence, although some contemporary Hanafi-majority jurisdictions have introduced reforms in this area. The two schools are similar with respect to basic financial rights, but Imami jurisprudence possesses greater capacity to develop supplementary financial protection. In Imami jurisprudence, the Islamic judge plays a highly prominent role in protecting women. The judge may compel the husband to divorce, pronounce the divorce if the husband refuses, and hear the wife's application. This active judicial role constitutes an important protective mechanism for women. Under Hanafi jurisprudence, the judge's role is more limited and is generally confined to annulment in specified circumstances. Judicial protection for women is therefore weaker in certain cases. Imami jurisprudence consequently provides broader judicial protection for women.

13. Stipulations Incorporated into the Marriage Contract and Delegated Authority to Divorce

Under Imami jurisprudence, stipulations incorporated into the marriage contract occupy an important position, and the wife may include various provisions for her own protection, including delegated authority to divorce, the right to education, the right to employment, and the right

to leave the country. The principle of fidelity to contractual stipulations provides the basis for the validity of these conditions and plays an important role in strengthening women's protection. Under Hanafi jurisprudence, it is also possible to delegate the authority to divorce to the wife, but in practice this mechanism has been less frequently used, and the range of protective stipulations has been more limited. Both schools permit delegated authority to divorce, but this mechanism is more developed under Imami jurisprudence. Under both schools, the mother is entitled to custody during the child's early years. This reflects the importance that both schools attribute to the mother's role and to her protection after divorce. The principal differences concern the age limits governing custody and the manner in which custody transfers to the father. In the field of custody, the level of protection afforded to women is relatively similar under the two schools. Because of its emphasis on dynamic *ijtihad* and the role of reason in legal inference, Imami jurisprudence has greater capacity to reinterpret legal rules and adapt them to changing conditions. The development of the concept of hardship and distress and recognition of a broader judicial role illustrate this capacity. Hanafi jurisprudence also permits *ijtihad*, but reform has proceeded more slowly in certain traditional systems. Nevertheless, many Hanafi-majority jurisdictions have reformed their family laws by relying on jurisprudential mechanisms. Both schools possess adaptive capacity, but Imami jurisprudence demonstrates greater theoretical flexibility.

14. The Extent of Protection Afforded to Women in Divorce under Imami and Hanafi Jurisprudence

Assessing the extent of protection afforded to women in divorce under Imami and Hanafi jurisprudence requires examination of several principal indicators: the right to seek divorce, financial protection, the role of the courts, stipulations incorporated into the marriage contract, custody, and the capacity of *ijtihad* to adapt legal rules to contemporary circumstances. Both schools provide principles for protecting women within the framework of Islamic jurisprudence, but the extent and scope of these protections are not identical, and structural differences exist between them. Under Imami jurisprudence, although the primary authority to divorce rests with the husband, several mechanisms protect

women in difficult circumstances. The most important include judicial divorce on the ground of hardship and distress, compelling the husband to divorce in cases of failure to provide maintenance, divorce in cases of prolonged absence, stipulations incorporated into the marriage contract, including delegated authority to divorce, and direct application by the wife to the Islamic judge. Broad recognition of hardship and distress enables women to seek divorce in diverse circumstances. This constitutes one of the most important protective features of Imami jurisprudence. Under Hanafi jurisprudence, protection of the wife's right to leave the marriage is more limited. The wife may obtain separation through *khul'*, involving financial payment, delegated divorce, or annulment in specified cases. However, judicial annulment is available on narrower grounds, and *khul'* generally requires the husband's consent. Consequently, leaving a harmful marriage may be more difficult in certain circumstances. In terms of the wife's ability to seek divorce, Imami jurisprudence provides broader protection than Hanafi jurisprudence. Both schools provide women with basic financial rights, including dower, maintenance during the waiting period, child maintenance, and the right to accommodation during the waiting period. These rights reflect the existence of a minimum level of economic protection for women following divorce under both schools. In legal systems based on Imami jurisprudence, particularly under contemporary interpretations, supplementary forms of financial protection, such as remuneration for domestic services and consolatory payment, have also been introduced. Such protection is not extensively recognized in classical Hanafi jurisprudence, although some contemporary Hanafi-majority jurisdictions have adopted reforms in this field. The two schools are similar with respect to basic financial rights, but Imami jurisprudence has greater capacity for developing supplementary financial protection. Under Imami jurisprudence, the Islamic judge plays a highly prominent role in protecting women. The judge may compel the husband to divorce, pronounce the divorce where the husband refuses, and adjudicate the wife's application. This active judicial role constitutes an important protective mechanism for women. Under Hanafi jurisprudence, the judge's role is more restricted and is generally confined to annulment in specified circumstances. Judicial protection for women is

therefore weaker in some cases. Imami jurisprudence consequently provides broader judicial protection for women.

15. Stipulations Incorporated into the Marriage Contract and Delegated Authority to Divorce

Under Imami jurisprudence, stipulations incorporated into the marriage contract occupy an important position, and the wife may include various provisions for her own protection, including delegated authority to divorce, the right to education, the right to employment, and the right to leave the country. The principle of fidelity to contractual stipulations provides the basis for the validity of these conditions and plays an important role in strengthening women's protection. Under Hanafi jurisprudence, it is also possible to delegate the authority to divorce to the wife, but in practice this mechanism has been less frequently used, and the range of protective conditions has been more limited. Both schools permit delegated authority to divorce, but this mechanism is more developed and more commonly used under Imami jurisprudence. Under both schools, the mother is entitled to custody during the child's early years. This reflects the attention that both schools give to the mother's role and her protection after divorce. The principal differences concern the age limits governing custody and the manner in which custody transfers to the father. In the field of custody, the level of protection afforded to women is relatively similar under the two schools. Because of its emphasis on dynamic *ijtihad* and the role of reason in legal inference, Imami jurisprudence possesses greater capacity to reinterpret legal rules and adapt them to new circumstances. The development of the concept of hardship and distress and recognition of a broader judicial role illustrate this capacity. Hanafi jurisprudence also permits *ijtihad*, but reform has proceeded more slowly in certain traditional systems. Nevertheless, many Hanafi-majority jurisdictions have reformed their family laws by relying on jurisprudential mechanisms. Both schools possess adaptive capacity, but Imami jurisprudence demonstrates greater theoretical flexibility. A comparison of the extent of protection afforded to women in divorce under Imami and Hanafi jurisprudence demonstrates that both schools guarantee women's basic financial rights, including dower, maintenance, and custody. Because of the development of judicial divorce, broad recognition of hardship and

distress, and the active role of the courts, Imami jurisprudence provides greater protection to women in difficult circumstances. Hanafi jurisprudence relies more heavily on mechanisms such as *khul'* and delegated divorce, which in some cases depend on the husband's consent. The two schools display substantial similarities with respect to custody and dower. Both systems possess jurisprudential capacities for strengthening women's protection in the contemporary era. Overall, the protection afforded to women under Imami jurisprudence is broader in relation to release from a harmful marriage and access to judicial remedies, whereas Hanafi jurisprudence also provides protection but within a more limited scope in certain areas. Nevertheless, by relying on *ijtihad* and legal reform, both schools can advance family justice and strengthen women's rights in divorce.

16. Contemporary Challenges Facing Women in Divorce under Imami and Hanafi Jurisprudence

Contemporary social, economic, and legal transformations have created new complexities for the institution of the family and, particularly, divorce. Women's increasing social and economic participation, changing patterns of life, expanding urbanization, and the influence of contemporary human rights norms on legal systems have caused traditional jurisprudential rules governing divorce to confront new questions and challenges. Imami and Hanafi jurisprudence, as two major jurisprudential systems in the Islamic world, offer frameworks for women's rights in divorce that are different in certain respects and similar in others. An examination of contemporary challenges in light of these two schools demonstrates that the gap between traditional rules and emerging social needs is one of the most important issues confronting family law in Islamic societies.

1. Limitations on Women's Authority to Seek Divorce

One of the most significant challenges in both schools is the limited authority of women to dissolve marriage. Under Imami jurisprudence, the primary authority to divorce rests with the husband, and the wife may seek divorce only in specified circumstances, such as hardship and distress, the husband's absence, or stipulations incorporated into the marriage contract (Mohaghegh Damad, 2018). Under Hanafi jurisprudence, the husband likewise possesses the primary authority to divorce, and

the wife generally acts through *khul'* or delegated divorce (Al-Jaziri, 2003). In the contemporary era, women's increased awareness of their rights and changing social roles have made this restriction a fundamental challenge. Many women find themselves in circumstances in which continuation of marital life is difficult, yet establishing the legally recognized grounds for divorce, particularly before traditional judicial institutions, is complex and time-consuming.

2. Proving Hardship and Distress and Its Practical Difficulties

Under Imami jurisprudence, hardship and distress constitute one of the most important mechanisms for protecting women in divorce. Nevertheless, proving hardship and distress before courts is often difficult and requires sufficient evidence. Under Hanafi jurisprudence, although harm is recognized as a ground for annulment, its scope is more limited. In the contemporary era, circumstances such as psychological violence, emotional neglect, or abandonment of marital life without formal disappearance are difficult to prove within traditional jurisprudential frameworks. Consequently, women may encounter legal and judicial obstacles when seeking to leave harmful marriages.

3. Economic Issues Following Divorce

Another important challenge for women in divorce concerns their economic situation after separation. Under Imami jurisprudence, women's financial rights include the dower, maintenance during the waiting period, and, in certain cases, remuneration for domestic services. Hanafi jurisprudence likewise recognizes the dower and maintenance during the waiting period. Nevertheless, in the contemporary era, when many women participate independently or jointly in the household economy, these traditional rights may not adequately address their post-divorce financial needs. Rising living costs, child custody responsibilities, and limited social support expose women to economic vulnerability. This demonstrates the need for contemporary interpretations of jurisprudential rules and their adaptation to present economic conditions.

4. Child Custody and Guardianship

Custody constitutes another major challenge in divorce. Under Imami jurisprudence, custody of young children generally belongs to the mother, while legal guardianship remains with the father. Hanafi jurisprudence likewise grants the mother priority in

custody until a specified age. In the contemporary era, changing family structures and rising divorce rates have made custody one of women's principal concerns. Legal or jurisprudential restrictions on decision-making concerning a child's education, travel, or financial affairs may limit the mother's role in the child's upbringing. This issue is particularly challenging in societies where civil legislation is based on traditional interpretations of jurisprudence.

5. Tension Between Traditional Jurisprudence and Contemporary Human Rights

The expansion of human rights and gender-equality discourse at the global level constitutes one of the principal challenges facing legal systems based on Islamic jurisprudence. Some advocates of women's rights argue that traditional jurisprudential rules governing divorce are not fully consistent with principles of equality and gender justice reflected in international instruments. Conversely, many jurists maintain that Islamic jurisprudence, when correctly interpreted through dynamic *ijtihad*, is capable of responding to contemporary needs. This discursive tension in the field of family rights, particularly divorce, has generated extensive debate concerning legislative reform, new jurisprudential interpretations, and the role of *ijtihad* in adapting the law to changing circumstances.

6. Increased Legal Awareness among Women and Emerging Demands

In the contemporary era, women are more aware of their rights than in the past and expect family law to provide them with greater protection. This awareness has led women to seek more extensive stipulations in marriage contracts and to apply to judicial authorities when disputes arise. Nevertheless, in certain societies, traditional cultural attitudes and social structures impede the full enforcement of women's legal rights. This gap between law and practice is one of the principal challenges to the realization of women's rights in divorce. In many Islamic countries, civil family legislation has been enacted under the influence of Imami or Hanafi jurisprudence. In some cases, these laws have subsequently been reformed to provide greater protection for women. Despite such reforms, differences among national legal systems, judicial interpretations, and levels of enforcement have resulted in varying conditions for women in divorce across different countries. This demonstrates that the challenges women

face in divorce are not exclusively jurisprudential, but also depend on social, cultural, and legal factors.

17. Conclusion

An examination of women's rights in divorce from the perspectives of Imami and Hanafi jurisprudence demonstrates that, despite methodological and inferential differences, both jurisprudential systems have sought to establish a balance among preservation of the family, justice between spouses, and adherence to the requirements of the *Shari'a*. Nevertheless, contemporary social, economic, and cultural transformations have caused the traditional rules of divorce in both schools to confront new practical and theoretical challenges. A comparative analysis of the two schools therefore reveals that they possess considerable capacities for protecting women, but that the manner in which their rules are implemented, interpreted, and adapted to contemporary conditions determines their effectiveness. Under Imami jurisprudence, although the primary authority to divorce rests with the husband, mechanisms such as judicial divorce, hardship and distress, the husband's absence, stipulations incorporated into the marriage contract, and delegated authority to divorce have been made available to women. These mechanisms demonstrate that Imami jurisprudence recognizes protective avenues through which a woman may leave a harmful marital relationship. Hanafi jurisprudence similarly recognizes institutions such as *khul'*, delegated divorce, and annulment under specified circumstances as mechanisms for protecting women. Nevertheless, in both schools, the husband's primary authority to divorce remains a fundamental principle and has become one of the principal subjects of debate and criticism in contemporary family-law discourse. The comparative study demonstrated that Imami jurisprudence possesses greater protective capacity in certain areas, particularly through the development of hardship and distress and the recognition of stipulations incorporated into the marriage contract. Hanafi jurisprudence, by contrast, emphasizes *khul'* and delegated divorce and offers distinct mechanisms that may reduce inequality if properly implemented. However, women's practical ability to benefit from these mechanisms depends on numerous factors, including the national legal system, judicial interpretation, social culture, and women's level of legal awareness. The gap between jurisprudential

theory and legal practice therefore constitutes one of the most important issues in assessing the extent of protection afforded to women in divorce.

In the contemporary era, changes in women's social and economic roles, higher levels of education, broader participation in the labor market, and the expansion of human rights discourse have increased expectations that family-law systems will provide stronger protection for women. Under these circumstances, traditional divorce rules, which were largely developed in earlier social contexts, require reconsideration and interpretation in light of contemporary conditions. Challenges such as the difficulty of proving hardship and distress, women's economic vulnerability after divorce, child-custody issues, and tensions between certain traditional rules and principles of gender justice demonstrate that the mere existence of protective jurisprudential rules is insufficient. Their implementation and adaptation to social realities are of fundamental importance. From a jurisprudential perspective, one of the most important means of addressing these challenges is to utilize dynamic *ijtihad* and attend to the objectives of the *Shari'a*. Objectives such as justice, the prevention of oppression, protection of human dignity, and preservation of the family can provide a basis for new interpretations of divorce rules. In Imami jurisprudence, the principle of continuing *ijtihad* and attention to the requirements of time and place permit reconsideration of certain rulings and development of protective mechanisms. In Hanafi jurisprudence, principles such as *istihsan*, public interest, and custom may similarly be used to develop solutions better adapted to contemporary circumstances. These capacities demonstrate that Islamic jurisprudence, contrary to static interpretations, is capable of responding to social change, provided that it is applied through a dynamic and realistic approach. From a legal and social perspective, reform of civil family law in many Islamic countries reflects an effort to balance jurisprudential foundations with emerging needs. Incorporating protective stipulations into marriage contracts, broadening the concept of hardship and distress, establishing post-divorce economic protection for women, and giving greater weight to the child's best interests in custody are among the measures that can strengthen women's rights. Nevertheless, the principal challenge in many societies is the gap between law and

practice. Even where protective legislation exists, cultural, economic, and administrative barriers may prevent women from fully benefiting from their rights. Enhancing women's legal awareness, educating judges and lawyers, and reforming judicial practices are therefore among the measures required to secure the practical realization of women's rights in divorce. Ultimately, women's rights in divorce under Imami and Hanafi jurisprudence are not merely a jurisprudential issue, but a multidimensional and interdisciplinary subject encompassing legal, social, cultural, and economic dimensions. A comparative analysis of these two schools demonstrates that both possess capacities for protecting women, but effective use of those capacities requires new interpretations, legislative reform, and attention to the realities of women's lives in the contemporary era. Movement toward a system in which justice, human dignity, and family stability are simultaneously protected requires continuous dialogue among jurisprudence, law, and social realities. Future research on women's rights in divorce should therefore focus on the development of new *ijtihad*-oriented approaches, comparative study among jurisprudential schools, and examination of the legal experiences of different countries. Only through such an approach can a model be developed that preserves the foundations of the *Shari'a* while responding to the needs of women in the contemporary world and reducing the social harms associated with divorce. In other words, the realization of justice in divorce requires constructive interaction between the jurisprudential tradition and social transformation—an interaction capable of protecting women's rights within the framework of Islamic values while also taking account of the realities of contemporary life.

Authors' Contributions

Authors contributed equally to this article.

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

Transparency Statement

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

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