

Modernization of Laws Governing Family Law

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The institution of the family in Iran has undergone profound structural transformations; however, the laws governing it have not evolved in parallel with these changes. This study aims to identify comparative patterns of modernization, analyze gaps in Iran's family law system, and examine the obstacles to legal reform. The study employs a descriptive-analytical and comparative research method, with data collected from library-based sources. The findings indicate that common-law and European legal systems have achieved modernization without a complete rupture from tradition through mechanisms such as no-fault divorce, shared parental responsibility, and the sharing of property acquired during marriage. In Iran, the family financial regime, child custody laws, and the model of the husband's headship of the family remain substantially disconnected from contemporary social realities. Secondary jurisprudential rules, dynamic *ijtihad*, and constitutional principles provide significant capacities for legal reform. The principal obstacles can be classified into three areas: resistance arising from conservative interpretations, inefficiency within the judicial system, and the absence of sustained political will. Sustainable modernization can be achieved through constructive engagement with the internal capacities of Islamic jurisprudence and the legal system.

Keywords: *dynamic ijtehad, gender equality, specialized family court, secondary jurisprudential rules, family mediation*

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1. Introduction

The family, as the most fundamental social institution, requires a legal framework capable of remaining aligned with changing social conditions (Mohaghegh Damad et al., 2024). In Iran, structural changes in patterns of life, the growing participation of women in the public sphere, and transformations in the expectations of younger generations regarding family relationships have created a new social context (Zeineddini & Gharachemani, 2024). However, the laws governing family law remain largely grounded in frameworks designed decades ago (Nasari Yousefi et al., 2025). The widening gap between these laws and the lived realities of Iranian families has generated serious

legal and social consequences and has made the need for revision increasingly apparent (Javar et al., 2025). This inefficiency can be traced across various areas of family law. The family financial regime, encompassing *mahr* (dower), maintenance, and remuneration for household services, is not aligned with contemporary economic patterns and leaves women's rights vulnerable to changes in the labor market (Kohansal Kalkenari et al., 2025). Child custody laws, which are based on fixed age criteria, do not give sufficient consideration to the emotional and psychological interests of the child (Sadeghi & Tavallaei, 2024). The judiciary also suffers from a shortage of specialized judges, prolonged proceedings, and weaknesses in the enforcement of judgments, all of which restrict access to justice



(Aghapour, 2025). In addition, women's moral and emotional rights within the family lack a clear legal status and are largely absent from statutory law (Amini Kouchaksaraei & Naseri, 2025). The complexity of the issue is further heightened by the structural challenges confronting the modernization of family law in Iran. Primary rules of Islamic jurisprudence in areas such as the right to divorce, guardianship, and inheritance may, in certain cases, come into tension with contemporary standards of gender equality and social justice (Hedayatnia & Bateni, 2024). The experience of reform-oriented Islamic legal systems demonstrates that such tensions may be addressed through dynamic *ijtihad* and the application of secondary jurisprudential rules (Husain et al., 2024). Common-law and European legal systems have likewise developed mechanisms such as mandatory mediation and specialized family courts, offering models from which carefully adapted lessons may be drawn (Xiao, 2024). Challenges arising from the digital world, ranging from electronic proceedings to smart contracts, have also added a new layer of requirements to family law (Winkler, 2025). Given the importance of the subject, a considerable body of research has emerged in this field. Some studies have analyzed the jurisprudential and religious dimensions of family legislation. Others have examined structural deficiencies in the judicial system and gaps in the protection of women and children. At the international level, comparative studies have also addressed the modernization of family legislation across different legal systems (Begum et al., 2024). What remains comparatively underdeveloped in the existing literature is an integrated model capable of combining indigenous jurisprudential and legal capacities with the experiences of more advanced legal systems within a coherent framework. The present study seeks to address this gap. Its primary objective is to identify comparative models of modernization, analyze the legal status of the family in Iran, and propose strategies for updating the laws governing family law. The research questions are as follows: (1) What models of family-law modernization exist in selected legal systems, and what lessons do they offer for the Iranian legal system? (2) What gaps and inefficiencies characterize Iran's family-law system, and what capacities for modernization are available? (3) What fundamental jurisprudential, institutional, and political obstacles and challenges confront the

modernization of family law in Iran? The novelty of this research lies in proposing an indigenous-comparative model that connects the internal capacities of Islamic jurisprudence, constitutional law, and global experience. The following sections address the theoretical foundations, review of the literature, research method, and findings.

2. Theoretical Foundations and Review of the Literature

2.1. Conceptualizing Modernization in Family Law

Modernization in the field of law is a process through which legal rules are brought into alignment with the social, economic, and cultural transformations of society. This process does not merely mean replacing old laws with new ones; rather, it involves redefining legal frameworks in response to society's changing needs (Javar et al., 2025). In the field of family law, modernization has a dual significance because the family is both a private institution grounded in emotional bonds and a public structure that contributes to the maintenance of social order. Family laws must manage this duality and, while preserving fundamental values, retain sufficient flexibility to adapt to new conditions (Mohaghegh Damad et al., 2024). The experience of different legal systems demonstrates that successful modernization is achieved not by severing ties with tradition but through its creative reinterpretation.

In modern legal systems, the family is understood as a structured institution with multiple, interconnected functions. These functions range from the socialization of children and transmission of culture to meeting the emotional needs of family members and preserving social cohesion. Within this understanding, family law is not merely an instrument for resolving disputes; it must also create the conditions necessary for these functions to flourish (Hedayatnia & Bateni, 2024). A systemic view of the family demonstrates that any legal change in one area, such as custody or divorce, affects other domains; accordingly, legal reforms must be designed through a comprehensive and integrated approach. Contemporary Iranian families exist in a space between traditional patterns and emerging expectations, and this plurality has made the modernization of family law unavoidable (Zeineddini & Gharachemani, 2024).

2.2. Theoretical Framework of Comparative Modernization

Parsons's structural functionalism constitutes one of the important theoretical foundations for analyzing family modernization. Parsons views the family not as a group isolated from society but as a subsystem within the broader social system, whose duties and functions emerge from the overall social structure. From this perspective, family laws must, on the one hand, preserve the family's intrinsic functions, such as childrearing and emotional support, and, on the other hand, remain compatible with the requirements of the modern social system (Azimzadeh Ardebili et al., 2023). Alongside this theory, the dynamic interpretive approach within Islamic jurisprudence also provides important theoretical capacity. Based on principles such as the alteration of rulings following a change in their subject matter, public interest, and the negation of hardship, this approach makes it possible to reinterpret traditional rulings in light of contemporary circumstances and thus situates the modernization of family law not in opposition to Islamic jurisprudence but as a logical continuation of it (Ansori & Juliansyahzen, 2022).

Common-law and European civil-law models constitute two important empirical patterns in the modernization of family law, each characterized by a distinctive approach. Common-law systems, particularly in England, Canada, and Australia, have undertaken a fundamental shift from judicial confrontation toward family cooperation through the introduction of no-fault divorce, shared parental responsibility, and mandatory mediation (Xiao, 2024). European legal systems have likewise developed more flexible legal frameworks through civil partnership arrangements, systems for sharing spouses' economic gains, and gender-equality policies. What these two models share is a transition from a static legal system toward a dynamic one capable of responding to the plurality of family forms and changing gender roles (Huntington, 2022). Comparative study of these models is relevant to the Iranian legal system not as a means of imitation but as a way of identifying principles capable of appropriate adaptation.

2.3. Review of the Literature and Research Gap

The modernization of family law is an interdisciplinary field situated at the intersection of Islamic jurisprudence, law, sociology, and psychology. Researchers have

approached this area from different perspectives. Some have concentrated on statutory analysis and legislative gaps, others have examined social and gender dimensions, and still others have adopted comparative approaches by placing the experiences of other legal systems alongside that of Iran (Satpathy, 2024).

Zeineddini and Gharachemani examined women's financial and economic rights in light of social transformations and found that the separate-property regime recognized in Iranian law is no longer sufficient, by itself, to guarantee economic justice between spouses under contemporary conditions (Zeineddini & Gharachemani, 2024). Sadeghi and Tavallaei examined the feasibility of joint custody in the Iranian legal system with reference to the experiences of the United States, England, and Malaysia, finding that existing legal capacities permit the gradual recognition of this institution (Sadeghi & Tavallaei, 2024). Xiao, in a comparative study, examined divergent pathways of family-law modernization in Japan and China and demonstrated that successful modernization depends on the extent to which law is compatible with the cultural context of society (Xiao, 2024). Cahn and colleagues, through their concept of family law for the hundred-year life, demonstrated that modern legal systems must address family needs throughout the entire life course rather than focusing only on early adulthood (Cahn et al., 2022).

A review of previous studies reveals a distinct gap in the literature. Iranian studies have generally focused on one or several specific issues, such as *mahr*, divorce, or custody, and relatively few studies have attempted to analyze Iran's family-law system as an integrated whole while simultaneously considering jurisprudential capacities, structural limitations, and comparative models. International studies, in turn, either focus primarily on secular legal systems or examine the experiences of other Islamic countries without sufficient attention to the specific characteristics of Iran's jurisprudential-legal system. By adopting an integrated approach that examines jurisprudential, institutional, and political challenges alongside comparative models, the present study seeks to address this gap.

3. Research Method

The present study is applied in purpose and descriptive-analytical in nature. Data were collected through library-

based research, and the sources examined included domestic laws and regulations, jurisprudential texts, judicial decisions, international instruments, peer-reviewed scholarly articles, and specialized books in the field of family law. Comparative analysis was also employed to answer the research questions. Under this method, selected legal systems—including common-law systems, continental European systems, and reform-oriented Islamic jurisdictions—were examined alongside the Iranian legal system in order to identify similarities, differences, and potentially adaptable models. The analytical process was conducted in three stages: description of existing laws and practices, critical analysis of gaps and challenges, and inference of solutions compatible with the jurisprudential and legal capacities of the Iranian system. This methodological combination enables the findings to possess both sufficient theoretical grounding and practical legal relevance.

4. Research Findings

4.1. Models of Family-Law Modernization in Selected Legal Systems

4.1.1. Innovations in Common-Law Systems: No-Fault Divorce, Shared Parental Responsibility, and Mandatory Mediation

A fundamental transformation in the approach of common-law systems to divorce was marked by the enactment of the United Kingdom's Divorce, Dissolution and Separation Act 2020. The Act, which entered into force in April 2022, abolished the fault-based divorce system that had governed English law for more than half a century. Under the new framework, spouses may seek divorce merely by declaring that the marriage has "irretrievably broken down," without having to prove fault on the part of either spouse (Xiao, 2024). This paradigmatic shift is based on the recognition that a fault-based system not only fails to reduce the psychological consequences of divorce but may intensify hostility between spouses and increase the emotional burden imposed on children. The possibility of filing a joint divorce application under this legislation represents an important step toward the peaceful resolution of family relationships (Huntington, 2022). Another development distinguishing common-law systems is the shift from the traditional concept of

"custody" toward the modern concept of "parental responsibility." In England, the Children Act 1989 and its subsequent amendments explicitly established this conceptual transition, meaning that following separation both parents continue to hold shared rights and responsibilities toward their children, with the emphasis shifting from parental entitlements to parental obligations toward the child. In Australia, the 2006 family-law reforms introduced the concept of "equal shared parental responsibility," establishing a presumption in favor of participation by both parents in major decisions affecting the child's life (Satpathy, 2024). Canada likewise replaced the traditional concepts of custody and access in the 2021 reform of the federal Divorce Act with the concepts of "parenting time" and "decision-making responsibility," thereby reducing the hierarchical implications associated with post-separation parental relationships. By placing the best interests of the child at the center of all decisions, this approach creates a stronger basis for constructive parental cooperation (Cahn et al., 2022).

Mandatory mediation constitutes the third major innovation in common-law systems in the modernization of family law. In Australia, the 2006 family-law reforms required parties to disputes involving children to participate in "family dispute resolution" before initiating court proceedings. This requirement was reinforced through the establishment of a nationwide network of Family Relationship Centres providing mediation services at accessible cost (Xiao, 2024). In England, reforms introduced in 2014 likewise made attendance at a mediation information session a prerequisite in most family cases before litigation could commence. This development reflects a deeper paradigmatic shift: family disputes are inherently forms of human conflict rather than merely legal controversies, and their resolution requires processes that also address emotional and psychological dimensions. Empirical evidence indicates that agreements reached through mediation tend to be more durable than unilateral judicial orders (Huntington, 2022).

Common-law systems have also introduced notable innovations in the field of child financial support. Through the establishment and subsequent reform of its child-support administration, Australia developed one of the most advanced systems for calculating and collecting child maintenance, based on a formula incorporating the

income of both parents, living costs, and the amount of care provided by each parent. By facilitating automatic transfer of maintenance payments, this system minimizes the risk of irregular payment (Satpathy, 2024). The broader wave of digitalization has likewise transformed family proceedings. Electronic filing of petitions, virtual hearings, and integrated case-management systems have enhanced judicial efficiency and facilitated access to justice. Evaluations of the Australian system indicate that the average processing time for uncontested divorce cases was reduced by approximately half following digitalization (Cahn et al., 2022).

4.1.2. *Approaches in European Civil-Law Systems: Gender Equality, Civil Partnerships, and Property-Sharing Regimes*

Continental European legal systems have adopted an approach to family-law modernization distinct from that of common-law jurisdictions, grounded in structural gender equality and recognition of the diversity of family forms. France took a major step in this direction through the introduction of the *Pacte civil de solidarité* (PACS) in 1999. This legal institution, situated between formal marriage and unregistered cohabitation, allows couples to formalize their relationship through simplified procedures and obtain certain legal rights (Winkler, 2025). Statistics indicate that in recent years civil solidarity pacts have become a major component of intimate partnership formation in France. This development reflects an important demographic reality accepted by European lawmakers: families in modern societies assume diverse forms, and the law must be capable of accommodating this plurality (Ansori & Juliansyahzen, 2022).

In the field of family property, European countries have developed innovative models that recognize spouses' indirect contributions to the accumulation of family wealth. France recognizes a community regime for property acquired during marriage as the default marital-property framework, under which assets acquired by the spouses during married life are treated as common property. Germany likewise applies a system of participation in accrued gains, and its 2009 reforms sought to ensure an equitable distribution of increases in wealth accumulated during marriage (Huntington, 2022). These approaches are intended to compensate for

the economically invisible contribution of a spouse who performs unpaid domestic work and relinquishes employment opportunities. German reforms also incorporated pension entitlements into the calculation of property distribution, representing an important step toward fuller recognition of spouses' economic contributions (Winkler, 2025).

The Scandinavian countries have developed some of the most advanced models of gender equality in family law. Since the 1970s, Sweden has pursued the ideal of the "dual-earner, dual-carer family," shifting its legal framework away from gender-based role differentiation and toward symmetrical participation. Swedish marriage law progressively established equal financial obligations between spouses and removed legal distinctions between the roles of husband and wife (Ansori & Juliansyahzen, 2022). Its comprehensive parental-leave system, among the most extensive in the world, has been a central instrument of this policy. In Sweden, parental leave extends to 480 paid days, with a portion reserved specifically for fathers so that equal participation in childcare becomes a social norm. This combination of legal reform and supportive social policy demonstrates that substantive gender equality requires simultaneous intervention at the legislative, administrative, and cultural levels (Cahn et al., 2022).

European civil-law systems have also undergone significant developments in mediation and new technologies. France introduced mandatory mediation-information procedures for family disputes in 2016, requiring parties to attend an informational session concerning mediation before initiating certain proceedings. Germany, through its Mediation Act of 2012, likewise established a comprehensive legal framework for mediation in family disputes (Winkler, 2025). The digitalization of family proceedings has further transformed these systems. Singapore, for example, expanded electronic family-court services in 2017, enabling electronic filing, online consultation, and virtual mediation sessions. Evaluations of such systems indicate substantial reductions in the processing time of uncontested divorce cases (Huntington, 2022).

4.1.3. *Modernization in Legal Systems Grounded in Religious Tradition: The Experiences of Malaysia, Tunisia, and Turkey*

Malaysia, as one of the leading jurisdictions in reforming Islamic family law, presents a distinctive model of coexistence among multiple legal systems. The Islamic Family Law (Federal Territories) Act 1984 and its subsequent reforms introduced important developments in women's rights, including regulation of the minimum age of marriage and stricter conditions on men's subsequent marriages, requiring judicial scrutiny of financial capacity, equitable treatment, and potential harm to the existing wife (Husain et al., 2024). A particularly important innovation has been the formal recognition of the concept of *harta sepencarian*, or jointly acquired property, rooted in Malay customary traditions. Under this institution, women may receive a share of property accumulated during marriage upon divorce even when they did not directly contribute financially to its acquisition. This careful integration of local custom with Islamic principles constitutes an example of indigenous modernization achieved not through importing foreign models but through reconstructing internal normative capacities (Begum et al., 2024).

Tunisia is widely regarded as one of the most prominent examples of comprehensive modernization of Islamic family law. The Tunisian Code of Personal Status, enacted in 1956 shortly after independence, introduced fundamental changes that were unprecedented at the time. Its most significant innovation was the prohibition of polygamy, justified through a purposive interpretation of Qur'anic provisions emphasizing the practical impossibility of fulfilling the requirement of equal treatment among multiple wives (Husain et al., 2024). Another major transformation was the conversion of divorce from a unilateral male prerogative into a judicial process available to both spouses. The law also introduced the concept of moral damages arising from divorce, allowing an injured spouse to claim compensation beyond *mahr* and maintenance. Notably, following the 2011 revolution and the growing influence of Islamist movements in Tunisia, these reforms were not only retained but were reinforced by the 2014 Constitution's stronger emphasis on gender equality (Begum et al., 2024).

Turkey presents a different model of interaction between secular law and Islamic traditions. Unlike

Malaysia and Tunisia, which implemented reforms within frameworks informed by Islamic law, Turkey secularized family law comprehensively during the Atatürk reforms of the 1920s and adopted the Swiss Civil Code. This transformation prohibited polygamy, made civil marriage mandatory, and established equal rights in divorce and inheritance (Ansori & Juliansyahzen, 2022). The 2001 revision of the Turkish Civil Code went further by introducing a participation regime in acquired property as the default marital-property system. The Turkish experience offers an important lesson: legal secularization alone does not guarantee social transformation. The gap between formal law and social practice in more traditional regions, including the continuation of informal religious marriages, demonstrates that sustainable modernization requires compatibility between law, culture, and public education (Husain et al., 2024).

A comparison of the Malaysian, Tunisian, and Turkish experiences reveals both common and distinctive patterns in the modernization of family law within societies shaped by religious traditions. What the three experiences share is that successful modernization has not necessarily been achieved through repudiation of religious principles but through their creative reinterpretation or through the construction of new legal frameworks. Malaysia drew upon indigenous customary capacities, Tunisia relied on a purposive interpretation of Islamic law, and Turkey pursued extensive replacement of the inherited legal system (Begum et al., 2024). A major distinction concerns the relationship between each legal system and the social foundations of modernization. Tunisia consolidated modernization at the highest legislative level through elite consensus, Malaysia reduced resistance through gradualism and flexibility, while Turkey demonstrated that reforms lacking deep roots in public culture may remain fragile. Taken together, these experiences show that family-law modernization does not follow a single pathway and that each society must develop a model suited to its own capacities and constraints (Ansori & Juliansyahzen, 2022).

4.2. Analysis of the Legal Status of the Family in Iran and Capacities for Modernization

4.2.1. Structural Critique of Key Family Laws: The Civil Code and the Family Protection Act of 2012

Iran's family-law system is structured around a model of the "husband's headship," explicitly stated in Article 1105 of the Civil Code and reflected in other provisions governing spousal relations. This model grants the husband a set of exclusive legal powers, ranging from requiring the wife to reside in the marital home and restricting her employment to the doctrine of marital obedience as a legal duty of the wife. Rooted in a traditional interpretation of Imami Shi'i jurisprudence, this framework has in practice produced a system of legal dependency of the wife upon the husband (Mohaghegh Damad et al., 2024). In financial relations, the Civil Code recognizes the principle of separate property between spouses. However, the absence of a system for sharing economic gains accumulated during married life renders women's domestic labor largely invisible from the perspective of property law and leaves them vulnerable upon divorce. Although the institution of remuneration for household services has partially addressed this problem, more fundamental deficiencies remain unresolved (Kohansal Kalkenari et al., 2025).

Marriage and divorce under the Iranian Civil Code constitute one of the most controversial areas of family law. Under the amended Article 1041, the minimum age of marriage is set at 13 years for girls and 15 years for boys, a framework that is inconsistent with the educational and social realities of contemporary society. In the field of divorce, Article 1133 primarily vests the right to divorce in the husband, while women's access to divorce depends on proving circumstances for which the evidentiary burden is often substantial (Hedayatnia, 2024). Although Article 1130 has expanded the concept of *usr wa haraj*—intolerable hardship—and thereby created channels through which women may obtain divorce, the process remains lengthy and frequently burdensome. Polygamy likewise remains potentially available to men despite limitations introduced by the Family Protection Act, and its complete legal elimination would require explicit legislative revision (Javar et al., 2025).

The Family Protection Act of 2012 represented an important step toward procedural modernization of

Iran's family-law system, but it fell short of achieving substantive reform. Its procedural innovations include the establishment of specialized family courts with female judicial advisers, mandatory referral of applicants for consensual divorce to counseling centers, and conditioning registration of divorce upon settlement of the wife's financial rights (Zolfaghari Darzi & Habibi Tabar, 2025). Nevertheless, significant substantive gaps remain. The fundamental provisions of the Civil Code concerning the right to divorce, child custody, and financial relations were left unchanged. Article 45, which emphasizes the "interests and welfare of children" in all judicial decisions, embodies an important principle; however, in the absence of clear operational criteria, its interpretation and application have remained variable and inconsistent. This gap between statutory text and implementation constitutes one of the central challenges facing Iran's family-law system (Hedayatnia & Bateni, 2024).

Implementation difficulties under the Family Protection Act have intensified some of these deficiencies. Although Article 1 requires the establishment of specialized family courts in all judicial districts, such courts either do not exist in many rural areas and smaller cities or suffer from severe shortages of specialized personnel. The note to Article 2 established a five-year period for providing a female judicial adviser in every branch, yet this objective has still not been fully achieved (Aghapour, 2025). With respect to the enforcement of financial judgments, weak mechanisms for collecting maintenance, *mahr*, and remuneration for household services force many women to pursue prolonged and costly judicial proceedings. Taken together, these shortcomings indicate that meaningful improvement in the family-law system requires simultaneous reform at the legislative, institutional, and implementation levels (Kohansal Kalkenari et al., 2025).

4.2.2. The Gap Between Changing Patterns of Family Relationships and Existing Legal Frameworks

Iranian society has experienced profound structural transformations in family patterns over recent decades, while the legal framework has failed to keep pace. The transition from extended to nuclear families, the rise in the average age of marriage, declining fertility, and increasing divorce rates have redefined the institution of the family and generated new needs and challenges. The

model of absolute husbandly headship reflected in Article 1105 of the Civil Code is clearly distant from the realities of contemporary urban families, in which decision-making frequently occurs jointly (Zeineddini & Gharachemani, 2024). This gap is not merely formal. When family disputes enter the judicial arena, laws detached from the realities of people's lives not only fail to deliver justice but may themselves become instruments of pressure. Over time, this situation erodes public confidence in the family-law system (Azimzadeh Ardebili et al., 2023).

Women's increasing participation in the labor market is one of the most significant social transformations with which existing laws are plainly inconsistent. Article 1117 of the Civil Code, which permits restrictions on a wife's employment under the authority of the husband, conflicts with the actual position of educated and employed women in Iranian society. This inconsistency has broad consequences. In judicial disputes, the provision may function as an instrument for restricting women's professional activity and place them in the difficult position of choosing between occupational independence and marital stability (Amini Kouchaksaraei & Naseri, 2025). Moreover, the Civil Code places the duty of maintenance exclusively on the husband, even where the wife has an independent income. While this arrangement may have corresponded to traditional gendered divisions of labor, it is increasingly inconsistent with families in which both spouses are employed and jointly contribute to household finances (Nasari Yousefi et al., 2025).

Economic transformations in recent decades have also generated challenges in family financial rights that existing laws do not adequately address. The institution of *mahr*, originally intended to provide women with financial security in the event of marital dissolution, has in practice lost much of its original function because of exceptionally high stipulated amounts and inflationary conditions. On the one hand, men unable to satisfy *mahr* obligations may become trapped in cycles of enforcement and release, while on the other hand, women whose *mahr* cannot realistically be collected remain without effective financial security (Sadeghi & Tavallaei, 2024). The maintenance regime is likewise poorly adapted to chronic inflation. There is no automatic mechanism for adjusting maintenance in accordance with changes in the cost of living, requiring

women to initiate separate judicial proceedings for each adjustment. The absence of maintenance-guarantee funds likewise leaves families without adequate protection where the obligated spouse refuses to fulfill his responsibilities (Zeineddini & Gharachemani, 2024). The emergence of new family forms represents another area overlooked by the existing legal framework. Single-parent families, most of which are headed by women, lack a clearly defined status within the Iranian legal system and suffer from insufficient specific legal protections. In custody disputes, the fixed age rules of Article 1169 may be applied without adequate consideration of the circumstances of the individual child or the actual competence of each parent, an approach that conflicts with the principle of the "best interests of the child" reflected in Article 45 of the Family Protection Act (Azimzadeh Ardebili et al., 2023). Cohabitation without formal marriage, which has become more visible in some urban contexts, likewise falls outside any established legal framework, leaving the parties—particularly women and any children born from such relationships—without adequate legal protection. Taken together, these developments make a comprehensive reconsideration of family legislation in light of contemporary social realities increasingly unavoidable (Aghapour, 2025).

4.2.3. *Jurisprudential and Constitutional Capacities for Modernization: Dynamic Ijtihad, Secondary Rules, and Constitutional Potential*

Contrary to a common perception, Shi'i jurisprudence contains significant internal capacities for adapting legal rulings to changing circumstances. Secondary rules and principles, including public interest, necessity, the negation of intolerable hardship, and the principle that rulings may change when their underlying subject matter changes, constitute important theoretical tools through which primary rules may be adjusted under particular conditions. The doctrine of the negation of *usr wa haraj*, which forms the basis of Article 1130 of the Civil Code, is a successful example of transforming a secondary jurisprudential principle into an effective legal mechanism (Javar et al., 2025). Initially applied primarily to exceptional circumstances, this doctrine has gradually been interpreted more broadly in judicial practice and has become an important route through which women may obtain divorce. The principle of

public interest has also acquired institutional standing in Iran through the Expediency Discernment Council and may serve as a basis for legal reform in family matters, provided its application is accompanied by appropriate safeguards (Mohaghegh Damad et al., 2024).

Dynamic *ijtihad*, as a foundational capacity of Shi'i jurisprudence, enables traditional rulings to be reconsidered in light of contemporary conditions. In recent decades, some contemporary jurists have advanced novel views concerning key issues in family law. With respect to family headship, interpretations of *qiwamah* have been proposed that understand it not as absolute domination but as responsibility and care, and that move toward a model of cooperation where women also contribute to household expenses (Zolfaghari Darzi & Habibi Tabar, 2025). Regarding child marriage, some jurists distinguish sexual maturity from social maturity and emphasize the importance of informed consent, thereby offering a possible jurisprudential basis for raising the minimum age of marriage. In relation to remuneration for household services, newer jurisprudential opinions recognizing women's domestic labor as compensable provide a foundation for strengthening women's financial rights in statutory law (Hedayatnia & Bateni, 2024).

The Constitution of the Islamic Republic of Iran contains significant legal capacities for reforming family legislation that have not been fully utilized. Article 10, by providing that all relevant laws and regulations must facilitate the formation of the family, safeguard its sanctity, and strengthen family relations, establishes a functional criterion against which existing laws may be assessed and by which reforms may be justified (Hedayatnia, 2024). Article 21 requires the state to guarantee women's rights in all respects in accordance with Islamic criteria and identifies five specific areas for state action, including the establishment of competent courts for the protection of the family and social protection for women without guardians. Constitutional principles concerning human dignity, justice, and equal protection under law likewise provide a strong basis for reforms aimed at reducing gender discrimination. If interpreted dynamically, these constitutional capacities provide a legitimate pathway for reform without requiring a departure from the ideological foundations of the legal system (Mohaghegh Damad et al., 2024).

Dynamic judicial interpretation and precedent-setting decisions constitute another legal capacity capable of producing significant practical improvements without changing statutory texts. The experience of expansive interpretation of Article 1130 in relation to *usr wa haraj* demonstrates that judicial practice can create meaningful openings even within existing legislation. Circumstances such as abuse, addiction, abandonment of the family, and certain illnesses have gradually been recognized in judicial decisions as instances of intolerable hardship, demonstrating the interpretive flexibility of the judiciary (Zolfaghari Darzi & Habibi Tabar, 2025). In this context, judicial guidelines for harmonizing family-court practice, authoritative precedent on ambiguous issues, and specialized training programs for judges are tools capable of generating substantial short-term improvements without requiring amendment of core legislation. Taken together, these jurisprudential, statutory, and judicial capacities demonstrate that the modernization of Iranian family law does not require abandoning its religious and legal foundations; rather, it may be achieved through constructive engagement with them (Hedayatnia & Bateni, 2024).

4.3. Fundamental Challenges to the Modernization of Family Law in Iran

4.3.1. Jurisprudential and Interpretive Challenges: Tension Between Primary Rules and Contemporary Needs and Resistance from Conservative Interpretations

Primary jurisprudential rules in several core areas of family law are in tension with the social and legal needs of contemporary society. This tension is particularly pronounced in three domains: a divorce system centered on a unilateral male entitlement, polygamy, which remains potentially available despite legal restrictions, and an inheritance system involving unequal distribution that conflicts with contemporary standards of economic justice. What complicates these tensions is their dual character. Some are substantive, meaning that a fixed jurisprudential rule directly conflicts with a contemporary social need, while others are apparent and may be resolved through creative interpretation based on the objectives of Islamic law (Hedayatnia & Bateni, 2024). In the context of domestic violence, a traditional jurisprudential emphasis on preserving family unity may in practice contribute to insufficient protection of

victims. This indicates that meaningful progress in this area will remain difficult unless jurisprudential priorities are reformulated in favor of protecting vulnerable individuals (Javar et al., 2025).

Conservative jurisprudential interpretations constitute a significant obstacle to the modernization of family law. Some jurists regard movement toward standards of gender equality as a form of submission to foreign cultural models and therefore resist dynamic interpretation out of concern that it could become a channel for imported doctrines. Such resistance does not invariably arise from ill intent; rather, it often reflects genuine concern about preserving religious identity. Its practical effect, however, may be to obstruct legitimate avenues of reform (Zolfaghari Darzi & Habibi Tabar, 2025). Interpretive resistance is particularly visible in relation to *mahr*. Although the institution has lost much of its original function under inflationary conditions, traditional interpretations may oppose meaningful adjustment. A similar problem is evident in custody, where traditional approaches may prioritize paternal claims without placing sufficient emphasis on the child's emotional and psychological needs. Overcoming this resistance requires constructive scholarly dialogue among jurists, legal scholars, and social-science specialists (Husain et al., 2024).

One of the most fundamental jurisprudential-legal challenges in Iran is the close intermingling of religious norms and civil legislation. In many cases, moral and religious norms originally directed toward individual conscience have been transformed into legally enforceable obligations, reducing the flexibility of the legal system. In divorce, religious requirements such as the waiting period (*'iddah*) have become part of the statutory process without necessarily being accompanied by clear implementation mechanisms (Mohaghegh Damad et al., 2024). This intermingling also affects custody, where a religious conception of welfare may at times prevail over the child's emotional and psychological interests. Distinguishing between an "ethical rule," which seeks to orient individuals toward religious values, and a "legal rule," which is compulsory and supported by formal sanctions, is therefore a key element in reforming the family-law system. Without this distinction, the legislature remains vulnerable both to pressures for modernization and to concerns

regarding fidelity to jurisprudential principles (Hedayatnia, 2024).

The objectives-of-Sharia approach offers one of the most promising pathways for addressing jurisprudential tensions in family law. Rather than focusing exclusively on the literal form of particular rules, this approach emphasizes the higher objectives of Islamic law, including the protection of religion, life, intellect, lineage, and property, and requires family legislation to realize these objectives under contemporary conditions. Tunisia's use of purposive reasoning to justify the prohibition of polygamy on the basis that the requirement of equal treatment cannot realistically be fulfilled provides an important example of such interpretation in the service of modernization (Ansori & Juliansyahzen, 2022). For Iran, this approach could provide a basis for defining reforms such as raising the minimum age of marriage, strengthening women's rights in divorce, and reforming the custody regime not as departures from Islamic jurisprudence but as logical extensions of its underlying objectives. Achieving this requires broader instruction in purposive jurisprudence within seminaries and stronger interdisciplinary dialogue among Islamic jurisprudence, law, and the social sciences (Husain et al., 2024).

4.3.2. *Institutional and Structural Challenges: Judicial Weakness, Institutional Fragmentation, and Bureaucratic Obstacles*

Iran's judiciary faces structural inefficiencies in the handling of family disputes that may prevent legal modernization from being effectively realized even if legislation is reformed. The high volume of family cases, combined with the limited number of specialized judges, has made procedural delay a chronic problem. In cases such as child custody, delays in issuing decisions impose not only economic costs but also serious psychological harm on children (Aghapour, 2025). The shortage of female judges and judicial advisers in family courts constitutes another challenge. Although the Family Protection Act of 2012 requires female judicial advisers, this requirement has still not been fully implemented in many judicial districts. This shortage may negatively affect both the quality of adjudication and litigants' confidence in cases involving highly private matters concerning women. The absence of continuous specialized judicial training in family psychology and

comparative law also means that many judges continue to approach complex contemporary disputes through traditional frameworks (Kohansal Kalkenari et al., 2025). The fragmentation of institutions involved in family matters constitutes one of the principal structural barriers to coherent policy implementation in Iran. More than thirty parallel institutions, including the Welfare Organization, the judiciary, the Ministry of Health, the Vice Presidency for Women and Family Affairs, and various support bodies, operate without comprehensive coordination. This fragmentation results in duplication, wasted resources, and gaps in service provision that disproportionately affect vulnerable families (Nasari Yousefi et al., 2025). In divorce cases, counselors from counseling centers, family-court judges, social workers, and psychiatric experts may operate without shared protocols or effective information exchange, producing processes that exhaust the parties without contributing meaningfully to the resolution of the dispute. The establishment of a National Family Coordination Council capable of bringing relevant institutions under a unified management framework has been proposed in policy discussions but has not yet been realized (Satpathy, 2024).

Bureaucratic barriers within family-law procedures severely restrict access to justice for vulnerable groups. Marriage registration, divorce proceedings, maintenance claims, and custody enforcement all involve complex administrative layers requiring considerable time and expense. These barriers place women lacking sufficient financial independence in a particularly difficult position (Amini Kouchaksaraei & Naseri, 2025). In cases of domestic violence, administrative delay in issuing protective measures may have irreversible consequences. Administrative corruption at certain levels may further compound these obstacles; when lawful entitlements become dependent on personal connections or privileged access, public confidence in the legal system is seriously undermined. Digitalization of procedures, reduction of administrative layers, and creation of transparent electronic case-tracking systems are therefore indispensable measures for addressing these deficiencies (Winkler, 2025).

The enforcement of judgments is often the weakest component of Iran's family-law system. Obtaining a judgment represents only half of the process of realizing a legal right; where enforcement is ineffective, the

practical value of the decision may be negligible. In disputes involving maintenance and *mahr*, identifying and attaching the debtor's assets can be extremely difficult, and the absence of an integrated asset-information system facilitates evasion of enforcement (Kohansal Kalkenari et al., 2025). In cases involving custody and contact with children, coercive enforcement may itself inflict serious psychological harm on the child, creating a paradox that complicates effective implementation. The absence of maintenance-guarantee funds, inadequate electronic enforcement systems, and limited mechanisms for compelling compliance leave many women and children who have obtained favorable judgments waiting for effective relief. The experience of countries such as Australia and Canada, which have established automated systems for collecting child support, offers adaptable models for addressing this deficiency (Satpathy, 2024).

4.3.3. *Political and Discursive Challenges: Absence of Political Will, Conflict Among Legislative Institutions, and the Influence of Competing Discourses*

The absence of strong political will for fundamental family-law reform constitutes one of the principal barriers to modernization in Iran. Political actors frequently avoid deep reforms in this field because family issues are closely intertwined with religious and cultural values, and rapid changes may provoke significant political resistance. The result of this political caution has been the accumulation of unresolved problems within the family-law system, including legislative bills that have circulated among state institutions for years without reaching final enactment (Azimzadeh Ardebili et al., 2023). Short-term political priorities also contribute to this situation. During periods of economic crisis or political pressure, governments tend to divert attention away from foundational legal reform and toward reactive policies. This cycle leaves family law in an intermediate condition that is neither fully traditional nor fully modern, with vulnerable families bearing the greatest costs (Xiao, 2024).

Conflict among legislative institutions, particularly between the Islamic Consultative Assembly and the Guardian Council, has repeatedly produced deadlock in the reform of family legislation. Charged with reviewing legislation for conformity with Islamic law and the

Constitution, the Guardian Council has rejected various reform-oriented enactments on the ground that they conflict with Sharia principles. This delay-producing cycle leaves families facing problems for which no institution assumes clear responsibility (Mohaghegh Damad et al., 2024). Differences in the interpretation of Islamic rules between these institutions arise from divergent jurisprudential approaches. Such disagreement is especially visible in matters concerning women's rights, where the legislature may adopt measures subsequently regarded by the Guardian Council as inconsistent with jurisprudential rules. The absence of an effective mechanism for resolving these conflicts on a sustainable basis constitutes a structural problem within Iran's legal system that affects family law as well as other areas of legislation (Begum et al., 2024). The confrontation between competing discourses in the field of family law has made national consensus difficult to achieve. A feminist discourse emphasizing full gender equality and women's individual rights stands in tension with a traditional family-centered discourse emphasizing the complementary roles of women and men and prioritizing family stability. In Iran's political and media environment, this opposition can become so polarized that even moderate reforms encounter resistance (Zeineddini & Gharachemani, 2024). Globalization and expanding access to digital media have exposed younger generations to new patterns of life that differ from traditional norms. This cultural transformation has widened the gap between the lived realities of parts of society and existing legal frameworks. The role of social media in normalizing forms of intimate relationship for which the legislature has no clear response further deepens this divide (Huntington, 2022).

Addressing these political and discursive challenges requires a change in the way family-law modernization is framed. The experience of countries such as Morocco, where reforms to the family code were advanced through a commission involving religious scholars, legal experts, women's-rights advocates, and representatives of civil society, demonstrates that broad stakeholder participation can facilitate consensus and strengthen the legitimacy of reform. For Iran, such a pathway requires that modernization of family law be presented not as an imported project but as a commitment grounded in indigenous and Islamic values (Begum et al., 2024). The

family is both "sacred" and "rights-based," and these two dimensions need not be treated as contradictory; rather, they can be understood as mutually reinforcing. A discourse capable of integrating these dimensions while gaining social acceptance is a necessary condition for sustainable modernization in Iran. As long as modernization continues to be framed as a cultural-religious conflict, any progress is likely to encounter substantial resistance (Xiao, 2024).

5. Conclusion

The laws governing family law in Iran have not kept pace with the structural transformations of society, and this lack of alignment has generated serious consequences in the areas of financial rights, child custody, divorce, and women's moral and emotional rights. The present study sought to identify comparative models of modernization, analyze the legal status of the family in Iran, and propose strategies for updating family legislation. To achieve this objective, a descriptive-analytical method and comparative analysis were employed, with common-law systems, continental European legal systems, and reform-oriented Islamic jurisdictions examined alongside the Iranian legal system.

The comparative analysis demonstrated that successful modernization of family law has not been achieved in any legal system simply through severing ties with tradition; rather, it has generally proceeded through creative reinterpretation and adaptation. Common-law systems have made a fundamental transition from adversarial litigation toward family cooperation through no-fault divorce, shared parental responsibility, and mandatory mediation. European systems have developed more flexible frameworks through civil partnerships and regimes for sharing property acquired during marriage. The experiences of Malaysia, Tunisia, and Turkey further demonstrate that reforms lacking roots in public culture remain fragile. Analysis of the Iranian legal system identified structural deficiencies in the family financial regime, child-custody rules, and the gap between changing patterns of family life and existing legal frameworks. At the same time, secondary jurisprudential rules, dynamic *ijtihad*, and constitutional principles provide important capacities for modernization. The principal obstacles to modernization fall into three categories. Jurisprudential-interpretive challenges include resistance arising from conservative

interpretations. Institutional-structural challenges include judicial inefficiency and fragmentation among relevant institutions. Political-discursive challenges are manifested in the absence of sustained political will and conflict among legislative institutions. At the practical level, dynamic judicial interpretation and digitalization of judicial procedures can generate tangible improvements in the short term. In the medium term, legislative reform concerning the minimum age of marriage, women's financial rights, and a child-custody system based on the best interests of the child is necessary. At the research level, examining Morocco's family-law reform model as an example of broad stakeholder participation, investigating the effects of emerging technologies on family adjudication, and conducting national surveys of public attitudes toward legal reform could help address existing gaps in the literature.

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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