

Modernization of Laws Governing Family Law

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1. Round 1

1.1. Reviewer 1

Reviewer:

In the first paragraph of the Introduction, the sentence “The widening gap between these laws and the lived realities of Iranian families has generated serious legal and social consequences” identifies the central research problem, but the existence and magnitude of this “gap” are asserted rather than demonstrated. This paragraph refers to changing patterns of family life, women’s increased participation in the public sphere, generational expectations, labor-market developments, and changing family structures, yet no demographic or socio-legal indicators are presented. The authors should strengthen the problem statement with authoritative national data on marriage age, divorce, female employment, household structure, fertility, single-parent households, or family litigation. Without such evidence, “social transformation” functions as a general premise rather than an empirically established condition. Even in a doctrinal-comparative article, the societal transformation said to justify legal modernization should be evidenced through official statistics or rigorous socio-legal studies. This would also help distinguish between normative dissatisfaction with current law and demonstrable institutional mismatch.

In the Introduction, the sentence “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” requires substantially greater conceptual precision. “Primary rules,” “gender equality,” and “social justice” are each contestable concepts, and the manuscript currently does not identify the normative benchmark against which the alleged tension is evaluated. Is gender equality understood as formal equality, substantive equality, equality of opportunity, anti-subordination, or equality subject to differentiated family roles? Likewise, the authors should distinguish between rules of classical Imami jurisprudence, particular contemporary jurisprudential opinions, and rules incorporated into Iranian positive law. These are not analytically interchangeable. The manuscript would be considerably stronger if it explicitly separated the jurisprudential, constitutional, statutory, and normative levels of analysis and explained when a criticism is directed at a jurisprudential doctrine, when at its legislative incorporation, and when at a particular judicial interpretation.

In the paragraph discussing Australian parental responsibility, the sentence “the 2006 family-law reforms introduced the concept of ‘equal shared parental responsibility,’ establishing a presumption in favor of participation by both parents” describes a historically important rule but presents it as though it remains the current legal framework. This section requires substantive updating. Most provisions of Australia’s Family Law Amendment Act 2023 commenced on 6 May 2024, and the statutory presumption of equal shared parental responsibility was removed. Current Australian law continues to recognize parental responsibility, but the court no longer applies that presumption when determining parenting arrangements; the best interests of the individual child remain paramount. Because the manuscript is explicitly concerned with modernization, relying on a superseded model is particularly problematic. The authors should reconstruct the Australian discussion chronologically: explain the 2006 model, identify criticisms or practical developments that led to reform, and then analyze the post-2024 framework. This would actually enrich the article by demonstrating that modernization itself is iterative rather than linear.

In the paragraph beginning “Mandatory mediation constitutes the third major innovation,” the treatment of England and Wales should distinguish carefully between mandatory mediation and the requirement to attend a Mediation Information and Assessment Meeting (MIAM). The sentence “mediation information ... before litigation became mandatory” risks suggesting that parties are legally required to mediate their substantive dispute. The applicable framework generally requires prospective applicants in specified private-law children and financial-remedy proceedings to attend a MIAM unless an exemption applies; the MIAM provides information and assesses suitability for mediation and other non-court dispute resolution. It does not itself make substantive mediation universally compulsory. The rules also contain significant exemptions, including circumstances involving domestic abuse and urgency. This distinction is highly relevant to the Iranian recommendations because compulsory mediation and compulsory information/assessment raise different issues concerning voluntariness, safety, power imbalance, and access to courts. The authors should therefore use precise procedural terminology and discuss exceptions.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the paragraph under “Conceptualizing Modernization in Family Law,” the sentence “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” is too broad to serve as the article’s principal analytical concept. Almost any legislative amendment responding to social change could satisfy this definition. The authors should construct a more discriminating conceptual framework and identify dimensions of family-law modernization, such as equality between spouses, individual autonomy, protection of vulnerable family members, recognition of family diversity, child-centered adjudication, alternative dispute resolution, procedural specialization, digital accessibility, and redistribution of economic consequences following relationship breakdown. These dimensions could then be applied consistently across the selected jurisdictions. At present, “modernization” sometimes means liberalization, sometimes gender equality, sometimes procedural efficiency, and sometimes digitalization. Unless these dimensions are distinguished, the comparative analysis risks comparing legally and theoretically incommensurable phenomena under an overly elastic label.

In the “Theoretical Framework of Comparative Modernization” section, the paragraph beginning “Parsons’s structural functionalism constitutes one of the important theoretical foundations” introduces structural functionalism, but the theory does not subsequently perform a discernible analytical function. The manuscript states that family law should preserve family functions while adapting to modern social requirements, yet no Parsons-derived categories are used to organize the comparative findings, evaluate Iranian law, or derive the recommendations. The theoretical framework therefore appears appended rather than integrated. The authors should either operationalize structural functionalism—for example, by identifying specific family functions and assessing whether particular legal rules facilitate or impair them—or replace/supplement it with theories more directly relevant to comparative family-law change, legal transplantation, legal pluralism, responsive law, or functional comparative law. The same applies to dynamic *ijtihad*: its incorporation would be stronger if the theoretical section specified

the interpretive mechanisms through which it becomes an analytical criterion rather than simply identifying it as a potential source of flexibility.

In the “Theoretical Framework of Comparative Modernization” and subsequent comparative sections, the manuscript moves among England, Canada, Australia, France, Germany, Sweden, Singapore, Malaysia, Tunisia, and Turkey without explaining the case-selection strategy. The sentence “Common-law and European civil-law models constitute two important empirical patterns” suggests a legal-family design, but the later inclusion of Singapore and three Muslim-majority jurisdictions introduces additional selection principles. The authors should explain why these particular jurisdictions were selected and what each represents analytically. A scientifically defensible comparative design could use criteria such as legal-family membership, religious/secular constitutional structure, degree of family-law reform, institutional similarity to Iran, availability of reform experience, or functional comparability. The manuscript should also clarify whether the cases are intended to be representative, “most different,” “most similar,” illustrative, or exemplary cases. Without a transparent selection rationale, there is a significant risk of selection bias, particularly because jurisdictions may have been chosen primarily for reforms that support the manuscript’s modernization thesis.

In the Research Method paragraph, the sentence “Data were collected through library-based research” is insufficient for a comparative legal study making numerous specific claims about legislation, judicial practice, and institutional performance. The authors should provide a reproducible source-selection protocol specifying the databases and repositories searched, search terms, temporal limits, languages, inclusion and exclusion criteria, date of the final legal update, and hierarchy of authorities. The method should distinguish primary legal materials—constitutions, statutes, regulations, judicial decisions, and official governmental materials—from secondary academic literature. This distinction is particularly important because many propositions concern the precise content and dates of foreign legislation. The manuscript should also state how conflicting interpretations were handled and whether legislation was examined in the original language or through official translations. A transparent methodological protocol would significantly increase the reliability of the comparative conclusions and permit readers to determine whether the selected legal developments reflect current law.

In the Research Method section, the statement that analysis involved “description of existing laws and practices, critical analysis of gaps and challenges, and inference of solutions” needs methodological elaboration because the criteria governing the “critical analysis” and “inference” remain unclear. The authors should specify the comparison matrix or evaluative criteria applied to every jurisdiction. For example, each legal system could be compared across divorce, parental responsibility, matrimonial property, mediation, specialized adjudication, enforcement, and digital procedure, with each dimension assessed against explicit principles such as autonomy, equality, child welfare, accessibility, and enforceability. At present, the article moves from description to normative recommendations without showing the inferential steps connecting the two. A structured comparative matrix would also reduce the risk of functional equivalence errors: institutions with similar names may perform different functions, while functionally comparable institutions may have different doctrinal structures. The methodology should therefore explain how “adaptable” foreign models were identified and how compatibility with Iranian jurisprudential and constitutional constraints was assessed.

In the paragraph beginning “A fundamental transformation in the approach of common-law systems to divorce,” the manuscript states that the change began with the “United Kingdom’s Divorce, Dissolution and Separation Act 2020.” This should be corrected jurisdictionally. The reform concerns the divorce law of England and Wales, not the United Kingdom as a single family-law jurisdiction; Scotland and Northern Ireland have separate legal systems and divorce legislation. The Act came into force on 6 April 2022 and introduced the statement of irretrievable breakdown, joint applications, and removal of the former fault/separation facts. The manuscript should consistently use “England and Wales” throughout this section and should avoid treating “English law,” “UK law,” and “common-law systems” as interchangeable categories. This correction is important because jurisdictional precision is a basic requirement of comparative legal scholarship, particularly where legislative reforms are being proposed as transferable models for Iran.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.

Editor in Chief's decision: Accepted.