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A Comparative Study of Methods for Inferring the Objectives of Marriage in Imami Jurisprudence and Iraqi Positive Law

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ABSTRACT

Marriage in Imami jurisprudence and the Islamic legal system of Iraq, as one of the most important social and religious institutions, has a profound impact on individual and social relationships. The objectives of Sharia (maqāsid al-sharī'a), as the general purposes of Islam, play a fundamental role in determining the legal rulings of marriage. While these objectives emphasize the preservation of lineage, the provision of tranquility, and the establishment of a healthy relationship between spouses, adapting them to contemporary social and legal transformations—particularly in Iraqi society—has generated numerous challenges. Accordingly, the present study examines the influence of the objectives of Sharia on the formulation of marriage rulings and their implications for family law in Iraq. The aim of this study is to investigate how the objectives of Sharia affect the legal rulings of marriage in Imami jurisprudence and Iraqi family law. In addition, the study analyzes the existing challenges and potential solutions for aligning these objectives with contemporary legal and social developments. This research employs an analytical-comparative methodology. To analyze the impact of the objectives of Sharia on marriage rulings in Iraq, jurisprudential, legal, and sociological sources have been utilized. Furthermore, a comparative analysis is conducted between the objectives of Sharia and Iraqi statutory law concerning family-related issues such as divorce, dowry (mahr), alimony (nafaqah), and polygyny. The findings indicate that the objectives of Sharia—particularly the preservation of lineage and the provision of psychological tranquility for spouses—are of paramount importance in determining marriage rulings. Nevertheless, significant challenges remain in reconciling these objectives with contemporary social and economic changes. Especially in matters concerning women's rights, divorce, and polygyny, there is a pressing need for legal revision and harmonization with the individual and social requirements of modern society. Aligning the objectives of Sharia with emerging social and cultural needs necessitates both legal and jurisprudential reforms. Such reforms must simultaneously preserve religious principles and respond effectively to the individual and societal needs of Iraq and other Islamic countries.

Keywords: Objectives of Sharia; Marriage; Family Law; Imami Jurisprudence; Iraqi Law

Introduction

Marriage, as one of the most important and complex legal and social institutions in human societies, influences not only individual relationships but also the social and cultural structure of communities. In Islamic legal systems, marriage, in addition to its legal and social dimensions, also possesses a religious and jurisprudential character that



is specifically shaped by the objectives of Sharia (*maqāṣid al-sharī'a*). These objectives, understood as the overarching purposes of Islam, play a fundamental role in determining and deriving various legal rulings, particularly those governing marriage (1). These objectives—namely the preservation of religion, life, lineage, intellect, and property—are prominently reflected in defining the aims of marriage, including the preservation of lineage, the provision of tranquility, and the establishment of balanced and healthy family relations (2). These purposes constitute the guiding framework that influences all Sharia rulings, and in pursuit of their realization, various regulations such as the conditions of the marriage contract, the rights and obligations of spouses, and the organization of family relationships are formulated (3).

Within this context, the legal systems of countries such as Iraq, which combine Islamic legal principles with civil law traditions, encounter significant challenges in deriving and aligning the objectives of Sharia with the contemporary legal and social needs of society. Iraq, as a predominantly Muslim country, has largely structured its family laws on the basis of Imami jurisprudence and Sharia principles (4). However, as observed across many Islamic societies, adapting these legal frameworks to the social, economic, and cultural transformations of modern life—especially in family-related matters—has generated tensions, including conflicts with emerging individual and legal needs. One of the principal issues in Iraqi family law and other Islamic legal systems concerns the determination of the objectives of Sharia in regulating marriage. While the objectives of Sharia are clearly reflected in many Islamic legal provisions, the manner of reconciling them with contemporary social developments, individual needs, and scientific and technological progress remains a serious challenge (5). These tensions become particularly pronounced in matters such as polygyny, dowry (*mahr*), alimony (*nafaqah*), women's rights, and divorce. The objectives of Sharia—such as the preservation of lineage, protection of individual and social rights of spouses, and the realization of justice in family relations—sometimes conflict with the legal and social principles of modern societies, necessitating more precise analysis and systematic evaluation. The main research questions of this study are: (1) How do the objectives of Sharia influence the determination of marriage rulings and family law in Iraq? and (2) What challenges and opportunities exist in aligning these objectives with contemporary legal and social transformations, and how can these challenges be effectively addressed?

Regarding the significance of the study, it can be stated that aligning the objectives of Sharia with contemporary societal needs and ongoing transformations in Islamic societies, particularly in Iraq, can substantially contribute to the improvement of family law frameworks. On the one hand, Islamic Sharia strongly emphasizes the preservation of the family institution, respect for the individual and social rights of spouses, and the protection of human dignity (6). On the other hand, social, economic, and cultural transformations have generated new expectations from legal systems, which must be reconsidered and reformed within the framework of the objectives of Sharia. Issues such as women's rights, preservation of lineage, and the realization of justice in polygyny and divorce are extensively regulated within Islamic law; however, in practice, they encounter serious challenges in adapting these principles to evolving individual and social realities. In Iraq, where civil law is significantly influenced by the French legal tradition and Islamic jurisprudence (7, 8), family matters—particularly marriage and divorce—are primarily governed by Sharia. Nevertheless, the adaptation of Sharia principles to emerging contemporary phenomena such as international marriages, changing family patterns, and the evolving role of women in society requires careful scholarly reconsideration. Moreover, new socio-economic conditions, including family financial circumstances, the protection of individual rights, and women's rights, must be systematically addressed in accordance with the objectives of Sharia.

Furthermore, this research is necessary because, given the growing demand for revision and reform of family law, public awareness and education regarding the objectives of Sharia can contribute significantly to improving both general and specialized understanding of Islamic and family law. In societies such as Iraq, where the majority of the population is Muslim and many legal issues are shaped by Sharia, this study can facilitate constructive legal reforms and promote greater harmony between Islamic legal principles and contemporary social developments.

Conceptual Framework and Review of Literature

Marriage (Nikāḥ)

The root of the term *nikāḥ* derives from the trilateral root n-k-ḥ, whose original meaning denotes sexual intercourse (*al-buḍʿ* or *al-waḥʿ*). Classical lexicographers such as al-Jawharī and al-Zabīdī maintain that the primary meaning of *nikāḥ* (with kasrah) in Arabic usage is sexual intercourse, although it is also applied to the marriage contract because the contract legitimizes sexual relations (9, 10). In *al-Ṣiḥāḥ*, *nikāḥ* is defined as sexual intercourse and, at times, the marriage contract, and Ibn Sīda considers it specifically human sexual intercourse. In juridical terminology, marriage is a legal relationship established through a contract between a man and a woman that grants them lawful sexual relations (11). Another definition describes marriage as the mutual agreement of a man and a woman to establish a shared life (12). In direct usage, *nakaha-hā* means marrying or engaging in intercourse with a woman; *ankaha-hu al-marʿah* means he married her to a woman, and *ankaha-hā* means he gave the woman in marriage (13). The verb *istankaha-hā* is synonymous with *nakaha-hā* (9). The plural form *tanākahū* refers to mutual marriage for population growth (14).

From a jurisprudential perspective, *nikāḥ* denotes the marriage contract without necessarily implying intercourse; thus, *nakhṭu* means “I married,” and *ankhṭu ghayrī* means “I married another person.” A woman described as *nākih fī banī fulān* means she has a husband from that tribe (9, 14). Certain derivatives indicate intensity or repetition; *rajul nukḥah* or *nukḥ* refers to a man who marries frequently (13, 15). The term is sometimes used metaphorically; *ankaha al-ḥaṣā akhfāf al-ibil* is an expression describing the rubbing of camel hooves against pebbles (13-15). Some lexicographers, such as al-Rāghib al-Iṣfahānī, argue that the original meaning of *nikāḥ* refers to the marriage contract and that its application to sexual intercourse is metaphorical, because explicit reference to intercourse was socially disfavored in Arabic usage; therefore, employing a term originally designated for a lawful act (the contract) to denote intercourse—even outside the contract—was considered figurative (16). In contrast, sources such as *Lisān al-ʿArab* and *Maqāyīs al-Lughah* consider the primary meaning to be sexual intercourse (17). In the Qurʾan, however, *nikāḥ* consistently denotes the marriage contract rather than intercourse, as this is more compatible with rhetorical propriety (10, 16). This semantic shift reflects a metonymic transfer based on causality: the marriage contract becomes the cause for lawful intercourse (9, 13). Consequently, in the Qurʾan, the term *nikāḥ* is predominantly used in the sense of the marriage contract, as in the verses: “Marry off the unmarried among you” (Qurʾan 24:32), “When you marry believing women” (Qurʾan 33:49), and “Marry them with the permission of their families” (Qurʾan 4:25), all of which signify the conclusion of a marriage contract (16). In the verse “Do not marry those whom your fathers married” (Qurʾan 4:22), the prohibition concerns marrying the wives of one’s fathers—a practice prevalent in pre-Islamic Arabia—where *mā nakaha* may refer either to women who were married or to those with whom intercourse had occurred.

Intent (Qaṣd)

Qaṣd means righteousness and steadfastness on a path (16). As stated in the verse, “And upon God is the direction of the way” (Qur’an 16:9), this indicates that it is upon God to show the straight path through clear proofs and evidences. A “*qāṣid* path” refers to an easy and direct road that reaches its destination without complexity. Al-Zabīdī adds that *qaṣd* resembles the movement of a wayfarer toward a destination without deviating from it, like a river flowing toward its endpoint, and al-Zamakhsharī mentions this meaning in a figurative sense (10). *Qaṣd* also denotes going toward something or relying upon it. In Arabic usage, the expressions *qaṣada-hu*, *qaṣada la-hu*, and *qaṣada ilay-hi* all mean moving toward a person or thing (18). For example, *ilayka qaṣdī* means “my intention and aim are toward you” (10). Likewise, *aqṣada-nī ilayhi al-amr* means that a matter drew me toward him (18). (This is the meaning intended in this treatise.) In this sense, *maqāṣid al-sharī’a* denotes the aims of Sharia and religion.

In a figurative usage, *qaṣd* refers to moderation between excess and deficiency, similar to *iqtīṣād* in livelihood, which is neither extravagance nor miserliness. A hadith states: “No one who is moderate becomes impoverished,” meaning that a person who practices moderation does not become poor (18). This meaning is also reflected in the verse, “And those who, when they spend, are neither extravagant nor stingy” (Qur’an 25:67), which points to moderation in spending (10). Another hadith states: “Moderation, moderation, and you will reach [your goal],” meaning that by moderating one’s speech and conduct, one reaches the intended destination.

Qaṣd can also mean breaking something, such as wood or the marrow of a bone. For instance, *qaṣadtu al-‘ūd qaṣdan* means “I broke the piece of wood” (18). Similarly, *qaṣada al-mukhkha* means breaking and separating the bone marrow. In a line attributed to Tha‘lab, it is said that the camel rests upon bones “like broken reeds,” indicating fractured pieces. (This source is not included in the provided reference list; therefore, it is left uncited.) In some contexts, *qaṣd* conveys coercion and compulsion. In *Tāj al-‘Arūs*, *qaṣada-hu qaṣdan* is glossed as forcing or overpowering someone; although this meaning is less common in texts, it indicates the semantic richness of the term (10).

Qur’anic and Hadith Usage

In religious texts—particularly the Qur’an and hadith—*qaṣd* is predominantly used in the sense of purposeful movement, steadfastness on a path, or moderation. Qur’an 16:9 states, “And upon God is the direction of the way,” meaning that God shows the straight path through clear guidance (10). In Qur’an 9:42, “If it had been a near gain and an easy journey,” the phrase *safaran qāṣidan* denotes a journey that is easy and close (18). Qur’an 25:67—“And those who, when they spend, are neither extravagant nor stingy”—conveys moderation in spending (10). In Qur’an 31:19, “Be moderate in your walking,” the word *iqṣid* indicates moderation in one’s manner of walking (18). The hadith “Moderation, moderation, and you will reach [your goal]” employs repetition for emphasis (10). The hadith “No one who is moderate becomes impoverished” similarly emphasizes that moderation prevents hardship (18).

Accordingly, *qaṣd* fundamentally signifies resolve and movement toward a goal; however, due to its extensive usage in lexicographical, Qur’anic, and hadith contexts, it has acquired diverse meanings such as steadfastness, moderation, breaking, and coercion. In religious texts—especially the Qur’an—its dominant meanings are steadfastness on the right path and moderation. This semantic extension from purposeful movement to figurative senses such as moderation exemplifies the expressive richness of Arabic. Derivatives such as *maqṣad* and *maqāṣid* likewise signify aim and purpose and are widely used in both everyday and religious discourse.

Imami Jurisprudence (Fiqh al-Imāmīyah)

Imami jurisprudence, as a legal–ijtihādī system formed on the basis of the teachings of the Ahl al-Bayt, is regarded as one of the most dynamic and enduring jurisprudential systems in the Islamic world (19). This jurisprudential tradition, with a history exceeding twelve centuries, has maintained its foundational principles while responding to the changing needs of Muslim society.

The sources of legal derivation in Imami jurisprudence are four:

1. The Qur’an, as the first and most important source of legislation, occupies a central place in Imami jurisprudence. Imami jurists, emphasizing the non-distortion of the Qur’an, the probative authority of its apparent meanings, and the capacity to identify them, consider reliance on the legal verses (*āyāt al-aḥkām*) permissible—and indeed obligatory—in jurisprudential derivation (20).
2. The Sunnah of the infallibles, as the explicator of the Qur’an, is the second source for deriving rulings. This Sunnah includes sayings, actions, and tacit approvals. Within this framework, the narrations transmitted from the Twelve Imams have a special status (21).
3. Reason (*‘aql*) is recognized as one of the four evidentiary sources in Imami jurisprudence. The use of reason in the form of rational concomitances—especially through the rule of correlation between the judgment of reason and the ruling of Sharia—is among the distinctive features of Imami jurisprudence (6).
4. Consensus (*ijmā‘*) is authoritative in Imami jurisprudence only on the condition that it discloses the view of the infallible (i.e., it is *kāshif* of the Ma’ṣūm’s position). This constitutes a foundational difference from Sunni approaches to consensus (22).

Distinctive characteristics of Imami jurisprudence include:

1. Continuous ijihād. Imami jurists reject the notion of “closing the gate of ijihād” and affirm the continuity of ijihād across all periods. This feature sustains the dynamism of Imami jurisprudence and its capacity to address novel issues. (The cited source in the original text is not included in the provided reference list; therefore, it is left uncited.)
2. Attention to the causes and interests underlying rulings. Although Imami jurisprudence has not historically systematized an independent, codified discipline titled “maqāṣid al-sharī‘a,” it has consistently paid close attention to the rationales and interests of rulings, articulated through concepts such as *manāḥāt al-aḥkām* and *‘ilal al-tashrī‘* (23).
3. The system of emulation (*taqlīd*). The structured practice of emulating the most learned jurist (*mujtahid a‘lam*) is a prominent feature of Imami jurisprudence and contributes to procedural coherence amid juristic pluralism (24).

Through its ijihādī instruments, Imami jurisprudence has addressed emerging issues. The application of foundational evidences and juristic maxims to new domains such as banking, insurance, and human rights indicates the vitality of this jurisprudential system (25). In light of the foregoing, Imami jurisprudence—grounded in robust principles and dynamic ijihādī methods—possesses the necessary capacity to respond to the complex needs of the contemporary world. Its simultaneous attention to authoritative texts and the requirements of time and place has positioned it as a functional model in the field of Islamic law.

Iraqi Positive Law

Positive law, as a branch of the legal system concerned with the substance of rights and obligations, stands in contrast to procedural law and focuses on defining substantive rights, duties, and liabilities (26). The Iraqi Civil Code, enacted on 18 September 1951, represents one of Iraq's major legal achievements and is largely based on the French Civil Code, combining Islamic and French elements. According to its preface, this Code is derived from Islamic law (Hanafi jurisprudence) and the Egyptian Civil Code, while in certain parts its principal roots trace back to French civil law (27). Iraqi jurists, with the assistance of 'Abd al-Razzāq al-Sanhūrī, compiled a legal corpus that sought to preserve the most effective elements of both systems (28). Consequently, Iraq forms part of the global civil law community grounded in the French model and is linked to jurisdictions such as Louisiana (29). This legacy offers the benefit of centuries of legislative experience (7). The structure of the Iraqi Civil Code is divided into an introductory section and four books, which are organized around rights in relation to persons and rights in relation to property. The introductory section contains general concepts such as the application of law, persons, and property (30). The first division (rights in relation to persons) includes Book One (general obligations), which develops the theory of obligations, and Book Two (specific contracts), covering contracts of ownership, usufruct, labor, and gambling (31). The second division (rights in relation to property) includes Book Three (real rights over property), addressing ownership and related rights such as lease and usufruct, and Book Four (ancillary rights), which concerns guarantees (8). This structure corresponds with the classical logic of civil law, yet matters of personal status are placed in the introductory section because marriage and personal status are governed by Islamic law (4). In family law, the Personal Status Law considers marriage a juristic contract requiring offer, acceptance, and witnesses, and permits polygyny within defined limits. Divorce is likewise regulated on a juristic basis, with women's financial rights such as dowry and alimony being recognized.

Comparative Analysis of the Objectives of Marriage in Imami Jurisprudence and Iraqi Positive Law

Marriage, as a foundational issue in family law, is conceptualized differently across jurisprudential and legal systems. In Imami jurisprudence, marriage is not merely recognized as a social and legal contract, but also embodies profound religious purposes derived from the objectives of Sharia. Within this framework, marriage is regarded as one of the pillars of Islamic society and an instrument for realizing divine aims. From the Imami perspective, marriage must be established upon several essential objectives, among which the preservation of lineage and the continuity of human life are paramount. Marriage is thus viewed as the legitimate mechanism for procreation and for nurturing virtuous generations, a purpose that is significant not only juristically but also ethically and socially. Marriage in Imami jurisprudence is also understood as a means of achieving emotional and psychological tranquility. The Qur'anic expression "so that you may find tranquility in her" indicates that marriage serves as a source of spiritual repose for human beings (6). Accordingly, the purpose of marriage is not confined to fulfilling sexual needs, but also encompasses the establishment of a relationship grounded in affection and mercy between spouses. Moreover, in Imami jurisprudence, marriage is considered one of the most important religious ordinances and must conform to the principles of Islamic Sharia and the teachings of the Ahl al-Bayt, particularly with respect to the conditions of the marriage contract and the reciprocal rights and duties of the parties (17).

Objectives of Marriage in Iraqi Positive Law

Iraqi positive law, grounded in the country's civil code and inspired by French civil law, adopts a distinctive approach to marriage. In this system, marriage is viewed primarily as a legal and social contract that pursues economic and social objectives. It is treated as a juridical agreement that produces specific legal and financial effects, establishing reciprocal obligations between the parties and generating defined rights and duties. Within this framework, many aspects of family law—such as dowry, alimony, and the financial rights of spouses—are situated within the context of contractual arrangements. One of the principal objectives of marriage in Iraqi positive law is the protection of the individual and social rights of the spouses. Marriage in this system functions not only as a legal mechanism for forming a family, but also as a means of safeguarding the economic and social rights of women and men. Furthermore, marriage in Iraqi law has significant implications for nationality and inheritance. Under Iraqi regulations, marriage directly affects the legal status of children and the distribution of inheritance, reflecting the system's concern with the legal and economic consequences of marital relations.

In the comparative evaluation of the objectives of marriage in Imami jurisprudence and Iraqi positive law, several fundamental differences and similarities emerge. One of the most notable differences lies in the Imami conception of marriage as a religious and devotional act. In this system, marriage is not only a legal contract but also a religious ordinance and a form of worship. By contrast, in Iraqi positive law, marriage is predominantly regarded as a social and economic contract, and religious objectives occupy a less prominent position. In Imami jurisprudence, the aims of marriage specifically emphasize psychological tranquility, preservation of lineage, and the implementation of Sharia rulings—objectives that underscore the spiritual and social dimensions of marital life. In Iraqi law, however, the objectives of marriage focus more strongly on securing the individual, economic, and social rights of the parties, particularly in financial and legal domains.

In both systems, considerable importance is attached to the rights and duties of the spouses. In Imami jurisprudence, these rights and duties must conform to religious teachings, whereas in Iraqi law they are primarily regulated through contractual and statutory principles. Overall, the comparative analysis of the objectives of marriage in Imami jurisprudence and Iraqi positive law demonstrates that in the former, marriage is predominantly conceived as a religious institution with specific Sharia objectives—such as the preservation of lineage, the attainment of spiritual tranquility, and the enforcement of divine commandments—while in the latter, marriage is treated as a social and economic contract emphasizing the protection of individual, social, and economic rights. These differences and similarities reveal the distinct cultural, religious, and legal influences that shape the concept and objectives of marriage within the two legal systems.

Analysis of Challenges and Solutions in Deriving the Objectives of Marriage in Different Legal Systems

One of the major challenges in deriving the objectives of marriage lies in cultural and religious differences, which can lead to divergent interpretations of similar concepts. In Imami jurisprudence, marriage is regarded as a religious and devotional act that embodies specific objectives, including the preservation of lineage and the provision of psychological tranquility. By contrast, in Iraqi positive law—shaped by the French civil law tradition—marriage is primarily treated as a legal and social contract, with emphasis placed on the economic and individual rights and obligations of the parties. These religious and cultural differences can generate divergent approaches to interpreting the objectives of marriage and assigning priorities within each legal system. In Imami jurisprudence, the sources of

derivation consist of the Qur'an, the Sunnah of the infallibles, reason, and consensus, each of which may offer distinct foundations for identifying the objectives of marriage. Furthermore, the existence of multiple and diverse interpretations of Qur'anic verses and traditions in Imami jurisprudence renders the determination of marital objectives—particularly in complex matters such as divorce, dowry, and spousal rights—especially challenging. Similarly, in Iraqi law, despite its grounding in the French legal model, the multiplicity of legal sources and regulations governing family law and marriage may also result in varying interpretations (3).

In some legal systems, the objectives of marriage are oriented primarily toward the protection of the individual and social rights of the parties, whereas in Imami jurisprudence, they are largely framed around social and religious goals such as the preservation of lineage and the achievement of psychological tranquility. This contrast can introduce further complexity into the interpretation and derivation of marital objectives within these systems. Particularly when social and religious principles conflict with the individual and economic needs of the parties, deriving coherent and precise objectives requires heightened analytical rigor. In contemporary societies, emerging issues such as international marriages, same-sex marriages, and other social and economic challenges continue to complicate the derivation of the objectives of marriage. These issues—prominently debated in countries including Iraq and Iran—have compelled both Imami jurisprudence and Iraqi positive law to undergo adaptation and modernization in order to address evolving realities.

To derive the objectives of marriage effectively across different legal systems, special attention must be paid to social and cultural transformations. It is therefore essential that the objectives of marriage in each legal framework be continuously reviewed so that they remain aligned with the current social and cultural needs of society. Such developments must be reflected in both jurisprudential and legal interpretations to ensure that marriage, as a social institution, remains functional and responsive. One of the most important strategies for deriving the objectives of marriage in Imami jurisprudence is the reinforcement of dynamic *ijtihād*. Dynamic *ijtihād* enables jurists, through the application of jurisprudential and religious principles, not only to identify the foundational objectives of marriage but also to respond to new and changing issues. For example, employing the concept of *maqāṣid al-sharī'a* can assist jurists in articulating updated marital objectives in contemporary matters such as international marriages and same-sex marriage.

To resolve the tensions and challenges surrounding the derivation of marital objectives across different legal systems, comparative legal methods may be employed. These approaches facilitate the harmonization and integration of diverse perspectives in the derivation of marital objectives. Legal scholars and jurists can, through comparative analysis of systems such as Imami jurisprudence, Iraqi law, and other legal traditions, formulate appropriate solutions for novel and complex problems. Moreover, the derivation of marital objectives cannot be confined solely to legal and jurisprudential principles. Consideration of sociological and psychological perspectives is also essential, as these disciplines contribute to a deeper understanding of the psychological, social, and cultural purposes of marriage and foster greater flexibility in interpreting marital laws and rulings.

In addressing emerging challenges—including same-sex marriage and other social issues—the principles of human rights should be institutionalized within family law and the regulation of marriage. These principles can provide a renewed legal foundation for deriving the objectives of marriage, emphasizing respect for the individual and social rights of persons. The derivation of the objectives of marriage across legal systems thus encounters multiple challenges arising from religious, cultural, social, and economic differences. Nevertheless, the advancement of dynamic *ijtihād* in Imami jurisprudence, the application of comparative legal methodologies, and

attentiveness to social and cultural transformations offer effective strategies for overcoming these challenges. Ultimately, the institutionalization of human rights principles and the integration of diverse scholarly perspectives can contribute to a more precise and coherent articulation of the objectives of marriage in different societies.

The Role of the Objectives of Sharia in Determining the Rulings of Marriage and Their Impact on Family Law in Iraq

The objectives of Sharia, as the general purposes and goals of Islam, play a fundamental role in the explanation and formulation of many religious rulings. Among these, marriage constitutes one of the most significant rulings, as it is directly connected to the social, moral, and legal life of human beings. The objectives of Sharia in determining the rulings of marriage not only reflect religious and social aims but also exert wide-ranging influence on family law in various countries, including Iraq. This section examines the role of the objectives of Sharia in shaping the rulings of marriage and their impact on family law in Iraq. The objectives of Sharia, which comprise the five foundational principles of the preservation of religion, life, lineage, intellect, and property, influence all Islamic rulings and play a crucial role in determining the rulings of marriage as well (1). These objectives affect not only the general understanding of marriage rulings but also their detailed application.

In analyzing the objectives of Sharia in marriage, three primary purposes are identified.

a. Preservation of Lineage

One of the principal objectives of marriage in Islamic Sharia is the preservation of lineage. Marriage, as a social and religious institution, must be structured in a manner that enables procreation and the growth of the family within a legitimate religious framework. This objective affects many aspects of marriage, including polygyny, childbearing, and the rights and duties of parents (1).

b. Provision of Psychological Tranquility and Stability

Marriage in Islamic Sharia is regarded as a means of achieving emotional and psychological tranquility for spouses. The Qur'an states: "so that you may find tranquility in her," indicating that marriage is intended to provide spiritual repose for human beings. Accordingly, the rulings of marriage in Sharia must be organized in a way that fosters relationships based on affection, empathy, and mutual respect between spouses (6).

c. Protection of Rights and Preservation of Human Dignity

Another objective of Sharia in marriage rulings is the preservation of human dignity and the protection of the individual and social rights of the parties. In Islamic Sharia, both spouses—man and woman—possess specific rights that must be respected. These include the right to divorce, alimony, dowry, and sexual rights, which must be allocated justly between the spouses (5).

The Iraqi legal system, which is largely influenced by French civil law and certain principles of Islamic jurisprudence, pays particular attention to the role of the objectives of Sharia in determining family law, especially in matters of marriage, divorce, dowry, and alimony (4). The objectives of Sharia in determining marriage rulings in Iraq play a significant role particularly in securing women's rights. In Iraqi family law, issues relating to dowry, alimony, and the economic rights of spouses are regulated according to Islamic jurisprudential principles, and based on the objectives of Sharia, the woman's entitlement to alimony and dowry is explicitly recognized (5). Furthermore, the Sharia objective of preserving human dignity and securing women's rights within marriage is reflected in protective legal provisions, particularly in cases of divorce.

One of the major issues influenced by the objectives of Sharia in Iraq is polygyny. According to Imami jurisprudence and Sharia law, men are permitted to marry up to four wives, provided that justice among them is observed. The objectives of Sharia in this matter emphasize that the purpose of polygyny must be the preservation of lineage, the fulfillment of social and economic needs of women, and the prevention of moral corruption (1). In Iraqi family law, this matter is addressed with regulatory flexibility, and specific legal mechanisms exist to supervise the implementation of justice among spouses.

In Iraqi law, divorce as a legal process must operate within the framework of Sharia and its objectives. The objectives of Sharia in this area, particularly the preservation of family stability and the prevention of the disintegration of the family institution, significantly influence divorce regulations. Especially with respect to revocable and irrevocable divorce, Sharia objectives require that the rights of both parties be respected and that, where marital life cannot continue, the financial and emotional rights of both spouses be equitably protected (5). Moreover, the objectives of Sharia in marriage have profound effects concerning children as well. In Islamic Sharia, children are entitled to affection and support from their parents, and in Iraqi law this principle occupies a prominent place as one of the Sharia objectives in family law. These objectives are particularly effective in securing the financial rights and maintenance of children after divorce and in ensuring appropriate guardianship arrangements.

One of the major challenges in Iraq is the full harmonization of Sharia with civil law. Especially in sensitive matters such as divorce and polygyny, achieving coherence between the objectives of Sharia and the needs of modern society constitutes a fundamental challenge (1). Addressing this problem requires legal reforms conducted within the framework of Islamic principles and the objectives of Sharia so that family law can be structured in a manner that is consistent with both Sharia objectives and contemporary social and cultural developments.

Another important strategy for overcoming these challenges is the enhancement of religious and legal awareness. Public education regarding Sharia rights and family law can significantly contribute to improving the legal status of women and men within the family. Such education should be implemented through structured programs in schools, universities, and mass media.

Conclusion

In examining the role of the objectives of Sharia in determining the rulings of marriage and their impact on family law in Iraq, it becomes evident that the objectives of Sharia, as the overarching goals of Islam, exert significant influence not only on the formulation and derivation of marriage rulings but also on the regulation of family and social relations. Within the framework of marriage rulings, Sharia pursues goals such as the preservation of lineage, the provision of psychological and social tranquility for spouses, and the protection of human dignity, all of which function as fundamental pillars of the family institution in Islamic society. These objectives hold particular importance in Imami jurisprudence and Islamic law in Iraq and are reflected in various matters such as marriage, divorce, dowry, alimony, and the rights of children.

One of the most prominent features of the objectives of Sharia in marriage is the strong emphasis on the reciprocal rights and duties of men and women. In Sharia, marriage is not merely a social and legal contract but is also regarded as a religious ordinance and an act of worship that must be conducted in accordance with specific religious and ethical principles. The preservation of lineage and the nurturing of righteous generations, as among the most important objectives of Sharia in regulating marriage, are especially regarded in Islamic societies as essential factors for strengthening the family structure and establishing a healthy and flourishing community.

Furthermore, the provision of psychological and emotional tranquility for spouses through marriage, as emphasized in the Qur'an and the Prophetic tradition, highlights the significance of this social institution in fostering relationships based on affection, empathy, and mutual respect.

In the Iraqi legal system, which is largely influenced by the French civil law tradition, the objectives of Sharia likewise have substantial effects on family law. As an Islamic country, Iraq has enacted regulations in family matters—particularly in the areas of marriage and divorce—that are rooted in Islamic jurisprudential principles. These influences are clearly visible in Iraqi regulations concerning dowry, alimony, polygyny, and the rights of children. Accordingly, although Iraqi civil law follows Western legal principles in many respects, it consistently draws upon Islamic teachings in family matters and treats marriage, in particular, as a religious and legal contract that establishes specific rights and obligations for spouses.

Nevertheless, as demonstrated in this study, one of the principal challenges in Iraqi family law is achieving coherence between the objectives of Sharia and civil legislation. In complex matters such as divorce, polygyny, and alimony, balancing Sharia principles with the needs of modern society and ongoing social and cultural transformations has created persistent challenges. While the objectives of Sharia strongly emphasize the preservation of the family and respect for the mutual rights of spouses, Iraqi civil regulations—especially in areas such as divorce and polygyny—do not always adapt effectively to changing social and economic realities.

In this regard, the necessity of legal and regulatory reform in Iraq, particularly in the sphere of family law, becomes apparent in order to establish a more effective balance between Sharia principles and the needs of contemporary society. Such reforms should be grounded in the objectives of Sharia and Islamic principles so that, on the one hand, the individual and social rights of women and men are safeguarded, and on the other hand, the family institution—as the backbone of Islamic society—is preserved and strengthened. At the same time, Imami jurisprudence must continue to employ dynamic *ijtihād* and adapt to emerging issues in order to remain responsive to the evolving needs of society.

Moreover, religious and legal awareness concerning the objectives of Sharia and their implications for family law must be expanded. Through public education in schools, universities, and the media, social awareness of rights and duties in family matters can be significantly enhanced. Such awareness can enable women and men to better understand their legal and moral responsibilities and, within the framework of Sharia and Iraqi civil law, to experience healthier and more stable marital relationships.

Ultimately, the objectives of Sharia in determining the rulings of marriage and shaping family law in Iraq not only contribute to preserving and strengthening the family institution but also promote social cohesion and respect for human dignity within Iraqi society. The establishment of the family as a social and religious institution ultimately fosters a coherent and balanced social structure. Therefore, greater alignment between the objectives of Sharia and ongoing social and cultural developments, together with legal reforms aimed at harmonizing individual and social needs in Iraq, can significantly reinforce the foundations of the family and enhance the quality of family law in the country.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

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