

# An Analysis of the Sharia Supervisory Process of the Guardian Council in Relation to Family Law

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## 1. Introduction

The legislative system of the Islamic Republic of Iran is fundamentally predicated upon the principles of Islamic Sharia. Consequently, ensuring that parliamentary enactments conform to divine law is a cornerstone of legal legitimacy within this jurisdiction. Pursuant to Article 4 of the Constitution, all laws and regulations must align with Islamic criteria, a task entrusted to the jurists of the Guardian Council. Within this framework, one of the most significant theoretical and practical challenges involves identifying the “criterion fatwa”—the specific juristic ruling that serves as the authoritative benchmark for evaluating the Sharia-conformity of legislation amidst a plurality of divergent juristic opinions.

While the Guardian Council has articulated in its interpretive theory that the “personal fatwa of its constituent jurists” constitutes the standard for such assessments, empirical scrutiny suggests that this principle is not uniformly applied in practice. Family law, characterized by its profound impact on social structures and its susceptibility to evolving societal needs, represents a critical domain for examining this phenomenon. The primary objective of this research is to analyze the Guardian

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Council's supervisory performance regarding family law and to investigate the actual patterns of fatwa selection used to validate or reject legislation. The central hypothesis posits that the Council lacks a consistent methodological pattern, frequently alternating between different jurisprudential sources, such as the "dominant view" (Mashhur), the "opinion of the Supreme Jurist," or the "specific fatwas of contemporary jurists."

## **2. Theoretical Foundations**

The discourse surrounding the "criterion fatwa" intersects jurisprudence, constitutional law, and legislative theory. In a legal order where Sharia is the supreme source, the problem of "multiple valid opinions" necessitates a decisive standard. Theoretical frameworks proposed to resolve this include the theory of "discretionary selection of fatwas," the "authority of the Supreme Jurist," the "reliance on dominant juristic views," and "fatwas based on public interest (Maslahah)."

The Guardian Council's formal stance—prioritizing the personal opinions of its members—is intended to provide a streamlined supervisory mechanism. However, academic critiques highlight that this approach may lead to legal unpredictability and inconsistency, especially if the jurists' personal views deviate from established jurisprudential traditions or lack consensus.

## **3. Research Methodology**

This study employs a descriptive-analytical approach, utilizing library-based research and qualitative document analysis. The methodology is structured into two phases: first, a theoretical examination of the options for determining a criterion fatwa within the Iranian legislative framework; and second, a case study analysis of the Guardian Council's decisions across seven significant instances within family law. The research utilizes primary legal documents, parliamentary records, and the

Council's official pronouncements to identify the underlying patterns of juristic selection.

#### **4. Research Findings**

The findings reveal that the Guardian Council does not strictly adhere to its interpretive theory regarding the primacy of the "personal fatwa of its members." Instead, the Council demonstrates a multifaceted and sometimes inconsistent approach in the domain of family law:

- 1. Paternal Consent in Marriage:** The Council adopted a precautionary approach amidst significant jurisprudential divergence.
- 2. Embryo Donation:** The Council approved the practice by aligning with contemporary juristic opinions (e.g., Ayatollah Khamenei) regarding new medical advancements.
- 3. Child Custody:** Following the "dominant view" and the fatwas of Imam Khomeini, the Council rejected legislative attempts to prioritize maternal custody for children up to age seven.
- 4. Custody after Father's Death:** The Council aligned with the "dominant view" to validate maternal priority.
- 5. Divorce due to Hardship (Haraj):** While accepting the principle, the Council opted for a restrictive interpretation of its application.
- 6. Minimum Marriage Age:** The Council adhered to the "dominant view," finding legislative increases in the age of marriage to be non-compliant with Sharia.
- 7. Abortion:** Following legislative amendments, the Council approved the provisions by aligning with the majority view of contemporary jurists.

Ultimately, the data indicates that the Council's selection process is characterized by a lack of a singular, stable criterion, frequently shifting between various jurisprudential authorities.

### **5. Conclusion**

The study concludes that the Guardian Council's interpretive theory—asserting the personal fatwa of its members as the definitive benchmark—is not consistently realized in its practical supervisory functions. The analysis of family law cases demonstrates that the Council lacks a uniform pattern in selecting a criterion fatwa, often oscillating between the dominant view, the Supreme Jurist's opinion, and contemporary juristic rulings. This inconsistency poses a significant risk to the legislative process, potentially leading to legal ambiguity and diminished predictability. To enhance the transparency and efficiency of Sharia supervision, it is imperative to establish a clear, systematic, and unified standard for selecting the criterion fatwa within the Iranian legal system.

### **6. Keywords**

Criterion Fatwa, Guardian Council, Sharia Supervision, Family Law, Islamic Legislation.