



Analysis of the Guardian Council's Sharia Review Process in Family Law Legislation¹

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DOI:

10.30497/FLJ.2026.247347.2124



1. Introduction

The legislative system of the Islamic Republic of Iran is founded upon the principles of Islamic jurisprudence (fiqh). Consequently, ensuring the conformity of parliamentary enactments with Islamic law constitutes one of the fundamental principles of the legal system. Pursuant to Article 4 of the Constitution, all laws and regulations must be based on Islamic criteria, and the determination of such conformity rests with the *fuqaha* (Islamic jurists) of the Guardian Council.

Within this framework, one of the principal theoretical and practical issues in Sharia review is identifying the **authoritative fatwa** (*fatwā-ye me'yār*) against which legislation is assessed. Since the Ja'fari school of Islamic jurisprudence recognizes legitimate diversity of juristic opinions, selecting a single jurisprudential standard for legislative review inevitably creates challenges within the lawmaking process.

1. The present article is extracted from the doctoral dissertation entitled "The Impact and Status of Multiple Fatwas in the Legislative System of the Islamic Republic of Iran," submitted to Alborz Campus, University of Tehran.

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In its interpretative opinions, the Guardian Council has maintained that the criterion for determining whether legislation is compatible with Sharia is the personal legal opinion (*fatwa*) of the Council's jurist members. Nevertheless, an examination of the Council's actual practice—particularly in relation to family law—demonstrates that this principle has not been applied consistently. Family law represents one of the areas most affected by conflicting juristic opinions because of its close relationship with social structures, cultural developments, and evolving public expectations. Accordingly, analyzing the Guardian Council's practice in this field provides valuable insight into the operation of constitutional Sharia review.

This study examines the Guardian Council's Sharia review process in family legislation and analyzes how the authoritative fatwa has been selected in practice. It asks which juristic opinion has actually served as the basis for determining the constitutionality of family-related legislation. The central hypothesis is that the Guardian Council has not followed a uniform methodology; rather, depending on the circumstances, it has relied upon various sources, including the dominant (*mashhūr*) opinion among Shi'a jurists, the views of contemporary jurists, and, in some cases, the opinion of the Supreme Leader.

2. Literature Review

The issue of the authoritative fatwa in the legislative system of the Islamic Republic of Iran has attracted increasing scholarly attention in recent years. Existing studies have explored competing theories regarding the appropriate criterion for selecting a fatwa in the legislative process. These include the theory of discretionary selection among juristic opinions (*takhyīr*), adherence to the Supreme Leader's fatwa, reliance on

the dominant juristic opinion, and approaches emphasizing public interest (*maṣlaḥa*).

Other studies have examined the effectiveness of Islamic jurisprudence within the legislative process and the challenges created by the plurality of juristic opinions.

Despite these contributions, most previous studies remain primarily theoretical and have devoted relatively little attention to the Guardian Council's actual decision-making in specific legislative cases. This is particularly true in the field of family law, one of the most sensitive areas of Iranian legislation. The novelty of the present study lies in its case-based analysis of several important family law statutes in order to identify the jurisprudential standards that the Guardian Council has employed in practice.

3. Methodology

This research adopts a descriptive-analytical approach based on documentary and library research. The first stage examines the theoretical foundations of the authoritative fatwa within the legal system of the Islamic Republic of Iran and evaluates competing approaches to selecting the governing juristic opinion.

The second stage analyzes selected family law statutes by examining parliamentary enactments, legislative records, and the Guardian Council's official opinions.

The selected cases encompass significant and controversial issues in Iranian family law, including parental consent for the marriage of an adult virgin daughter, embryo donation to infertile couples, child custody, judicial divorce based on hardship (*'usr wa ḥaraj*), the minimum marriage age for girls, and abortion.

For each case, the study compares the relevant juristic opinions with the Guardian Council's rulings in order to identify the jurisprudential standard that guided its review.

4. Findings

The findings demonstrate that the Guardian Council has not adopted a uniform approach in selecting the authoritative fatwa for reviewing family law legislation.

In certain cases, the Council has adopted a jurisprudentially cautious approach by selecting opinions that preserve the traditional structure of family law. In other instances, it has relied upon the dominant opinion among Shi'a jurists as the benchmark for evaluating legislation.

For example, regarding child custody following parental separation, the Guardian Council declared Parliament's proposal granting mothers custody of children up to the age of seven incompatible with Sharia, relying upon both the dominant juristic opinion and the views of Imam Khomeini.

Conversely, concerning embryo donation to infertile couples, despite significant disagreement among jurists, the Council did not consider the practice contrary to Islamic law, thereby permitting legislation in this field.

With respect to judicial divorce based on hardship, the Council accepted the principle that severe hardship may justify divorce while adopting a restrictive interpretation concerning its practical application.

Regarding the minimum marriage age for girls, the Council declared legislative attempts to increase the legal age of marriage inconsistent with Sharia, resulting in legislation more closely aligned with the dominant juristic position.

Similarly, in relation to abortion, the Council initially objected to several proposed provisions as incompatible with Islamic law

but ultimately approved the legislation after amendments had been introduced.

Taken together, these cases indicate that the Guardian Council has not confined itself exclusively to the personal opinions of its own jurist members. Instead, it has drawn upon diverse jurisprudential authorities, including the dominant opinions of Shi'a jurists, the views of contemporary scholars, and considerations of jurisprudential caution.

5. Conclusion

The findings suggest that the Guardian Council's interpretative position—that the personal fatwas of its jurist members constitute the governing standard for Sharia review—is considerably more complex in practice.

The case studies examined in the field of family law reveal that the Council has not followed a rigid or consistent methodology. Rather, depending upon the legal issue, prevailing social conditions, and the existence of divergent juristic opinions, it has relied upon different jurisprudential authorities.

While this flexibility allows the Council to respond to varying legislative contexts, it also creates uncertainty regarding the predictability and transparency of constitutional Sharia review. A clearer articulation of the criteria governing the selection of the authoritative fatwa, together with a more coherent framework for Sharia review, would likely enhance both transparency and the effectiveness of the legislative process. Moreover, greater attention to contemporary social developments alongside established jurisprudential principles may facilitate a more adaptive and efficient approach to legislative review.

Overall, the experience of the Guardian Council in reviewing family law legislation demonstrates that the interaction between

Islamic jurisprudence, legislative policymaking, and social change continues to play a decisive role in shaping the legal system of the Islamic Republic of Iran.

6. Keywords

Authoritative Fatwa; Guardian Council; Sharia Review; Family Law; Governmental Jurisprudence; Islamic Legislation.