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# Regulating Arbitrary Divorce in Islamic Family Law: A *Maqāṣid al-Sharīʿah*–Based Comparative Analysis of Muslim-Majority Legal Systems

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**Abstract:**

This article examines how contemporary Islamic family law regulates arbitrary divorce and evaluates the extent to which such regulation operationalizes *maqāṣid al-sharīʿah*, particularly as conceptualized by Jamāl al-Dīn ʿAṭiyyah. Arbitrary divorce is understood as unilateral marital dissolution that occurs without adequate judicial oversight, substantive justification, or fair compensation, resulting in harm to women and children. The study asks how different legal systems constrain or reproduce arbitrary divorce and which regulatory model most effectively realizes substantive justice. Employing a qualitative and comparative method, the research analyzes statutory regulations, judicial structures, and doctrinal frameworks governing divorce in Indonesia, Iran, and Algeria as material objects of study. The findings demonstrate three distinct regulatory patterns. Indonesia adopts a procedural model that formally judicializes divorce but fails to prevent substantive injustice due to weak enforcement and partial protection of women's financial and custodial rights. Iran reflects an administrative–doctrinal model that retains significant male prerogatives while introducing limited compensatory mechanisms. In contrast, Algeria represents a substantive *maqāṣid*-oriented model in which expanded judicial authority, mandatory reconciliation, and compensation for harm effectively constrain unilateral divorce and promote financial justice and child welfare. The study concludes that effective regulation of arbitrary divorce depends not on procedural formality alone but on the institutional capacity to translate ethical objectives into enforceable outcomes. This *maqāṣid*-based typology contributes to Islamic family law scholarship by offering a comparative framework for evaluating justice-oriented legal reform.

(Artikel ini mengkaji bagaimana hukum keluarga Islam di Indonesia, Iran, dan Aljazair mengatur perceraian sepihak serta sejauh mana regulasi tersebut mengoperasionalkan *maqāṣid* al-sharīʿah, khususnya dalam perspektif *maqāṣid* al-usrah sebagaimana dirumuskan oleh Jamal al-Dīn ʿAṭiyyah. Penelitian ini bertujuan menjawab pertanyaan utama: bagaimana sistem hukum di ketiga negara mencegah atau justru mereproduksi perceraian sepihak yang menimbulkan ketidakadilan gender dan kerentanan bagi perempuan dan anak. Penelitian ini menggunakan pendekatan kualitatif dengan metode studi doktrinal terhadap peraturan perundang-undangan keluarga Islam, putusan pengadilan, serta analisis komparatif lintas negara yang diperkaya dengan kajian literatur akademik. Hasil penelitian menunjukkan adanya variasi model regulasi perceraian sepihak. Indonesia merepresentasikan model *maqāṣid* prosedural yang menekankan yudisialiasi perceraian namun masih lemah dalam penegakan dan perlindungan substantif. Iran menunjukkan model kompensatoris yang relatif kuat melalui mekanisme finansial pascaperceraian, tetapi tetap mempertahankan dominasi prerogatif suami. Aljazair menampilkan model *maqāṣid* substantif dengan perluasan kewenangan yudisial yang signifikan untuk mencegah perceraian sepihak, melindungi perempuan, dan menjamin kepentingan terbaik anak. Penelitian ini menyimpulkan bahwa efektivitas *maqāṣid al-sharīʿah* dalam regulasi perceraian sangat bergantung pada sejauh mana *maqāṣid* tersebut dioperasionalkan secara institusional dan dapat ditegakkan, bukan sekadar dijadikan kerangka normatif.)
**Keywords:** *Maqāṣid al-Sharī'Ah*, Arbitrary Divorce, Islamic Family Law, Gender Justice, Legal Reform.

## Introduction

Divorce in Islamic family law has long been characterized by a structural asymmetry between husbands' unilateral authority to dissolve marriage and women's conditional, procedurally burdensome access to divorce. This study focuses on what it defines as *arbitrary divorce*: marital dissolution initiated unilaterally by the husband without meaningful judicial oversight, substantive justification, or fair post-divorce compensation, producing material, psychological, and social harm to women. While rooted in classical fiqh doctrines of *ṭalāq*, arbitrary divorce today is primarily reproduced through modern legal systems that formally regulate divorce yet tolerate substantive inequalities in outcomes. Existing scholarship has extensively examined Islamic divorce, gender justice, *maqāṣid al-sharīʿah*, and human rights; however, much of this literature remains fragmented, descriptive, or normatively prescriptive, without systematically interrogating how contemporary legal regimes operationalize—or fail to operationalize—ethical constraints on arbitrary divorce.[1]

[1] Mulki Al-Sharmani, "Marriage in Islamic Interpretive Tradition: Revisiting the Legal and the Ethical," *Journal of Islamic Ethics* 2, nos. 1–2 (2018): 76–96, https://doi.org/10.1163/24685542-

At a global level, Muslim-majority states have increasingly positivized Islamic family law through statutory codification and judicialization. These reforms are often justified as mechanisms to protect women and families, yet empirical studies demonstrate persistent gendered harms following divorce, including economic deprivation, social exclusion, and psychological vulnerability.[2] International human rights norms have further influenced divorce regulation, promoting gender equality and individual rights, while simultaneously generating tensions with religious legal frameworks that continue to privilege formal male authority in marriage dissolution.[3] It is within this intersection of Islamic normativity, state law, and ethical contestation that arbitrary divorce emerges as a persistent legal problem rather than a residual religious practice.

Existing literature identifies a broad spectrum of challenges that divorced women face. Leopold[4] reports significant declines in household income, elevated poverty risks, and increased single-parenting responsibilities disproportionately affecting women. In Saudi Arabia, these challenges manifest as multifaceted socio-economic, psychological, and legal hardships.[5] In Iran, divorced women endure five distinct dimensions of social exclusion: discrimination, economic dependence, exclusionary practices, traumatic health risks, and precarious marital status.[6] Similarly, in Kashmir, social stigma, family interference, and infidelity exacerbate women's vulnerabilities post-divorce. While men may experience short-term declines in well-being, women often face prolonged and chronic adversity. Nevertheless, some divorced women demonstrate notable resilience in confronting these adversities.[7]

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12340017; Natana DeLong-Bas, "Islamic Law and Gender," in *Islamic Studies*, by Natana DeLong-Bas (Oxford University Press, 2019), https://doi.org/10.1093/obo/9780195390155-0264.

2 Thomas Leopold, "Gender Differences in the Consequences of Divorce: A Study of Multiple Outcomes," *Demography* 55, no. 3 (2018): 769–97, https://doi.org/10.1007/s13524-018-0667-6.

3 Cheng-Tong Lir Wang and Evan Schofer, "Coming Out of the Penumbras: World Culture and Cross-National Variation in Divorce Rates," *Social Forces* 97, no. 2 (2018): 675–704, https://doi.org/10.1093/sf/soy070; Karin Carmit Yefet, "Divorce as a Formal Gender-Equality Right," *U. Pa. J. Const. L.* 22 (2019): 793.

4 Leopold, "Gender Differences in the Consequences of Divorce."

5 Ramzia Hisham Saleh and Rocci Luppicini, "Exploring the Challenges of Divorce on Saudi Women," *Journal of Family History* 42, no. 2 (2017): 184–98, https://doi.org/10.1177/0363199017695721.

6 Fatemeh Zarei et al., "Development and Psychometric Properties of Social Exclusion Questionnaire for Iranian Divorced Women," *Iranian Journal of Public Health* 46, no. 5 (2017): 640.

7 Tanveer Ahmad Khan and Wasia Hamid, "Lived Experiences of Divorced Women in Kashmir: A Phenomenological Study," *Journal of Gender Studies* 30, no. 4 (2021): 379–94, https://doi.org/10.1080/09589236.2020.1826295.

International human rights discourses further complicate these dynamics by introducing global norms that emphasize individual rights, equality, and gender justice. Wang and Schofer[8] note that world cultural frameworks have reshaped modern conceptions of marriage and family relations, contributing to rising divorce rates. Nevertheless, gender inequality remains entrenched in many Muslim-majority jurisdictions. In Indonesia, women often lose claims to joint property and face procedural barriers in divorce filings.[9] Yefet[10] argues that restrictive divorce regulations inherently violate formal gender-equality rights, raising constitutional concerns. In Bangladesh, the intersection of sharia and statutory laws perpetuates systemic subordination of women by limiting their access to divorce.[11] These insights emphasize the necessity of aligning Islamic legal reforms with international human rights standards while respecting religious authenticity.

Despite these developments, significant research gaps remain in fully understanding how *maqāṣid al-sharīʿah* can be operationalized to address the ethical deficiencies of current divorce laws. Recent scholarship underscores persistent gender disparities in religious-based family laws, particularly in India, and calls for comprehensive reforms to eliminate these inequalities.[12] Comparative analyses and case studies on Islamic law and gender have proliferated, yet inconsistencies persist between Islamic feminist interpretations and existing legal frameworks.[13] Moreover, specific legal provisions such as *iddah* are scrutinized for their gendered application, suggesting the need for reforms that consider equitable responsibilities for both genders.[14] Collectively, these studies highlight the ongoing need for deeper

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8 Wang and Schofer, "Coming Out of the Penumbras."

9 Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2206347, https://doi.org/10.1080/23311886.2023.2206347.

10 Yefet, "Divorce as a Formal Gender-Equality Right."

11 Shahnewaj Patwari and Abu NMA Ali, "Muslim Women's Right to Divorce and Gender Equality Issues in Bangladesh: A Proposal for Review of Current Laws," *Journal of International Women's Studies* 21, no. 6 (2020): 50–79.

12 Tanja Herklotz, "Law, Religion and Gender Equality: Literature on the Indian Personal Law System from a Women's Rights Perspective," *Indian Law Review* 1, no. 3 (2017): 250–68, https://doi.org/10.1080/24730580.2018.1453750.

13 DeLong-Bas, "Islamic Law and Gender"; Vincenza Priola and Shafaq A. Chaudhry, "Unveiling Modest Femininities: Sexuality, Gender (In)Equality and Gender Justice," *British Journal of Management* 32, no. 2 (2021): 306–21, https://doi.org/10.1111/1467-8551.12390.

14 Sunuwati, Siti Irham Yunus, Rahmawati, "GENDER EQUALITY IN ISLAMIC FAMILY LAW: SHOULD MEN TAKE IDDAH (WAITING PERIOD AFTER DIVORCE)?," *Russian Law Journal* 11, no. 3 (2023), https://doi.org/10.52783/rlj.v11i3.1504.

examination into how *maqāṣid* can be systematically integrated into legal doctrines to achieve substantive gender justice within Islamic family law.

This study adopts Attia's expanded *maqāṣid al-sharī'ah* specific to family law, which include the preservation of lineage, preservation of parental rights and duties, preservation of spousal rights and duties, preservation of children's rights, preservation of family solidarity and harmony, preservation of moral and ethical values within the family, and preservation of financial stability and justice within the family.[15] This functional *maqāṣid* framework offers a holistic ethical paradigm for evaluating and reforming contemporary legal systems, better capturing the multidimensional realities faced by women in divorce proceedings. This *maqāṣid*-based approach is particularly relevant in family law, where ethical considerations often intersect with rigid legal formalism. In Egypt, Morocco, and Indonesia, for instance, legal reforms reflect varying degrees of *maqāṣid*-oriented reasoning in addressing gender justice in divorce procedures.[16] In Morocco, the allowance for both spouses to initiate no-fault divorce illustrates a substantive shift towards equality, while Egypt's gender-specific khul' provisions continue to impose differential burdens.[17] In Indonesia, judicial discretion under the Compilation of Islamic Law reveals both possibilities and limitations in the application of *maqāṣid* principles.[18] These examples underscore the potential and challenges of embedding *maqāṣid*-based ethics into statutory frameworks to ensure gender-sensitive legal protections.

At this juncture, this article examines how three Muslim-majority legal systems: Indonesia, Iran, and Algeria, regulate arbitrary divorce and the extent to which these regulations operationalize *maqāṣid al-sharīʿah*, particularly as articulated in contemporary reformist thought. These jurisdictions were selected for their contrasting regulatory models and shared engagement with Islamic legal sources:

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[15] Gamal Eldin Attia, *Towards Realization of the Higher Intents of Islamic Law: Maqashid al-Syariah – A Functional Approach* (International Institute of Islamic Thought, 2007), https://iiit.org/wp-content/uploads/Towards-Realization-of-the-Higher-Intents-of-Islamic-Law-Maqasid-Al-Shariah-A-Functional-Approach.pdf.

[16] Baudouin Dupret et al., "Paternal Filiation in Muslim-Majority Environments: A Comparative Look at the Interpretive Practice of Positive Islamic Law in Indonesia, Egypt, and Morocco," *Journal of Law, Religion and State* 10, nos. 2–3 (2023): 167–217, https://doi.org/10.1163/22124810-20230002.

[17] Nadia Sonneveld, "Divorce Reform in Egypt and Morocco: Men and Women Navigating Rights and Duties," *Islamic Law and Society* 26, nos. 1–2 (2019): 149–78, https://doi.org/10.1163/15685195-00260A01.

[18] Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hawwa* 18, nos. 2–3 (2020): 295–324, https://doi.org/10.1163/15692086-12341380.

Indonesia represents procedural judicialization with limited substantive enforcement; Iran reflects doctrinal asymmetry embedded within codified Shiʿi jurisprudence; and Algeria illustrates substantive judicial intervention through family law reform. Focusing exclusively on these cases avoids overgeneralization and enables a grounded comparative analysis of how legal formalism interacts with ethical objectives in concrete legal settings.[19]

The study employs a comparative doctrinal methodology. The primary material objects of analysis are statutory regulations, judicial procedures, and formal divorce mechanisms governing *ṭalāq* and related forms of marital dissolution in the three countries. Using *maqāṣid* al-sharīʿah as an analytical framework—rather than a purely normative ideal—the research inductively evaluates whether legal rules and institutional practices realize core objectives such as harm prevention, financial justice, protection of lineage, and family welfare.[20] Comparative analysis proceeds through three steps: first, identifying legal mechanisms regulating unilateral divorce; second, assessing their practical effects on women and children; and third, classifying each system according to its dominant *maqāṣid* orientation. Therefore, the contribution of this study lies in developing a comparative typology of arbitrary divorce regulation—procedural, partial, and substantive *maqāṣid* models—grounded in positive law rather than abstract theory. By demonstrating how legal systems may formally restrict *ṭalāq* while substantively reproducing gendered harm, the article advances debates on Islamic family law reform beyond the dichotomy of tradition versus modernity, offering a framework for evaluating justice-oriented legal transformation within Islamic normative boundaries.

## Arbitrary Divorce and *Maqāṣid al-Sharīʿah* in Indonesia

This section examines how Indonesian Islamic family law regulates arbitrary divorce and evaluates the extent to which such regulation operationalizes Jamal al-Dīn ʿAṭiyyah's family-specific *maqāṣid al-sharīʿah*. As defined in this study, arbitrary divorce refers to marital dissolution initiated unilaterally by the husband without

[19] Baudouin Dupret et al., "Paternal Filiation in Muslim-Majority Environments: A Comparative Look at the Interpretive Practice of Positive Islamic Law in Indonesia, Egypt, and Morocco," *Journal of Law, Religion and State* 10, nos. 2–3 (2023): 167–217, https://doi.org/10.1163/22124810-20230002; Sonneveld, "Divorce Reform in Egypt and Morocco."

[20] Bouhedda Ghalia et al., "Medical Ethics in the Light of Maqāṣid Al-Sharīʿah: A Case Study of Medical Confidentiality," *Intellectual Discourse* 26, no. 1 (2018): 133–60.

adequate judicial oversight, substantive justification, or fair financial compensation, resulting in material and non-material harm to women. The Indonesian case illustrates how procedural reform may formally limit unilateral divorce yet still reproduce substantive gender injustice when *maqāṣid* objectives are only partially realized.

Indonesian Islamic family law is characterized by the codification of Islamic norms into state law, primarily through Law No. 1 of 1974 on Marriage, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (the KHI). Article 39 of the Marriage Law and Article 19 of Government Regulation No. 9 of 1975 require that divorce, including *ṭalāq*, be conducted before the Religious Courts. In principle, this judicialization of divorce represents a significant departure from classical fiqh doctrines that recognize unilateral *ṭalāq* as a private act of the husband. From a *maqāṣid* perspective, the requirement of judicial oversight is intended to prevent harm (*ḥifẓ al-nafs*) and preserve spousal and parental responsibilities by subjecting marital dissolution to institutional scrutiny.

However, empirical and doctrinal studies demonstrate that this procedural framework remains insufficient to prevent arbitrary divorce in practice. Despite the formal prohibition of out-of-court *ṭalāq*, Indonesian law does not impose effective criminal or administrative sanctions on husbands who pronounce divorce outside the court system. As a result, out-of-court divorces continue to occur and are often regarded as religiously valid, even though they violate positive law.[21] This legal gap creates a structural condition in which husbands can bypass judicial control while wives lose access to legal protections, including the right to file divorce claims in their domicile and the ability to secure post-divorce remedies. From Attia's *maqāṣid* framework, this situation reflects a failure to operationalize harm prevention and financial justice, as the legal system tolerates outcomes that disproportionately disadvantage women.

Recent policy interventions seek to address these shortcomings. Supreme Court Circular Letter (SEMA) No. 1 of 2022 emphasizes the difficulty of obtaining a divorce

[21] Irma Suryani et al., "The Possibility of Talaq Performers Criminalization in Indonesia: An Essential Lesson from India," *Journal of Human Rights, Culture and Legal System* 4, no. 3 (2024): 593–620, https://doi.org/10.53955/jhcls.v4i3.282; Firman Wahyudi, "Ithbāt Ṭalāq: An Offer of Legal Solutions to Illegal Divorce in Indonesia," *Al-Ahkam* 32, no. 2 (2022): 211–32, https://doi.org/10.21580/ahkam.2022.32.2.11720.

and encourages mediation as a mechanism to protect women's interests.[22] While this reform signals institutional awareness of gender vulnerability in divorce cases, its effectiveness remains contested. Compulsory mediation is applied uniformly to all divorce petitions, including cases involving domestic violence, despite substantial evidence that mediation in such contexts may expose victims to further harm.[23] From a *maqāṣid* perspective, mandatory mediation in cases of violence undermines the objective of harm prevention and fails to prioritize the ethical imperative of protecting life and dignity within the family.

The operation of the Religious Courts further illustrates the tension between procedural legality and substantive justice. Divorce adjudication in Indonesia follows a fault-based model, requiring parties to prove legally recognized grounds for divorce under Article 19 of Government Regulation No. 9 of 1975. This structure often transforms divorce proceedings into adversarial contests, compelling spouses to assign blame and construct narratives of fault.[24] Such contestation may satisfy formal legal requirements, yet it frequently exacerbates psychological harm and reinforces gendered power asymmetries. In *maqāṣid* terms, the emphasis on fault undermines family harmony (*ḥifẓ al-usrah*) and ethical values by prioritizing procedural victory over equitable resolution.

Post-divorce financial arrangements represent one of the most critical areas where arbitrary divorce continues to reproduce gender injustice. Although the KHI recognizes women's rights to maintenance, *mutʿah*, and *iddah* allowances, empirical studies reveal a significant gap between judicial decisions and actual enforcement. Many women are unable to realize their post-divorce rights due to husbands' non-compliance and limited public knowledge regarding execution procedures.[25]

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[22] Laras Shesa et al., "Reformulating Progressive Fiqh of Talak (Divorce): A Contemporary Study of the Principle of Making Divorce More Difficult in SEMA No. 1 of 2022 for Women's Protection," *MILRev: Metro Islamic Law Review* 3, no. 2 (2024): 236–62, https://doi.org/10.32332/milrev.v3i2.9950.

[23] Balawyn Jones and Amira Aftab, "Inside Indonesia's Religious Courts: An Argument for Domestic and Family Violence Screening and Exemption from Compulsory Mediation," *Oxford Journal of Law and Religion* 12, no. 2 (2024): 217–31, https://doi.org/10.1093/ojlr/rwad015.

[24] Hartini Hartini et al., "Sole Custody and The Implication of Fault-Based Divorce Under the Indonesian Legal System," *Journal of Indonesian Legal Studies* 9, no. 1 (2024): 249–78, https://doi.org/10.15294/jils.vol9i1.4576.

[25] Syukrawati Syukrawati et al., "Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis," *Al-Ahkam* 34, no. 1 (2024): 121–46, https://doi.org/10.21580/ahkam.2024.34.1.20624; Endad Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce: A Comparative Study Between Indonesia and

Moreover, women who initiate divorce proceedings—often due to domestic violence—are systematically excluded from *iddah* and *mutʿah* entitlements under the KHI, resulting in discriminatory outcomes.[26] These practices indicate a structural failure to achieve financial justice (*ḥifẓ al-māl*) and spousal equity within the *maqāṣid* framework. This structural weakness is further illuminated by feminist Muslim scholarship in Indonesia, which argues that nafkah obligations are often reduced to formalistic norms detached from ethical responsibility, thereby legitimizing post-divorce economic vulnerability rather than preventing it. Female Muslim scholars emphasize that the ethical purpose of nafkah lies in sustaining dignity, reciprocity, and care within and beyond marriage, principles that are frequently undermined in judicial divorce practices that prioritize procedural closure over substantive justice.[27]

Judicial discretion emerges as a double-edged mechanism within this system. On the one hand, judges frequently confront legal ambiguities and respond by invoking constitutional principles, human rights norms, and international obligations such as CEDAW to justify progressive interpretations of Islamic law.[28] Such discretion enables courts, in certain cases, to mitigate the harsh effects of arbitrary divorce by ordering financial support or prioritizing women's safety. On the other hand, the absence of clear enforcement mechanisms and standardized guidelines leads to inconsistent outcomes across cases, weakening legal certainty and undermining the *maqāṣid* objective of justice.

Children's rights further expose the limits of Indonesia's procedural approach to divorce regulation. While judges often reference the best interests of the child when determining custody, empirical analyses show that children's voices are rarely heard and histories of domestic violence are not consistently considered.[29] The protection of

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Malaysia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi*, April 18, 2025, 1–14, https://doi.org/10.24090/volksgeist.v8i1.12214.

[26] Nasruddin Yusuf et al., "Feminism Analysis of Judges' Considerations for Post-Divorce Domestic Violence Victims in Medan and Banda Aceh Religious Courts," *Al-'Adalah* 20, no. 2 (2023): 283, https://doi.org/10.24042/adalah.v20i2.16177.

[27] Nur Fadhilah et al., "Reevaluating Nafkah Obligations: Female Muslim Scholars' Insight and Ethics of Gendered Finance in Indonesian Families," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 20, no. 2 (2025): 458–89.

[28] Ahmad Muhamad Mustain Nasoha et al., "Relevance of Religious Court Decisions on Marriage to National Development Policy Directions: A Legal and Social Analysis," *Evolutionary Studies in Imaginative Culture*, October 3, 2024, 1340–47, https://doi.org/10.70082/esiculture.vi.1496.

[29] Saraswati Rika, "Accommodating the 'Best Interests of the Child' in Custody Disputes in the Indonesian System/s of Family Law," *International Journal of Law, Policy and the Family* 35, no. 1 (2021): ebab011, https://doi.org/10.1093/lawfam/ebab011.

children's welfare remains largely dependent on explicit petitions, rendering judicial intervention optional rather than mandatory.[30] Innovative initiatives, such as the E-Mosi Caper application in Bengkulu Province, demonstrate potential improvements in the enforcement of custody and alimony decisions, yet they remain localized solutions rather than systemic reforms.[31] From a *maqāṣid* perspective, this reflects a partial realization of children's rights (*ḥifẓ al-nasl*), constrained by procedural formalism.

Socioeconomic dynamics further shape the operation of arbitrary divorce in Indonesia. Research indicates that lower-income couples tend to accept marital dissolution more readily, whereas educated middle-class couples experience prolonged and complex divorce processes due to disputes over assets, custody, and social status.[32] These dynamics reveal that access to justice and the realization of *maqāṣid* objectives are unevenly distributed, reinforcing structural inequalities within the legal system.

The Indonesian case demonstrates that while judicialization of divorce represents a significant procedural reform, it has not fully transformed the ethical substance of divorce regulation. Attia's *maqāṣid al-sharīʿah* are only partially operationalized: harm prevention is undermined by ineffective sanctions and compulsory mediation; financial justice remains weak due to enforcement failures and discriminatory norms; and children's rights are inconsistently protected. Consequently, Indonesia exemplifies a procedural *maqāṣid* model in which formal restrictions on arbitrary divorce are maintained while its substantive reproduction persists. This finding underscores the necessity of moving beyond procedural control toward a *maqāṣid*-oriented framework that integrates ethical evaluation, enforceable compensation, and gender-sensitive judicial standards into the regulation of divorce.

## Arbitrary Divorce in Iran and Partial *Maqāṣid* Accommodation

This section analyzes the regulation of arbitrary divorce in Iran and evaluates the extent to which Iran's family law regime partially accommodates, yet largely contradicts, Jamal al-Dīn ʿAṭiyyah's *maqāṣid al-sharīʿah* at the family level. In this

[30] Ibnu Radwan Siddik Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases: An Analysis Using the Maslahah Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 463–84, https://doi.org/10.29240/jhi.v9i2.10117.

[31] Musaddad et al., "Guaranteeing the Rights of Children and Women Post-Divorce."

[32] Rachel Rinaldo et al., "Divorce Narratives and Class Inequalities in Indonesia," *Journal of Family Issues* 45, no. 5 (2024): 1195–216, https://doi.org/10.1177/0192513X231155657.

study, arbitrary divorce is understood as marital dissolution enabled through structurally asymmetric legal rules that grant husbands unilateral authority while subjecting women to onerous procedural, evidentiary, and financial burdens, thereby generating systematic harm. Iran presents a paradigmatic case in which the preservation of formal Islamic legality coexists with deep substantive failures to protect women, children, and family stability.

Iranian family law is primarily codified in the Civil Code, particularly Articles 1120–1153, with Article 1133 constituting the core provision governing ṭalāq. Under this article, husbands retain an unconditional right to divorce, while women may only seek judicial dissolution upon proving specific grounds such as hardship (ʿusr wa ḥaraj), abandonment, or severe misconduct. Following the 1979 Iranian Revolution, family law reverted from mid-twentieth-century secular-influenced reforms to a sharia-based framework widely regarded as more restrictive toward women, despite the preservation of gender equality in inheritance law.[33] Empirical data indicate that these legal changes have coincided with rising divorce rates, with the divorce-to-marriage ratio reaching 25.3% in 2016, the highest level recorded.[34]

From a *maqāṣid* perspective, the most critical deficiency of Iran's divorce regime lies in its failure to protect life and soul (ḥifẓ al-nafs). While judicial oversight is formally required for women-initiated divorces, the evidentiary standards imposed are exceptionally high. Women must demonstrate that continuation of the marriage has become unbearable and intolerable, a process that often takes two to three years and requires proof of repeated harm within narrowly defined temporal parameters. Research on domestic violence in Iran shows that this legal structure creates a paradox in which women must endure prolonged abuse to satisfy legal thresholds, thereby increasing the risk of severe violence and, in some cases, femicide.[35] Such outcomes directly contradict the foundational *maqāṣid* of preserving life at both the individual and family levels.

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[33] Fathonah K. Daud and Aden Rosadi, "Dinamika Hukum Keluarga Islam Dan Isu Gender Di Iran: Antara Pemikiran Elit Sekuler Dan Ulama Islam," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 205–2020, https://doi.org/10.24090/volksgeist.v4i2.5258.

[34] Behzad Damari et al., "Divorce Indices, Causes, and Implemented Interventions in Iran," *Iranian Journal of Psychiatry and Clinical Psychology* 28, no. 1 (2022): 76–89, https://doi.org/10.32598/ijpcp.28.1.3455.1.

[35] Atieh Babakhani and Susan L. Miller, "'I Felt I Was Screaming Under the Water': Domestic Violence Victims' Experiences in Iran's Police Departments and Criminal Courts," *Violence Against Women* 28, no. 10 (2022): 2398–423, https://doi.org/10.1177/10778012211032703.

The asymmetry embedded in Article 1133 also undermines the protection of intellect and rational agency (ḥifẓ al-ʿaql). Attia's *maqāṣid* framework emphasizes informed consent, autonomy, and the capacity for reasoned decision-making within family relations. In Iran, women's ability to exercise these faculties is constrained by legal dependency on marital stipulations and judicial approval. Unless divorce rights are explicitly delegated in the marriage contract, women must navigate complex litigation processes while possessing limited legal literacy and access to legal assistance. Counseling and mediation requirements, although framed as reconciliation mechanisms, are frequently conducted in environments that reinforce patriarchal norms rather than enabling genuine, autonomous choice.[36] This structural imbalance renders women's consent contingent and compromises the *maqāṣid* objective of intellectual protection.

Iran's partial accommodation of *maqāṣid* is most visible in the domain of financial rights, yet this accommodation remains limited and inconsistent. Women's economic entitlements vary significantly depending on the form of divorce. In revocable (*rāji*ʿ) divorces, women retain rights to maintenance during the *ʿiddah* period, whereas irrevocable (*bāʾin* and *khul*ʿ) divorces extinguish these rights. The *khul*ʿ mechanism, which requires women to forgo financial claims or offer compensation to secure divorce, effectively commodifies women's exit from marriage and operates coercively for economically vulnerable spouses.[37] Although the mahr system is designed to provide financial security, weak enforcement mechanisms result in widespread non-payment, further eroding *ḥifẓ al-māl* as conceived within Attia's family-oriented *maqāṣid*.

The consequences of these legal arrangements extend beyond spousal relations to the protection of lineage and children's welfare (*ḥifẓ al-nasl*). Iranian custody rules rely heavily on age-based criteria, granting mothers custody of daughters only until age nine and sons until age fifteen, regardless of the child's best interests. Moreover, the legal linkage between child registration and Islamic marriage creates additional vulnerabilities for children born outside formally recognized unions, potentially rendering them legally marginalized.[38] Maintenance obligations for children are

[36] Somayeh Jaberi et al., "Iranian Women's Divorce Style: A Qualitative Study," *Family Process* 61, no. 1 (2022): 436–50, https://doi.org/10.1111/famp.12655.

[37] Daud and Rosadi, "Dinamika Hukum Keluarga Islam Dan Isu Gender Di Iran."

[38] Ladan Rahbari, "Marriage, Parentage and Child Registration in Iran: Legal Status of Children of Unmarried Parents," *Social Sciences* 11, no. 3 (2022): 120, https://doi.org/10.3390/socsci11030120.

frequently unenforced, and proposed legislative reforms risk further weakening compliance mechanisms. These deficiencies compel many women to remain in harmful marriages to avoid custody loss and financial insecurity, thereby undermining family stability rather than preserving it.

Sociological studies further illuminate how arbitrary divorce operates within Iran's broader social context. Despite restrictive legal frameworks, women increasingly initiate divorce proceedings, navigating a five-stage process that includes contemplation, hesitation, decision-making, separation, and formal legal action.[39] Divorced women face intense social stigma rooted in cultural honor norms, leading to isolation, loneliness, and adverse mental health outcomes.[40] These social consequences amplify the harms generated by legal asymmetry and highlight the disjunction between formal legal norms and lived realities.

Within Islamic legal thought, the persistence of unilateral ṭalāq has not gone unchallenged. Shiʿi scholars such as Ayatollah Yusuf Sanei have argued for reinterpreting divorce rules in light of Qurʾanic justice and human dignity, advocating gender equality in divorce rights while maintaining traditional positions on inheritance.[41] Comparative jurisprudence also demonstrates that other Islamic traditions, notably the Mālikī school, provide more substantive mechanisms for establishing spousal harm and enabling judicial divorce through flexible evidentiary standards.[42] These perspectives underscore that Iran's current regime reflects a particular doctrinal choice rather than an immutable Islamic mandate.

When assessed holistically through Attia's *maqāṣid* al-sharīʿah framework, Iran's divorce law exhibits a pattern of partial accommodation and structural failure. At the individual level, the regime inadequately protects women's bodily integrity, mental well-being, rational autonomy, and economic security. At the family level, it fails to secure children's welfare, equitable spousal relations, and household stability. Attia's contextual principle—that legal means must be reevaluated when empirical evidence demonstrates their failure to achieve *maqāṣid*—provides a compelling basis

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[39] Jaberi et al., "Iranian Women's Divorce Style."

[40] Abdolbaset Mahmoudpour et al., "Effectiveness of Acceptance and Commitment Therapy (ACT) on Emotional Regulation and Loneliness of Divorced Women in Iran," *Journal of Marital and Family Therapy* 47, no. 4 (2021): 831–42, https://doi.org/10.1111/jmft.12492.

[41] Ali Akbar, "Ayatollah Yusuf Sanei's Contribution to the Discourse of Women's Rights," *Religions* 12, no. 7 (2021): 535, https://doi.org/10.3390/rel12070535.

[42] Tesneem Alkiek, "Spousal Harm in the Mālikī Law School: Evidence and Procedure," *Islamic Law and Society*, November 23, 2023, 1–29, https://doi.org/10.1163/15685195-bja10049.

for reform. Rising divorce rates, documented domestic violence, economic vulnerability, and psychological harm collectively indicate that asymmetrical divorce rules no longer function as protective mechanisms.

Iran exemplifies a compensatory *maqāṣid* model in which limited financial remedies coexist with entrenched unilateral divorce rights. While certain elements of Islamic law are invoked to justify the system's legitimacy, the regime ultimately preserves formal authority at the expense of substantive justice. The persistence of arbitrary divorce in Iran demonstrates that without equal access to divorce, effective enforcement of financial obligations, and child-centered custody standards, *maqāṣid* al-sharīʿah remain rhetorically affirmed but practically undermined.

## Algeria's Family Law Reform and Substantive *Maqāṣid* Implementation

This section analyzes Algeria's post-2005 family law reform's regulation of arbitrary divorce and evaluates the extent to which these reforms operationalize Jamal al-Dīn ʿAṭiyyah's *maqāṣid al-sharīʿah* substantively. In this study, arbitrary divorce refers to marital dissolution that occurs without legitimate cause, adequate judicial scrutiny, or fair compensation, resulting in harm to spouses—particularly women—and children. Algeria represents a distinctive case in the Muslim legal world, where reform was pursued not by abandoning Islamic law, but by reconfiguring judicial authority to ensure that divorce outcomes align with the ethical objectives of sharia rather than its formalistic rules alone.

Prior to the 2005 amendments to the Code de la Famille, Algerian divorce law operated under a hybrid regime that preserved classical Islamic doctrines on *ṭalāq*. Husbands could exercise unilateral repudiation extrajudicially through oral declaration, with courts playing a largely administrative role by registering divorces after they occurred. This framework reflected the traditional fiqh understanding of *ṭalāq* as a prerogative right of the husband, subject to minimal institutional oversight. While such a system maintained formal fidelity to classical doctrine, it left women vulnerable to arbitrary divorce and offered limited mechanisms for assessing harm or ensuring post-divorce justice.[43]

[43] Belkheir Mohamed Ait Aoudia, "Legal Certainty of Rights and Freedoms in Algeria: Beyond the Constitutionalization," *Statute Law Review* 45, no. 2 (2024): hmae036, https://doi.org/10.1093/slr/hmae036.

The 2005 amendments marked a fundamental departure from this model by transforming divorce into a judicially mediated process. Article 49 introduced mandatory prior judicial authorization for all forms of divorce, including *ṭalāq, khulʿ*, and dissolution by mutual consent. Under this provision, divorce can be established only by judicial judgment after several reconciliation attempts conducted personally by the judge within a nonextendable three-month period. Courts are no longer passive registrars of marital dissolution but active gatekeepers whose approval is a prerequisite for the validity of divorce.[44] From a *maqāṣid* perspective, this judicial gatekeeping mechanism directly serves the protection of lineage and family stability (ḥifẓ al-nasl) by preventing impulsive or arbitrary dissolution.

Mandatory reconciliation constitutes a central control mechanism within this system. Judges are legally obligated to attempt reconciliation and to document these efforts before authorizing divorce. The completion of reconciliation proceedings determines the commencement of *iddah* and the scope of revocation rights (*rujʿūʿ*) in revocable divorces. The Algerian Supreme Court has treated compliance with the requirements of reconciliation and *iddah* as matters of public order, underscoring the constitutional significance of judicial oversight in family dissolution.[45] While reconciliation may not always succeed, its compulsory nature reflects a *maqāṣid*-oriented preference for preserving marital harmony (sakinah, mawaddah, raḥmah) over procedural efficiency.

The most explicit operationalization of *maqāṣid* al-sharīʿah emerges in the expanded judicial authority to assess and sanction arbitrary divorce. Article 52 grants judges broad discretion to determine whether a husband has abused his divorce prerogative and, if so, to award compensation for the harm caused. Unlike classical fiqh, which focuses on the formal validity of ṭalāq, Algerian law requires judges to evaluate the substantive justice of divorce outcomes. Although the law does not provide fixed parameters for calculating compensation, judicial decisions must be reasoned and are subject to limited appellate scrutiny, reinforcing accountability while preserving discretion.[46] This mechanism directly operationalizes harm prevention (*sadd al-dharāʾiʿ*) and financial justice (*ḥifẓ al-māl*).

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[44] Badouin Dupret et al., *Legal Pluralism in the Arab World* (BRILL, 1999), https://doi.org/10.1163/9789004416628. 357-381

[45] Benazza Amal and Mohamed Himmi Sidi, "Legal and Judicial Problems for Divorce According to Algerian Law," *Law & World* 31 (2024): 8.

[46] Amal and Sidi, "Legal and Judicial Problems for Divorce According to Algerian Law."

Judicial discretion is further expanded in cases of khulʿ. Article 54 authorizes judges to determine the amount of compensation owed by the wife when spouses cannot agree, capping it at the value of the customary dowry (*mahr al-mithl*). While khulʿ remains a wife-initiated divorce, judicial involvement ensures that compensation does not become coercive or punitive. Judges are instructed to strive for conciliation and fairness, reflecting a balance between women's right to exit harmful marriages and the preservation of equitable financial relations.[47] This approach aligns with Mālikī jurisprudence, which recognizes broad notions of spousal harm (ḍarar) as legitimate grounds for judicial intervention.[48]

Post-divorce housing and custody arrangements further illustrate the substantive nature of Algeria's reforms. Article 72 empowers judges to determine whether custodial parents—typically mothers—may remain in the matrimonial home or receive housing compensation from the father. Rather than automatically reverting housing control to husbands, judges assess arrangements on a case-by-case basis, using official rental standards to calculate compensation.[49] This shift enhances women's economic security and protects children's welfare, thereby advancing *maqāṣid* al-usrah at the family level.

Custody determination under Articles 62–71 consolidates judicial authority to prioritize the child's best interests over rigid hierarchies. Judges decide custody allocation, visitation schedules, and parental fitness, while Article 87 grants exclusive guardianship (wilāyah) to the custodial parent. This reform departs from classical doctrines that separated physical custody from guardianship and often favored paternal authority. By integrating custody and guardianship, Algerian law strengthens the protection of children's welfare and sociological lineage, consistent with Attia's expanded conception of ḥifẓ al-nasl.[50]

Alimony and child support enforcement mechanisms further distinguish Algeria's model. Judges determine maintenance obligations based on contextual assessments of sufficiency and custom (maʿrūf), while enforcement is supported by state intervention through the Public Ministry. Non-payment triggers public action

[47] Ait Aoudia, "Legal Certainty of Rights and Freedoms in Algeria."

[48] Alkiek, "Spousal Harm in the Mālikī Law School."

[49] Yassine Chami et al., "Between Reconciliation and Rights: The Judge Role in Child Advocacy in Algeria and Indonesia," *Journal of Law and Legal Reform* 6, no. 1 (2025): 421–48.

[50] Chami et al., "Between Reconciliation and Rights: The Judge Role in Child Advocacy in Algeria and Indonesia."

rather than relying solely on women's petitions, reducing evidentiary burdens and enhancing compliance.[51] This transformation redefines maintenance from a private moral duty into a state-enforced entitlement, strengthening economic justice within the family.

Despite these advances, Algeria's *maqāṣid*-oriented reforms are not without limitations. Expanded judicial authority increases women's dependence on judicial interpretation and consistency, exposing outcomes to variability. Constitutional guarantees of rights and freedoms are not always accompanied by detailed mechanisms for their implementation, and the protection of children's rights remains insufficiently mandatory in practice.[52] Moreover, while reconciliation is mandated, its effectiveness in cases of severe domestic violence remains contested, particularly given forensic evidence documenting high rates of spousal homicide within the marital home.[53]

Nevertheless, when assessed holistically, Algeria's post-2005 family law reforms represent one of the most substantive applications of *maqāṣid* al-sharīʿah in contemporary Muslim family law. By shifting the locus of divorce from unilateral Islamic prerogative to judicial entitlement, the Algerian model prioritizes ethical outcomes over formal validity. Judicial gatekeeping, harm-based compensation, child-centered custody, and enforceable financial support collectively demonstrate how *maqāṣid* can function as an operational legal framework rather than a rhetorical justification. While not eliminating all gendered vulnerabilities, Algeria comes closest among the cases studied to realizing Attia's vision of a family law system that actively protects life, dignity, and justice through context-sensitive judicial authority.

## Comparative Typology of Arbitrary Divorce Regulation

This section develops a comparative typology of arbitrary divorce regulation in Muslim-majority legal systems by examining Indonesia, Iran, and Algeria. Rather than presenting country studies as isolated cases, the discussion constructs an analytical

[51] Amal and Sidi, "Legal and Judicial Problems for Divorce According to Algerian Law."

[52] Ait Aoudia, "Legal Certainty of Rights and Freedoms in Algeria"; Turnip et al., "Implementing the Concept of Co-Parenting in Divorce Cases."

[53] Y. Mellouki et al., "The Epidemiological and Medico-Legal Characteristics of Violent Deaths and Spousal Homicides through a Population of Women Autopsied within the Forensic Medicine Department of the University Hospital of Annaba," *BMC Women's Health* 23, no. 1 (2023): 129, https://doi.org/10.1186/s12905-023-02287-2.

comparison that highlights how different regulatory designs seek to restrain unilateral ṭalāq, distribute gendered risks, and operationalize the ethical objectives of Islamic family law. The comparison is grounded in doctrinal analysis and socio-legal scholarship, and it is evaluated through the lens of *maqāṣid* al-sharīʿah, particularly as reformulated by Jamāl al-Dīn ʿAṭiyyah. This approach enables assessment not only of formal legal rules, but also of how legal means (wasāʾil) function in practice to realize or undermine substantive justice.

The Indonesian model represents a judicially controlled approach to divorce regulation. Law No. 1 of 1974, Government Regulation No. 9 of 1975, and the Compilation of Islamic Law (KHI) require all divorces, including ṭalāq, to be conducted before the Religious Courts. The husband's unilateral right is not abolished; rather, it is transformed into a judicially mediated process that requires prior court approval, verification of legally recognized grounds, and mandatory reconciliation efforts. Substantively, this model reflects what scholars describe as "procedural reform with substantive aspirations," whereby classical Islamic terminology is retained while state institutions serve as gatekeepers.[54] From a *maqāṣid* perspective, the Indonesian system seeks to protect family stability and prevent harm (*ḥifẓ al-nafs* and *ḥifẓ al-nasl*) by discouraging impulsive or arbitrary dissolution.

Despite its formal rigor, empirical studies demonstrate that Indonesia's judicial control model remains vulnerable to circumvention. The absence of effective criminal or administrative sanctions for extra-judicial *ṭalāq* allows out-of-court divorces to persist as religiously valid acts, even though they violate positive law.[55] This gap weakens the preventive function of judicial oversight and disproportionately harms wives, who lose access to legal remedies and are often treated as disobedient or at fault when seeking protection.[56] In *maqāṣid* terms, the Indonesian model partially realizes harm prevention and lineage protection, but it falls short of ensuring financial justice (*ḥifẓ al-māl*) and gender equity when enforcement mechanisms are weak.

Iran exemplifies an administratively registered model that preserves the classical prerogative of unilateral *ṭalāq*. Article 1133 of the Iranian Civil Code explicitly

[54] Dedi Sumanto et al., "The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence," *Jambura Law Review* 3, no. 2 (2021): 214–30, https://doi.org/10.33756/jlr.v3i2.11651.

[55] Wahyudi, "Ithbāt Ṭalāq."

[56] Ramadhita Ramadhita et al., "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (2023): 2206347, https://doi.org/10.1080/23311886.2023.2206347.

affirms that a husband may divorce his wife at will, subject only to obtaining a certificate of impossibility of reconciliation. This requirement functions primarily as an administrative registration mechanism rather than a substantive evaluation of justification. The legal system thus prioritizes doctrinal continuity with classical fiqh and the preservation of male autonomy as a core feature of Islamic authenticity. Women's access to divorce, by contrast, is conditioned on proving hardship (ʿusr wa ḥaraj) under Article 1130, which imposes a high evidentiary burden.[57]

From a comparative *maqāṣid* perspective, Iran's model reveals a hierarchical imbalance in the protection of objectives. Male autonomy and religious authenticity are treated as essential (*ḍarūrīyyah*), while protection against arbitrariness for women operates at a complementary (*ḥājīyyah*) or even marginal level. Although alternative mechanisms such as *khulʿ* and judicial dissolution exist, empirical studies show that their accessibility is uneven and often constrained by evidentiary and procedural barriers. Consequently, while the Iranian system formally preserves lineage and religious doctrine, it inadequately addresses harm prevention and distributive justice within the family, raising questions about proportionality among competing *maqāṣid*.

Algeria occupies an intermediate position through a judicially supervised compensation model. The Algerian Family Code permits unilateral divorce by the husband but requires judicial involvement and mandatory reconciliation attempts before the divorce becomes effective. Its most distinctive feature lies in the explicit recognition of arbitrary divorce as a compensable harm. Article 52 empowers judges to award damages to wives when divorce is deemed abusive or unjustified, thereby introducing accountability without abolishing the classical right. This model reflects a rights-based reform strategy that combines procedural supervision with post-divorce remedies.

In *maqāṣid* terms, Algeria's approach acknowledges that harm may not always be preventable ex ante and therefore seeks to mitigate its effects ex post. Compensation mechanisms serve to protect wealth and dignity (*ḥifẓ al-māl* and *ḥifẓ al-ʿirḍ*), while reconciliation efforts aim to preserve family integrity. However, empirical assessments suggest that compensation amounts and enforcement practices vary widely, limiting their deterrent effect. Moreover, the burden remains on wives to prove arbitrariness, thereby reproducing power asymmetries similar to those observed in

[57] Jaberi et al., "Iranian Women's Divorce Style"; Damari et al., "Divorce Indices, Causes, and Implemented Interventions in Iran."

other jurisdictions. Thus, while Algeria advances beyond purely procedural control, it still struggles to ensure consistent realization of *maqāṣid* objectives in practice.

When compared systematically, the three models differ along four critical dimensions: grounds requirements, mediation mechanisms, remedies for arbitrariness, and alternative pathways for wives. Indonesia mandates judicial verification of specific grounds and compulsory mediation, but lacks effective sanctions and enforcement. Iran requires no grounds for husbands and relies on administrative registration, placing the burden of justification on wives. Algeria does not require grounds for *ṭalāq*, but it enables judicial assessment of abuse and compensation. These differences reflect distinct regulatory philosophies: preventive judicial control (Indonesia), preservation of classical prerogative with minimal intervention (Iran), and accountability through compensation (Algeria).

ʿAṭiyyah's *maqāṣid* framework provides a comparative methodology for evaluating these divergent approaches without reducing the analysis to normative ranking. By distinguishing between objectives (*maqāṣid*) and means (*wasāʾil*), the framework allows recognition that different legal instruments may serve similar ends under different contextual conditions. Indonesia's stringent procedural controls may constitute a primary safeguard in a plural legal environment characterized by gender vulnerability, whereas Iran's minimal restrictions reflect a context in which religious authenticity is prioritized. Algeria's compensation mechanism may operate as a complementary response to persistent arbitrariness where preventive controls are politically or doctrinally constrained.

At the same time, the comparative analysis reveals a shared limitation across all three systems: none fully integrates preventive, compensatory, and substantive ethical evaluation into a coherent regulatory model. Indonesia restricts procedure but tolerates substantive injustice through weak enforcement; Iran preserves doctrine at the expense of proportional gender protection; Algeria compensates harm without consistently preventing it. From a *maqāṣid*-oriented perspective, the regulation of arbitrary divorce remains fragmented, with different objectives protected at different levels of necessity across jurisdictions.

This comparative typology demonstrates that the regulation of arbitrary divorce is not merely a technical legal issue, but a reflection of deeper normative choices about family, authority, and justice. The Indonesian, Iranian, and Algerian models each illuminate distinct pathways through which Islamic family law interacts with modern state governance. Evaluated through *maqāṣid al*-sharīʿah, these

pathways reveal both the possibilities and limits of procedural control, administrative formalism, and compensatory justice in addressing unilateral divorce. The analysis underscores the need for an integrated approach that aligns legal mechanisms more consistently with the ethical objectives of harm prevention, financial justice, and family welfare.

To clarify the comparative argument developed in this section, Table 1 synthesizes the key regulatory features of arbitrary divorce across Indonesia, Iran, and Algeria. Rather than reproducing descriptive country narratives, the table distills the core institutional and normative choices that shape how each legal system constrains or reproduces unilateral ṭalāq. The comparison focuses on selected analytical dimensions that are most consequential for assessing the realization of *maqāṣid*, including the status of ṭalāq, the scope of judicial authority, available remedies for arbitrariness, and the dominant regulatory logic underlying each system. By presenting these variables side by side, the table facilitates a structured evaluation of how different legal designs translate ethical objectives into concrete legal mechanisms.

**Table 1. Comparative Typology of Arbitrary Divorce Regulation**

| Dimension | Indonesia | Iran | Algeria |
|---|---|---|---|
| **Regulatory Model** | Procedural–judicial control | Administrative–doctrinal prerogative | Judicial–compensatory accountability |
| **Status of Ṭalāq** | Judicialized; requires court approval and mediation | Unilateral male right with administrative registration | Permitted but subject to judicial authorization |
| **Judicial Role** | Strong ex ante control; weak enforcement | Minimal substantive review | Active gatekeeping and ex post assessment |
| **Grounds for Husbands** | Statutory grounds required | No grounds required | No grounds required; abuse assessed |
| **Remedy for Arbitrariness** | Largely absent; no effective sanctions | None | Judicial compensation for harm (Art. 52) |
| **Position of Wives** | Formal access, but vulnerable to enforcement gaps | High evidentiary burden (ʿusr wa ḥaraj) | Access improved, but proof of abuse is required |

| | | | |
|---|---|---|---|
| **Dominant *Maqāṣid* Logic** | Harm prevention through procedure | Doctrinal continuity over equity | Substantive justice through accountability |
| **Level of *Maqāṣid* Realization** | Partial (procedural, not substantive) | Hierarchically imbalanced | Moderate but inconsistent |
| **Core Limitation** | Circumvention of judicial control | Gendered arbitrariness preserved | Uneven deterrence and discretion |

The comparative patterns summarized in Table 1 underscore that the regulation of arbitrary divorce is shaped more by the institutional capacity to operationalize justice-oriented objectives than by the presence of Islamic legal terminology. Indonesia's model demonstrates that procedural judicialization alone is insufficient when enforcement remains weak; Iran illustrates how doctrinal preservation may entrench gendered arbitrariness despite administrative oversight; and Algeria reveals the potential and limits of compensatory justice in the absence of consistent deterrence. From a *maqāṣid* al-sharīʿah perspective, the table highlights a shared structural fragmentation, in which preventive, compensatory, and substantive ethical evaluations operate in isolation rather than as an integrated regulatory framework. This typology thus provides an analytical foundation for rethinking how Islamic family law can more coherently align legal means with the ethical objectives of harm prevention, financial justice, and family welfare.

## Conclusion

This study demonstrates that the regulation of arbitrary divorce in Muslim-majority jurisdictions cannot be adequately assessed by formal legal compliance alone; it must be evaluated by the substantive realization of the *maqāṣid al-sharīʿah*, as articulated by Jamāl al-Dīn ʿAṭiyyah. By comparatively examining Indonesia, Iran, and Algeria, the research finds that each legal system reflects a distinct model of regulating unilateral divorce: Indonesia exemplifies a procedural *maqāṣid* model that formally restricts ṭalāq through judicial processes yet continues to reproduce substantive gender and financial injustice due to weak enforcement and partial protection of women and children; Iran represents an administrative–doctrinal model that retains significant male prerogative while introducing limited compensatory mechanisms; and Algeria illustrates a substantive *maqāṣid*-oriented model in which expanded judicial authority, mandatory reconciliation, and compensatory remedies

meaningfully constrain arbitrary divorce and operationalize harm prevention, financial justice, and child welfare. The study's principal contribution lies in developing a comparative typology that moves beyond descriptive legal analysis to assess how family law systems translate ethical objectives into concrete institutional practices. This *maqāṣid*-based typology enriches socio-legal scholarship on Islamic family law by foregrounding judicial discretion, enforcement capacity, and gendered outcomes as critical indicators of normative effectiveness. The findings suggest that future reforms should prioritize enforceable compensation schemes, child-centered judicial standards, and context-sensitive limitations on mediation. Further research is warranted to examine how judicial culture and socio-economic factors mediate the practical realization of *maqāṣid* across different legal settings.

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