

Jurisprudential–Legal Analysis of the Child’s Right to Visitation with Relatives

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Abstract

The issue of a child’s right to maintain contact and visitation with relatives, particularly after parental separation, constitutes one of the significant and practical concerns in Islamic jurisprudence and family law. This right not only affects the emotional relationship between the child and extended family members but is also inextricably linked to the child’s educational, psychological, and developmental interests. In Imamiyyah jurisprudence, early jurists, relying on the Qur’an, the Sunnah, and fundamental jurisprudential principles, have established strong theoretical foundations for this right. The child’s interaction with relatives plays a fundamental role in his or her emotional, social, and identity development. Despite this, the Iranian legal system regarding the child’s right of visitation with relatives other than the parents—especially in cases where both parents are alive and present—suffers from a significant legislative gap, which has led to ambiguity and inconsistency in judicial practice. This research, aiming to analyze this legislative gap and to examine the capacity of Imamiyyah jurisprudence to address it, has been conducted using a descriptive–analytical method and relying on authoritative jurisprudential and legal sources. The findings indicate that both classical and contemporary jurists affirm the legitimacy of this relationship, and despite the silence or restrictive nature of statutory texts—particularly Article 1174 of the Iranian Civil Code—the major jurisprudential rules and principles, including the best interest of the child (ghibṭat al-ṣaghīr), the obligation of maintaining kinship ties (ṣilat al-raḥim), the rule of “no harm” (qā’idat lā ḍarar), with emphasis on non-material and moral harm, and the rule of “no undue hardship” (qā’idat lā ḥaraj), provide robust theoretical and argumentative grounds for recognizing and guaranteeing the child’s right to visitation with blood relatives. These principles emphasize prioritizing the child’s emotional needs, preserving family bonds, and removing any unjustified harm or hardship resulting from the severance of such relationships. The ultimate conclusion is that the existing legislative gap can be remedied through reliance on these rich jurisprudential foundations, and it is necessary that courts, by adopting an active and principled interpretation, or more fundamentally, the legislature through explicit statutory reform, take effective measures to secure this important right for children.

Keywords: Right of visitation; relatives; Imamiyyah jurisprudence; rule of no harm; rule of no undue hardship; maintenance of kinship ties; best interest of the child.

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1. Introduction

The family, as the oldest and most fundamental social institution, occupies a unique and irreplaceable position within legal and social systems, particularly because it constitutes the primary environment for nurturing future generations and the initial context for children's socialization and emotional attachment formation (Katouzian, 1998). The Iranian legal system, recognizing the significance of this institution, has enacted a body of regulations aimed at strengthening and safeguarding it (Katouzian, 2006a). Within this framework, regulating the relationships between parents and children and guaranteeing children's rights—especially their fundamental right to maintain continuous and constructive relationships with their parents and other relatives—assumes heightened importance (Mazaheri & Salehi-Nejad, 2013). This right, which may be conceptualized through legal institutions such as custody (continuous relationship), visitation, and maintenance of kinship ties (temporary relationship), is normally realized naturally during the parents' cohabitation; however, following their separation, considerable legal and practical complexities emerge, requiring precise analysis and clarification (Katouzian, 2006b).

The concept of "relatives" (aqārib) within the scope of this study, in light of jurisprudential foundations rooted in blood-based kinship bonds, is primarily focused on consanguineous relatives. This is because, first, the child by nature lacks marital (affinal) kinship, and second, the central jurisprudential principle of maintaining kinship ties (ṣilat al-raḥim), according to jurists, explicitly pertains to blood relatives (Allamah Hilli, 1993; Najafi, 1984). Accordingly, milk kinship and affinal kinship, despite their social importance, fall outside the scope of the present analysis.

The core objective of this research is to examine and analyze the significant legislative gap in the Iranian legal system regarding the child's right to visitation with relatives other than the parents. While the legislator has explicitly recognized, in Article 1174 of the Iranian Civil Code, the visitation right of the parent who does not hold custody, the law remains conspicuously silent with respect to the visitation rights of other relatives, particularly in circumstances where both parents are alive and present (Katouzian, 2006b). The Family Protection Act of 1974, in Article 12, acknowledged this right only in cases of absence or death of one parent, a provision that was essentially exceptional in nature and insufficient to meet the child's emotional needs under other conditions (Education Deputy of the, 2008). This lack of explicit and comprehensive statutory regulation has generated theoretical ambiguities and inconsistency in judicial practice, thereby exposing the established rights of children and their relatives to potential infringement.

Nevertheless, legislative silence does not signify the absence of a legal foundation for this right. The dynamic Imamiyyah jurisprudence, as the primary source of Iranian civil law, contains progressive rules and principles capable of compensating for this legislative gap. Fundamental doctrines such as the obligation of maintaining kinship ties, the paramount principle of the child's best interest, the rule of "no harm" (lā ḍarar), and the rule of "no undue hardship" (lā ḥaraj) each independently provide strong theoretical grounds for recognizing, substantiating, and safeguarding the child's right to maintain relationships and visitation with consanguineous relatives beyond the parents (Isfahani, 1990; Khoei, 1990; Khomeini, 2003). Undoubtedly, the ultimate aim of recognizing this right is to fulfill the child's vital emotional, psychological, and identity-related needs—needs that can only be met through direct and physical interaction with the broader family network (Huffman et al., 2005; Seif & et al., 1997).

The primary objective of the present research is to conduct a precise analysis of this legislative gap in light of the capacities of Imamiyyah jurisprudence and to evaluate the potential of the principles of maintaining kinship ties, best interest, no harm, and no undue hardship in responding to this legal and social necessity. The central research question is whether, based on these jurisprudential foundations, it is possible to construct a theoretical and legal framework for recognizing and guaranteeing the child's right to visitation with relatives beyond the restrictive scope of Article 1174 of the Civil Code within the Iranian legal system.

To address this question, the present study adopts a descriptive–analytical method and relies on authoritative jurisprudential and legal sources. The following sections define and delimit the key concepts, outline the current legal status of this right in Iran, and precisely explain the existing legislative gap. Subsequently, a comprehensive analysis of each relevant jurisprudential principle and its implications for the right of visitation with relatives is presented. In the discussion section, the practical feasibility of remedying the legislative gap through jurisprudential foundations is examined, and finally, the findings and recommendations of the research are summarized.

2. Definitions and Concepts

To enter accurately into the main discussion and to conduct a systematic analysis of the legislative gap concerning the right of visitation with relatives, it is first necessary to define and delimit the fundamental concepts of “relatives” and “visitation” within the framework of this study.

2.1. *The Concept of “Relatives” in the Context of Visitation*

The term “kinship” (qarābat) in the Persian language denotes closeness and relationship (Anvari, 2002; Dehkhoda, 1991; Moin, 1991). Its root derives from “qurb,” meaning nearness, in contrast to “bu’d,” meaning distance. Lexical sources sometimes distinguish between “qarābat” in the general sense of lineage-based closeness and “qurbā” in the more specific sense of uterine kinship (blood relatives) (Ibn Manzur, 1985).

In legal terminology, kinship refers to the bond connecting individuals and is categorized into three types: consanguineous (blood), affinal (marital), and milk kinship. The Iranian Civil Code in Article 1031 divides kinship into consanguineous and affinal, while Article 1046 addresses milk kinship and its legal effects in prohibitions of marriage. Consanguineous kinship—the focus of the present study—is a blood relationship established either by direct descent or by descent from a common ancestor. Jurists define lineage (nasab) as the natural blood relationship arising from the conception of a child by a man and a woman, establishing the child’s connection to both parents (Emami). Some scholars distinguish between lineage in the narrow sense (parent–child relationship) and consanguineous kinship in the broader sense encompassing all blood relatives. Affinal kinship arises from marriage, and milk kinship arises from breastfeeding under specific legal conditions.

In this study, “relatives” refers specifically to the child’s consanguineous relatives. This limitation is grounded in jurisprudential reasoning: first, a child lacks affinal kinship due to legal incapacity for marriage; second, the principal jurisprudential foundation for preserving relationships—namely, the doctrine of maintaining kinship ties—exclusively concerns blood relatives and does not extend to affinal or milk kinship (Allamah Hilli, 1993; Najafi, 1984). Accordingly, the analysis centers on the child’s relationship with consanguineous relatives such as grandparents, siblings, paternal and maternal uncles, and aunts.

2.2. *The Concept of “Visitation” and Its Distinction*

In Persian usage, “visitation” (molāqāt) denotes encountering, meeting, and seeing one another (Amid, 1990). In family law, the term acquires a specialized meaning referring to the child’s temporary, physical, and in-person interaction with a parent or relative who does not hold custody.

Visitation is distinct from custody (ḥiḍānah). Custody pertains to the care and upbringing of children and represents the authority granted by law to parents for the comprehensive maintenance and education of their children (Katouzian, 2006a). Custody entails continuous residence and full material and moral responsibility and is both a right and an obligation of the parents. By contrast, visitation is a periodic and temporary relationship intended not for full guardianship but for preserving emotional bonds between the child and the non-custodial parent or relative. It has been emphasized that granting custody to one parent cannot justify depriving the child of visitation with the other parent or other relatives (Katouzian, 2006b).

The significance of the right of visitation lies in its responsiveness to the emotional needs of both the child and the parent or relative deprived of daily cohabitation, and in its capacity to mitigate the harmful psychological effects of parental separation on the child (Education Deputy of the, 2008). These encounters help the child preserve feelings of belonging and security and benefit from relationships with the extended family network. Nevertheless, post-separation parental conflict may transform visitation into a tool of pressure, contrary to its underlying purpose (Nazari Tavakkoli).

2.3. *General Jurisprudential Foundations of the Right of Visitation*

Imamiyyah jurists derive the right of visitation from two primary categories of evidence.

First, Qur'anic verses emphasizing the preservation of children's rights and the necessity of justice in family relations, such as the verse "Do not kill your children for fear of poverty; We provide for you and for them" (Qur'an 6:151), which underscores the prohibition of violating children's rights (Allamah Hilli, 1993).

Second, traditions of the Infallibles emphasizing the importance of preserving emotional bonds between children and relatives, including the narration "Love of children is part of faith," which reinforces the emotional foundation of this right (Kulayni, 1987).

3. The Right of Visitation of the Non-Custodial Parent in the Opinions of Classical Jurists

3.1. The View of Shahid Thani

Shahid Thani, in *Masālik al-Afhām*, while analyzing the rules of custody, explicitly recognizes the right of the non-custodial parent—particularly the father—to visitation with the child. He emphasizes the priority of the child's best interest as the decisive criterion and states: "The fundamental principle in custody and visitation is the consideration of the child's welfare... and if visitation entails harm to the child caused by either parent, it must be prevented." Accordingly, visitation is the general rule unless demonstrable harm to the child exists (Shahid Thani, 1993).

3.2. The View of Ṣāhib al-Jawāhir

Ṣāhib al-Jawāhir in *Jawāhir al-Kalām* refers to this right with even greater clarity. By stating "The father has the right to see his child," he derives this right from general legal evidence and regards any obstruction of it as reprehensible. He maintains that preventing the father from seeing his child is impermissible except where evident harm to the child is established. From his perspective, this right may be restricted solely in cases of clear and proven detriment to the child (Najafi, 1984).

3.3. The View of Allamah Hilli

Allamah Hilli likewise affirms the visitation right of the other parent in both *Qawā'id al-Ahkām* and *Tadhkirat al-Fuqahā'*. Relying on the jurisprudential rule of "no harm," he holds that any visitation that results in psychological or educational harm to the child must be prohibited. If visitation is feared to corrupt the child's moral or worldly condition, it must be prevented (Allamah Hilli, 1993).

4. The Right of Visitation of Other Relatives (Grandparents, Aunts, Uncles, etc.)

With respect to second-degree relatives, the aforementioned jurists express similar but more cautious views.

Shahid Thani does not find explicit primary textual evidence for this category of visitation but allows and, in some cases, recommends it based on the rule of maintaining kinship ties and the necessity of preventing emotional harm to the child (Shahid Thani, 1993).

Ṣāhib al-Jawāhir similarly holds that if severing the child's relationship with such relatives (for example, grandparents) harms the child's emotional well-being, preserving that relationship becomes obligatory due to the rule of preventing harm (Najafi, 1984).

Allamah Hilli notes in *Tadhkirat al-Fuqahā'* that if visitation with more distant relatives serves the child's best interest, it may not be prohibited without legitimate justification, as such interaction constitutes an instance of maintaining kinship ties (Allamah Hilli, 1993).

5. Final Criterion: Priority of the Child's Best Interest

All jurists under consideration ultimately identify the child's paramount welfare as the decisive criterion in determining the scope of visitation rights. This welfare encompasses not only physical health but also psychological, emotional, and educational well-being. Ṣāhib al-Jawāhir explicitly states that any visitation producing corruption or harm must be prevented (Najafi,

1984). Shahid Thani likewise identifies moral corruption and emotional disturbance as forms of harm that nullify the visitation right (Shahid Thani, 1993).

5.1. *General Foundations in Contemporary Jurisprudence*

Contemporary jurists, in addition to the traditional sources of law (Qur'an, Sunnah, consensus, and reason), place heightened emphasis on the rule of no harm, the demands of justice, and the preservation of family order. Moreover, the notion of the child's best interest—previously focused mainly on material and religious concerns—has expanded in contemporary jurisprudence to encompass broader psychological and social dimensions (Huffman et al., 2005; Khoei, 1990; Khomeini, 2003).

5.2. *The Right of Visitation of the Non-Custodial Parent in Contemporary Juristic Thought*

5.2.1. *The View of Imam Khomeini*

Imam Khomeini, in *Tahrīr al-Wasīlah*, explicitly recognizes the visitation right of the non-custodial parent. In discussing custody, he states: “The father—and thereafter the closest relatives in order—have the right to see the child even against the will of the custodian, so long as no harm results to the child.” The salient feature of this statement is the prioritization of the father, followed by other relatives according to proximity of kinship, with absence of harm as the sole legitimate limitation (Khomeini).

5.2.2. *The View Attributed to Contemporary Leadership*

Contemporary legal interpretations emphasize the established right of parents to visit their children and regard obstruction of this right as impermissible except where specific harm to the child is proven. They further stress the responsibility of legal institutions to provide judicial mechanisms ensuring enforcement of this right and preventing its violation (Education Deputy of the, 2008; Katouzian, 2006a).

5.2.3. *The View Attributed to Contemporary Social Jurisprudence*

From a socio-legal perspective, the child's right to visitation is recognized not merely as a parental entitlement but as a right belonging intrinsically to the child. Depriving the child of parental contact constitutes a form of psychological injury incompatible with the objectives of Islamic upbringing (Huffman et al., 2005; Seif & et al., 1997).

5.2.4. *The View Attributed to Contemporary Juristic Analysis*

Contemporary juristic analyses emphasize that the visitation right of parents is both definitive and enforceable. They hold that the custodian bears a corresponding duty to facilitate such visitation and that, in cases of dispute, the religious judge must determine the precise time and place of visitation as a lawful mechanism for resolving conflict (Khoei, 1990; Khomeini, 2003).

5.2.5. *The Right of Visitation of Other Relatives in Contemporary Jurisprudence*

Contemporary jurisprudence demonstrates greater openness toward recognizing visitation rights of extended relatives.

Imam Khomeini's formulation of “the closest relative after the father” establishes a hierarchy of visitation rights extending from parents to grandparents and then to other close relatives (Khomeini). Contemporary interpretations similarly permit visitation with close relatives such as grandparents where the child's welfare is preserved (Katouzian, 2006b). Such contact is viewed as essential for the child's social development and consistent with the objectives of maintaining kinship ties (Allamah Hilli, 1993; Najafi, 1984).

If visitation with relatives such as grandparents serves the child's emotional or educational interests, preventing it is impermissible. This ruling is grounded in the doctrines of preventing hardship and preserving kinship relations (Isfahani, 1990; Kulayni, 1987).

5.2.6. *Final Standard: An Expanded Conception of the Child's Best Interest*

All contemporary jurists examined regard the child's welfare as the central axis of decision-making, but define it expansively:

Psychological dimension: safeguarding the child from emotional deprivation (Huffman et al., 2005; Seif & et al., 1997).

Educational dimension: ensuring visitation does not introduce moral conflict or pedagogical harm (Khomeini, 2003).

Social dimension: preserving healthy family bonds as the foundation of the child's development (Katouzian, 2006a).

Imam Khomeini explicitly includes spiritual and moral harms within the concept of legally relevant injury (Khomeini). Contemporary juristic reasoning further recognizes emotional welfare and comprehensive upbringing as essential components of the child's best interest (Huffman et al., 2005; Khoei, 1990).

6. The Status of Relatives' Visitation Rights in Iran's Legal System (Clarifying the Legislative Gap)

To understand the dimensions of the issue with precision, it is necessary to examine the current legal status of relatives' visitation rights within Iran's statutory framework and to identify areas of ambiguity and legislative silence. An analysis of the relevant legal provisions, together with a review of existing judicial practice, indicates the absence of an explicit and comprehensive rule on this matter and reveals a notable legislative gap.

6.1. *Analysis of Article 1174 of the Civil Code: Confining the Right of Visitation to the Parents*

Article 1174 of the Iranian Civil Code, as the principal legal text governing a child's visitation following parental separation, provides: "Where, due to divorce or for any other reason, the parents of the child do not reside in the same household, each parent who does not have custody of the child has the right to visit his or her child. In the event of disagreement between the parents, determination of the time and place of visitation and other related details shall be made by the court."

Close attention to the wording of this article—particularly the use of the term "parents" (abavayn)—is decisive. This term clearly refers only to the father and the mother and does not indicate inclusion of other relatives. Consequently, this provision, which sets out the general rule of child visitation in cases of parental separation, expressly restricts its scope to the father and the mother and does not encompass other relatives, even the closest of them, such as grandparents. This restriction constitutes the principal basis of the legislative gap at issue regarding relatives' visitation rights and renders reliance on Article 1174 impossible for persons other than the parents who seek judicial recognition of a right to visitation.

6.2. *Legislative Silence and Critique of Earlier Protective Legislation*

In addition to the limitation embedded in Article 1174 of the Civil Code, other currently applicable laws likewise exhibit a general legislative silence concerning relatives' visitation rights (where both parents are alive and present). The only provision that previously addressed the matter was Article 12 of the Family Protection Act of 1974, which, in its final clause, provided: "... in the event of the absence or death of the father or the mother, the right of visitation with the child shall, as determined by the court, belong to other relatives."

Analysis of this provision in the repealed Family Protection Act also indicates that, even at that time, the legislator recognized relatives' visitation rights only in exceptional circumstances—namely the death or absence of one parent—and even then only subject to judicial discretion. Given its exceptional character and its tension with the principle of prioritizing the rights and duties of the parents, this rule was not amenable to expansive interpretation or extension to the ordinary situation in which both parents are present, and judges and legal scholars generally emphasized the necessity of confining it to its certain scope (death and absence) (Katouzian, 2006b). Some even maintained that the father's insanity should not be treated as

“absence” within the meaning of that provision. Accordingly, Article 12 of the former law did not remedy the core gap, and with its repeal, the legislative gap remains fully present in the current legal framework.

6.3. *Reflection of the Legislative Gap in Judicial Practice*

The absence of a clear and comprehensive statutory rule has naturally led to divergent approaches and inconsistency in decisions issued by family courts. When faced with claims brought by relatives—particularly grandparents—seeking visitation, judges have adopted different interpretive paths and have produced conflicting judgments.

One group of judges, emphasizing the position of the paternal grandfather as a natural guardian (*walī qahrī*) and the need for him to be able to supervise the grandchild, or treating the cases mentioned in Article 12 of the former Family Protection Act as illustrative, have ruled in favor of the paternal grandfather’s visitation right even while the father is alive.

By contrast, another approach—which appears to predominate in judicial practice and has also been endorsed by an advisory opinion of the Judiciary’s Legal Department—rests on non-recognition of such a right for relatives other than the parents. The principal arguments of this view include:

- The term “parents” (*abavayn*) in Article 1174 of the Civil Code is confined to the father and mother (as reflected in Advisory Opinion No. 7/1828 dated August 25, 2002).
- The law is silent regarding relatives’ visitation rights, and interpretation must be confined to expressly stated cases.
- The rule in Article 12 of the former Family Protection Act was exceptional and cannot be interpreted expansively.
- The grandfather does not bear a custodial duty while competent parents are alive (except in exceptional circumstances); therefore, he does not possess a corresponding right of visitation.
- Natural guardianship (which concerns the administration of affairs) must be distinguished from a personal right of visitation.
- The right referred to in Article 12 of the former Family Protection Act was not linked to guardianship, because it extended to all relatives.

A prominent example of this view is the decision of Branch 7 of the Supreme Court, which annulled a visitation order granted to a maternal grandmother (Case No. 7/1400/71), expressly stating that Article 1174 does not encompass grandparents and that there is no jurisprudential basis for compelling the mother to comply with the grandmother’s visitation request. There is also an opinion according to which visitation by paternal and maternal grandparents is not inherently prohibited, yet it cannot be recognized as a legally enforceable “right” claimable through the courts ([Katouzian, 2006b](#)).

This divergence of approaches and reasoning clearly reveals the practical consequences of the existing legislative gap and underscores the need to resort to deeper foundations—particularly jurisprudential rules—in order to identify a fair solution aligned with the child’s welfare.

7. **Visitation with Relatives Under Jurisprudential Rules**

In the face of legislative silence and the existing legal gap concerning relatives’ visitation rights, Imamiyyah jurisprudence, relying on general principles and maxims, provides significant grounds for deriving and substantiating this right. Analysis of doctrines such as the child’s best interest, maintenance of kinship ties, “no harm,” and “no undue hardship” clarifies the capacity of jurisprudence to respond to this need.

7.1. *The Rule of the Child’s Best Interest (Ghibṭah and the Child’s Welfare)*

The foundational principle of “observing the child’s best interest,” also expressed as “*ghibṭat al-ṣaghīr*,” is accepted as a strategic rule in all decision-making concerning children’s affairs in Iranian jurisprudence and law ([Katouzian, 2006a](#)). This principle requires that the child’s best interests be treated as the primary and essential consideration in any legal or judicial action. Psychological findings confirm that a child’s constructive relationship with the extended kinship network—beyond the parents—plays a vital role in securing mental well-being, emotional development, socialization, and identity formation. Close and affectionate contact with parents and relatives, particularly in early childhood, strengthens the child’s sense of security and calm ([Seif & et al., 1997](#)), and children who benefit from relatives’ emotional support and attention—especially from

grandparents—typically experience a stronger sense of belonging and security and develop a more stable family identity (Huffman et al., 2005). On this basis, it can be argued that preventing a child from visiting and maintaining continuous contact with relatives where such contact is deemed beneficial and necessary for the child’s growth and flourishing is, in many cases, contrary to the child’s best interest. The principle of the supremacy of the child’s welfare obliges courts and legal caretakers to consider each child’s individual circumstances and to facilitate the continuation of these beneficial bonds. This rule can serve as a basis for interpreting existing laws, filling statutory silence, and even issuing necessary judicial orders to guarantee relatives’ visitation, in pursuit of the child’s highest interests.

7.2. *The Rule of Maintaining Kinship Ties (Ṣilat al-Raḥim)*

“Maintaining kinship ties” (ṣilat al-raḥim), meaning preserving and continuing relationships with relatives, is among the strongly emphasized obligations in Islamic law, and numerous Qur’anic verses and traditions indicate its importance and the prohibition of severing kinship ties (qaṭ’ al-raḥim). Jurists agree that the subject of this duty is consanguineous relatives (arḥām).

Although a minor child does not personally bear a legal-religious duty to perform ṣilat al-raḥim, it is incumbent upon the parents and custodians not to cause the severance of the child’s natural and legitimate connection with his or her blood relatives, and not to provide the means for breaking these bonds. Unjustified prevention of a child from seeing close relatives such as grandparents, siblings, paternal and maternal uncles and aunts may be treated as causing or facilitating the severance of kinship ties—an act regarded as blameworthy and prohibited. Leading jurists such as Ṣāḥib al-Jawāhir and Shahid Thani have stated, explicitly or implicitly, that a child should not be prevented from visiting and gathering with the other parent or relatives, because such prevention results in severing kinship ties and in harming the child (Najafi, 1984; Shahid Thani, 1993). Contemporary jurists likewise emphasize non-obstruction of visitation and connection and treat it as required by the duty of maintaining kinship ties and by the need to avert harm and undue hardship (Bahjat, 1999; Khoei, 1990; Khomeini). Accordingly, the obligation to preserve kinship ties and the prohibition of severing them provide a robust jurisprudential foundation for requiring that the possibility of visitation and contact between the child and his or her consanguineous relatives be facilitated, even where the parents have separated.

7.3. *The Rule of “No Harm” (Lā Ḍarar)*

The well-known Prophetic maxim “There is no harm and no reciprocating harm in Islam,” transmitted through multiple chains with general (summary) continuity, is regarded as one of the governing and foundational rules of Islamic jurisprudence and signifies the negation of any unjustified harm or harmful conduct within social relations and legal-religious rulings (Isfahani, 1990). In the context of relatives’ visitation rights, the principal argument rests on the premise that preventing a child from sustained contact and visitation with relatives to whom the child has an emotional attachment may inflict serious “non-material” or “moral” harm. Such harm includes spiritual and psychological injury, emotional distress, and disruption of the child’s balanced personality development, all of which are considered blameworthy and unacceptable. Jurists have advanced different interpretations regarding the meaning and scope of the “no harm” rule, and three principal approaches may be outlined as follows.

First, the interpretation of the maxim as a divine, obligation-based prohibition: under this view, the expression functions as a prohibitive norm and signifies the religious unlawfulness of causing harm to others (Isfahani, 1990). On this reading, the very act of obstructing beneficial visitation is deemed unlawful; however, it does not necessarily yield a constitutive (waḍ’ī) consequence such as a direct judicial obligation to facilitate visitation or provide compensation.

Second, the interpretation as negation of a ruling that produces harm: this well-known approach treats the maxim as negating legal rules whose implementation entails unjustified harm (Ansari). Accordingly, any primary rule—such as custody-related arrangements, or even statutory silence regarding relatives’ visitation that results in practical prohibition—if, in application, causes substantial moral harm to the child, may have its harmful effect removed through the “no harm” rule. This interpretation offers the strongest doctrinal foundation for obligating compliance with relatives’ visitation in order to prevent harm to the child.

Third, the interpretation as a governance-based prohibition: according to this view, the maxim constitutes a prohibition issued from the standpoint of public authority and empowers the Islamic ruler—and, by extension, the judiciary—to take necessary measures to prevent harm in society (Khomeini). On this basis, where a child's inability to visit relatives produces harm, the court may—and indeed must—issue an appropriate order to avert such harm. In sum, the “no harm” rule, especially under the interpretations of negating harm-producing effects and governance-based intervention, provides substantial capacity to confront the existing statutory gap and to substantiate the necessity of securing the child's right to visit relatives where required.

7.4. *The Rule of “No Undue Hardship” (Lā Ḥaraj)*

The rule negating “hardship and undue constraint” (‘usr wa ḥaraj), derived from Qur’anic verses and numerous traditions, is a foundational jurisprudential principle emphasizing the ease-oriented character of Islamic law and the absence of burdensome obligations beyond ordinary capacity. “Ḥaraj” denotes constriction, tightness, and severe difficulty (Raghib Isfahani, 1985). In the present context, it may be argued that prolonged and complete deprivation of a child from meeting and accompanying close relatives with whom the child has a deep emotional bond can generate a condition of psychological pressure, longing, and intense sorrow that constitutes a clear instance of undue hardship. This hardship does not necessarily have a material dimension; rather, the emotional and psychological burdens arising from an imposed separation may themselves be hardship-producing. Under the “no undue hardship” rule, any rule or situation that results in undue hardship for the legally relevant subject is negated in Islamic law. Therefore, if strict implementation of custody arrangements, or legislative silence regarding relatives’ visitation, places the child in a hardship-producing situation in practice, this rule requires that such a situation or its hardship-producing effect be removed. The court may rely on this rule to structure visitation arrangements with relatives in a manner that alleviates the child's emotional constriction and psychological burden. Accordingly, the “no undue hardship” rule provides an additional jurisprudential foundation for the necessity of attending to the child's relationships with relatives and facilitating them where warranted (Mazaheri & Salehi-Nejad, 2013).

The analyses presented in the preceding sections reveal a noteworthy duality within Iran's legal system: on the one hand, the absence of an explicit and comprehensive statutory provision concerning a child's right to visit relatives other than the parents, together with legislative silence that has contributed to inconsistent judicial practice; and on the other hand, the existence of strong jurisprudential foundations emphasizing the importance and necessity of preserving and continuing these relationships. This section is devoted to synthesizing the jurisprudential arguments, critiquing opposing positions, and examining practical solutions for remedying the existing legislative gap.

A coherent set of key Imamiyyah jurisprudential rules and principles clearly justifies and substantiates the necessity of a child's relationship with consanguineous relatives. The foundational principle of the child's best interest (ghibṭat al-ṣaghīr), in light of psychological findings concerning the vital role of relatives in emotional and identity development, requires that such superior interests be taken into account in decision-making (Huffman et al., 2005; Seif & et al., 1997). The obligation of maintaining kinship ties and the prohibition of severing them indirectly impose a duty upon parents and custodians to refrain from creating obstacles to these essential bonds (Kulayni, 1987; Najafi, 1984). The “no harm” rule, given the undeniable moral harms that may arise from separating a child from close relatives, calls for the removal of any rule or condition that produces harm and can ground an obligation to arrange visitation to prevent that harm (Ansari; Isfahani, 1990). The “no undue hardship” rule likewise rejects the emotional and psychological constriction inflicted on a child through such deprivation and justifies removing that hardship through facilitation of contact (Mazaheri & Salehi-Nejad, 2013; Raghib Isfahani, 1985). Taken together, these rules form an integrated jurisprudential framework whose implications for the necessity of recognizing relatives’ visitation cannot be easily disregarded.

In contrast to these well-grounded foundations, the positions that refuse to recognize relatives’ visitation rights predominantly rely on a narrow, literal reading of existing statutory texts. Reliance on the term “parents” in Article 1174 of the Civil Code, and treating the former Family Protection Act's Article 12 as exceptional, may appear plausible at first glance, yet it does not fully align with the governing principles of family law—particularly children's rights—within the Iranian legal tradition (Katouzian, 2006b). First, family law, and especially the domain of children's rights, is an area in which justice

cannot be achieved solely through literal interpretation divorced from legislative objectives, welfare considerations, and the spirit of the legal system. Principles such as the child's best interest and the rules of "no harm" and "no undue hardship," as governing secondary rules, supervise primary rules—including specific statutory provisions or legislative silence—and can restrict their scope or guide action where silence exists (Isfahani, 1990; Raghieb Isfahani, 1985). Second, it appears unlikely that the purpose of Article 1174 was to establish a prohibition on visitation by other relatives; it is more plausible that the legislator addressed the most common locus of dispute—namely the parents—while remaining silent on other cases. Such silence should not be construed as a prohibition; rather, it should be completed through recourse to general principles and jurisprudential rules. Third, recognizing the parents' visitation right (itself grounded in welfare and harm-prevention) while denying it to other effective relatives despite the same underlying rationales lacks coherent legal and logical justification (Katouzian, 2006a).

Given the current situation—legislative silence on the one hand and the richness of jurisprudential foundations on the other—two principal solutions may be proposed to address this challenge and safeguard children's rights in relation to relatives.

The first solution is an active judicial interpretation grounded in jurisprudential principles. Family courts may move beyond a narrow and literal reading of Article 1174 and, relying directly on governing jurisprudential doctrines—particularly the child's best interest and the "no harm" rule (including interpretations that justify governmental intervention or negation of harm-producing effects)—assess, on a case-by-case basis, the necessity and benefit of a child's visitation with specific relatives. Where appropriate, and absent legal-moral impediments, the court may order the establishment of such contact. This approach requires judicial competence in jurisprudential reasoning and the willingness to issue decisions grounded in such principles, but it can, at least temporarily and until legislative reform, reduce inconsistent judgments and better protect children's interests (Katouzian, 2006b).

The second solution—more fundamental and durable—is explicit and comprehensive legislative reform. Eliminating ambiguity and achieving judicial consistency requires a clear legislative intervention. Article 1174 of the Civil Code should be revisited, or a new provision should be enacted within the relevant legal framework (such as family protection legislation), explicitly recognizing the child's right to visitation with significant consanguineous relatives (such as grandparents and siblings), subject to defined conditions and always centered on the child's best interest (Katouzian, 2006b). Such reform would not only fill the current legislative gap, but also respond appropriately to children's essential emotional needs and reaffirm the importance and status of the extended family within Iran's legal and cultural order.

8. Conclusion

This study was conducted with the aim of examining the legislative gap governing the right of a child to maintain contact with relatives (other than the parents) in the Iranian legal system and assessing the capacity of Islamic jurisprudential principles to address this issue. The findings indicate that despite the fundamental importance of a child's relationship with the extended family network for emotional and identity development, Iranian statutory law—particularly Article 1174 of the Civil Code—explicitly recognizes only the parents' right of visitation and remains silent and imprecise regarding the visitation rights of other relatives, especially where both parents are alive and present. As demonstrated by the analysis of judicial practice, this legislative deficiency has resulted in ambiguity, inconsistent court decisions, and ultimately, the inadequate protection of children's rights and interests in this domain.

In contrast, examination of the foundations of Imamiyyah jurisprudence reveals the existence of multiple principles and doctrines that provide substantial potential for justifying and establishing this right. The overriding principle of the child's best interest requires that the child's emotional and psychological needs—significantly supported by relationships with relatives—be prioritized. The rule mandating the preservation of kinship ties emphasizes the necessity of maintaining family bonds and regards their obstruction as blameworthy. The "no harm" principle, in light of the non-material harms caused by the severance of emotional relationships, supports the elimination of harm-producing situations, while the "no undue hardship" principle demands the removal of emotional and psychological distress imposed on the child through such deprivation. The combined strength and coherence of these jurisprudential foundations offer a reasoned response to approaches grounded solely in narrow and literal statutory interpretation and confirm that legislative silence cannot be understood as a denial of the importance or legal recognizability of these relationships.

The overall conclusion of this research affirms that Imamiyyah jurisprudence possesses the necessary capacity to remedy the existing legislative gap concerning relatives' visitation rights and that, by relying on principles such as the child's best interest, maintenance of kinship ties, no harm, and no undue hardship, a firm theoretical and legal basis for recognizing this right can be established. The significance of this conclusion lies in its potential to provide stronger protection for children affected by parental separation, to reinforce the supportive role of the extended family, and to reduce judicial inconsistency while enhancing legal predictability.

Finally, in order to resolve the legislative gap and its associated challenges in practical terms, two complementary solutions are proposed. First, an active, principle-based judicial interpretation, whereby family courts—drawing on general legal principles and governing jurisprudential doctrines, particularly the child's best interest and the rule of no harm—may, in cases of statutory silence or ambiguity, issue decisions in favor of the child and in support of preserving essential emotional relationships with relatives. Second, a clear and comprehensive legislative reform, which represents the more fundamental and durable solution, through revising Article 1174 of the Civil Code or enacting supplementary provisions within family protection legislation to explicitly recognize the child's right to maintain contact with significant consanguineous relatives, such as grandparents and siblings, under precise conditions and with the child's welfare as the central criterion. Although legislative reform is preferable due to the clarity and uniformity it would bring, until such reform is realized, the role of judges in utilizing jurisprudential capacities to safeguard the child's paramount interests remains vital and decisive.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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