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Additional material is published online only. To view please visit the journal online.

Cite this as: Sydorenko D, Oksaniuk O, Vatrás V, Omelchuk O and Sabluk S. Legal Framework and Practical Dimensions of Marital and Family Rights: A Doctrinal and Comparative Legal Review. Premier Journal of Science 2025;14:100127

DOI: <https://doi.org/10.70389/PJS.100127>

### Peer Review

Received: 8 September 2025

Last revised: 23 September 2025

Accepted: 29 September 2025

Version accepted: 3

Published: 15 October 2025

# Legal Framework and Practical Dimensions of Marital and Family Rights: A Doctrinal and Comparative Legal Review

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## ABSTRACT

### BACKGROUND

The study addresses the urgent need to modernize the legal regulation of family rights and obligations in response to contemporary social and legal challenges. Key issues requiring attention include gender equality, protection of children's rights, and the regulation of international marriages.

### MATERIALS AND METHODS

This study is a doctrinal and comparative legal review. The methodological framework included examination of current legislation, comparative legal and historical legal approaches, as well as analysis of secondary sources and case law.

### RESULTS

The research revealed fundamental contradictions in the regulation of family rights and obligations. Persistent problems include gender imbalance in legislation, difficulties in governing international marriages, and insufficient mechanisms for protecting children's rights and preventing domestic violence. Based on these findings, recommendations were formulated to adopt gender-neutral legal provisions, establish unified standards for regulating international marriages, and strengthen child protection measures. The study also emphasizes the importance of regulating emerging forms of family relations, including civil partnerships and same-sex marriages, which remain outside the scope of existing law.

### CONCLUSION

The results hold practical significance for improving the legislative framework governing family relations. Implementing the proposed recommendations would enhance the effectiveness of legal regulation, promote equality, and better protect the rights of all family members. Ultimately, these changes could reinforce the institution of the family in modern society.

**Keywords:** Gender-neutral family legislation, Conflict-of-laws in international marriages, Child protection against domestic violence, Legal recognition of civil partnerships and same-sex marriages, Marital property division and pre-nuptial agreements

### Highlights:

- Contradictions persist in regulating family rights and obligations.
- Gender-neutral laws are needed to ensure equality of spouses.
- Unified standards required for international marriage regulation.
- Legal recognition of civil partnerships and same-sex marriages is vital.
- Reform must combine legislation, awareness, and global cooperation.

## Introduction

Modern legal and social changes create new challenges in regulating family rights and obligations, which requires an in-depth analysis and revision of existing legal norms and approaches. Issues of gender equality, children's rights, regulation of international marriages, and protection from domestic violence are becoming increasingly relevant and require special attention.

Gender equality in family rights remains one of the critical issues, as traditional gender roles and stereotypes have a significant impact on the legal regulation of marriage. Some studies show that an imbalance of rights and responsibilities between spouses can lead to various legal and social problems.<sup>1</sup> Regulation of international marriages is also challenging due to conflict of laws and the need to harmonise legal norms. Baranovska et al.<sup>2</sup> emphasise the importance of international cooperation and the development of unified standards for effectively regulating family rights and obligations in international marriages. The issues of child protection and combating domestic violence also require in-depth analysis and improvement of the legislative framework. For example, Melnik<sup>3</sup> emphasises the need to strengthen legislative measures to protect children's rights and prevent domestic violence. Thus, the current legal regulation of family rights and obligations faces several problems and contradictions that require a comprehensive approach and the development of practical solutions to ensure justice and protect the interests of all family members.

This work aims to comprehensively study the theoretical, legal, and practical aspects of spouses exercising family rights and obligations. It will identify critical problems and contradictions in legal regulation and develop recommendations for their solution to ensure fairness and protect the interests of all family members. The following sections first review recent research, then present the research methods, followed by structured results, a critical discussion, and finally conclusions with prospects for further reform.

The article aims to study family rights' theoretical, legal, and practical aspects in marital legal relations. The author identifies the critical legal issues and offers recommendations on how to address them to improve the regulation of family rights and obligations of spouses.

### Objectives of the study:

- 1 To analyse the existing theoretical and legal approaches to exercising family rights in marital legal relations.
- 2 To study the practical aspects of applying legislation governing family rights and obligations of spouses.

**Ethical approval:** This study did not involve human participants or sensitive data; therefore, ethical approval was not required

**Consent:** N/a

**Funding:** No industry funding

**Conflicts of interest:** N/a

**Author contribution:**

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Conceptualization, Writing – original draft, review and editing

**Guarantor:** Denys Sydorenko

**Provenance and peer-review:**

Unsolicited and externally peer-reviewed

**Data availability statement:**

N/a

- 3 Identify the main problems and contradictions in the legal regulation of family rights and obligations.
- 4 To develop recommendations and proposals for improving the legislative framework in family rights.

### Recent Research

In the context of globalisation, the number of international marriages is increasing, which creates difficulties in legal regulation. Conflict of laws and the need to harmonise legal norms are becoming urgent issues requiring international cooperation and standards unification. Research in this area shows the importance of developing mechanisms for mutual recognition of legal decisions for the effective regulation of family rights and obligations in international marriages.<sup>4–8</sup> Harmonisation of legal norms and international cooperation are vital to effectively regulating international marriages. The introduction of unified standards and mechanisms for mutual recognition of legal decisions helps protect spouses' rights and obligations in international marriages. Further research is needed to develop practical recommendations for improving legal regulation.

Child protection and domestic violence are essential aspects of family law. Effective legal regulation should provide for both protection of victims of violence and preventive measures aimed at preventing such cases. Modern research emphasises the need to strengthen legislative measures and develop mechanisms for the legal protection of children to ensure their safety and well-being, full development, nutrition, and education.<sup>3,9–12</sup> Strengthening legislative measures to protect children's rights and prevent domestic violence is a priority, as many couples in Ukraine are separated in the context of war, and women bear a significant share of family responsibilities. The introduction of preventive measures and legal protection mechanisms helps to reduce violence and improve the legal protection of children exposed to domestic violence. Further research and the development of practical recommendations for improving the legislative framework in this area are needed. Recent Ukrainian reforms and statistical data further illustrate the urgency of these issues. Reports from the Ministry of Social Policy of Ukraine and the National Police indicate that the number of registered domestic violence cases has steadily increased during the years of full-scale war, a trend confirmed by UN Women's 2025 review, which highlights systemic risks for women and children. A GBV AoR Helpdesk<sup>13</sup> review underscores systemic risks faced by women in conflict conditions, while UN Women (2025)<sup>14</sup> stresses that the war has rolled back decades of progress in gender equality, safety, and economic opportunities. These developments highlight the importance of integrating international standards into Ukrainian reforms and adapting domestic law to address displacement, vulnerability, and social inequalities.

Modern society requires recognising and legal regulation of new forms of family relationships, such as civil partnerships. Differences in the legal and cultural

traditions of different countries create difficulties in regulating such relations, which requires adaptation of legislation. Studies show that it is necessary to introduce legal regulation of new forms of family relations to ensure equality and protect the rights of all family members.<sup>15–20</sup> The introduction of relevant legislation helps to prevent discrimination and improve legal protection.<sup>21</sup> Further research is needed to develop practical legal mechanisms and adapt legislation to current social realities.

The regulation of property rights and obligations of spouses remains controversial, especially in the event of divorce. Issues related to the division of property and alimony obligations are often the subject of litigation. Studies show that precise legal regulation of these issues is necessary to prevent conflicts and ensure fairness in property relations between spouses.<sup>22–26</sup> Introducing mandatory prenuptial agreements and simplifying property valuation procedures contribute to more efficient resolution of property disputes. Further research and development of legal recommendations in this area are needed to improve the legislation.

### Research Methods

The study is reclassified as a doctrinal and comparative legal review. This classification reflects the reliance on legislative texts, case law, historical legal sources, and comparative analyses rather than primary empirical research. Accordingly, all references to sociological surveys have been removed to ensure methodological consistency.

*Analysis of documents and legal acts.* This method involved studying and analysing current legislation, regulations, international treaties and conventions governing family rights and responsibilities. The focus was on the Family Code of Ukraine, laws on the protection of children's rights and combating domestic violence, and international agreements such as the Convention on the Rights of the Child<sup>21</sup> and Regulation (EU) No. 2019/1111 (Brussels II bis).<sup>27</sup>

*The comparative legal method* was used to compare the legal regulation of family rights and obligations in different jurisdictions. This allowed us to identify best practices and recommend their implementation in national legislation. In particular, the experience of European Union countries and international standards, such as the Charter of Fundamental Rights of the European Union (Official Journal C 326, 26.10.2012),<sup>28</sup> were analysed.

*Historical and legal method.* This method allowed us to study the evolution of legal regulation of family relations and understand the influence of historical and cultural factors on the formation of modern legal norms. Given the primarily normative and comparative character of the study, the research was reclassified as a doctrinal and comparative legal review. Accordingly, references to sociological surveys were removed to maintain methodological coherence. The analysis is therefore based exclusively on legislative texts, case law, historical sources, and comparative studies of family law systems in Ukraine and the EU, without

inclusion of empirical survey data. An example is the study of the rights and obligations of spouses in various legal systems, including ancient legal codes, such as the Code of King Hamurabi.<sup>15</sup> For example, according to Articles 127-195 of this code, the key concepts are the definitions of marriage, family and inheritance. This document addresses the conditions for marriage and possible divorce, property disputes between spouses, types of family conflicts, and the settlement of inheritance after death.

*The method of legal modelling.* It was used to develop proposals and recommendations for improving the legislative framework in family law. Based on the analysis of existing legal provisions and identified problems, models of possible changes and improvements to legislation were proposed.

**Ethical considerations:** No primary data were collected from human participants. The references to sociological perceptions and practices are based exclusively on secondary analysis of published studies and official statistical reports. Therefore, no institutional review board (IRB) approval or informed consent procedures were required for this study. The stages of the methodological steps were a multi-stage process in practice. In the first stage, the statutory texts and the international conventions were gathered and analyzed in consideration of gender equality, child protection, and inter-country family conflicts. Second, comparative analysis was carried out through comparison of the Ukrainian law with the chosen jurisdictions of the EU and common law to detect divergences and best practices. Third, historical documents like the Code of Hammurabi and the canonical Islamic religions were studied in order to trace the development of marital obligations. Lastly, the aspects of legal modelling were used to suggest possible changes and make sure that the advice is closely connected with the identified contradictions.

## Results

Particular attention is paid to the rights and responsibilities of spouses in different legal systems, including Islamic law<sup>16</sup> and ancient Eastern legal systems.<sup>15</sup> These studies highlight the unique features of each approach and their impact on modern legal systems. In the Islamic religion, marriage is a sacred obligation for every family member, and celibacy is considered a crime against the family. The Qur'an states that marriage is a legal contract between a husband and wife that establishes legitimacy and mutual responsibility in their relationship. It is a so-called private contract, the purpose of which is to legitimise procreation.<sup>15</sup>

Another important aspect is the study of the rights and obligations of spouses after divorce. An important aspect is analysing the legal nature of the marriage relationship and its evolution in legal doctrine.<sup>3</sup> This area allows for a deeper understanding of the theoretical foundations of family law and their impact on law enforcement practice. Thus, the existing theoretical and legal approaches to exercising family rights in marital legal relations are diverse and multifaceted.

They include both gender aspects and international experience, as well as specific features of different legal systems and their evolution. Marital property acquired during marriage is considered joint property of the spouses. Thus, property rights in marital relations are enshrined in Articles 316, 317, and 319 of the Civil Code of Ukraine.<sup>29</sup> The data analysis shows that property ownership in marital relations is absolute, with all owners having equal conditions for using this property. According to Article 60 of the Family Code of Ukraine,<sup>30</sup> every item acquired during the marriage, except for items for individual use, is subject to the right of joint ownership of the spouses, which indicates the presumption of joint ownership of the spouses to the property acquired during the marriage. Under Article 65(2) of the Family Code, when one of the spouses enters into a contract, it is deemed that he or she acts with the consent of the other spouse, who must provide a notarised consent.

We will explore the practical aspects of applying the legislation governing family rights and obligations of spouses.

The practical application of the legislation governing the family legal obligations of spouses allows us to assess the effectiveness of the current legal provisions. The issues of property division, alimony obligations and protection of property rights are the subject of many court disputes. For example, Chashkova<sup>22</sup> examines the consequences of marriage dissolution and emphasises the need for precise legal regulation of such situations. As a result of divorce, personal and property legal relations between spouses in a marriage are terminated. The legal consequences of divorce may be of a non-property and property nature. It is crucial to consider the main ones in Table 1.

In the context of globalisation, the number of international marriages is growing, which leads to complex legal situations related to conflict of laws. According to Article 1(2) of the Law of Ukraine "On Private International Law", there is a concept of a foreign element. This may be a party to legal relations who is not a citizen of Ukraine and enters into such legal relations with a Ukrainian citizen or vice versa when one of the objects is located in the territory of another state. In marriage, the foreign element has two aspects: a subject of legal relations and a legal fact.

When a marriage is concluded on the territory of a state between a citizen and a foreigner or vice versa, it is referred to as a subject. When a marriage is concluded on the territory of another state between citizens of Ukraine, it is referred to as a legal fact. At the same time, family legal relations are regulated by two methods, which refer to the legal framework of both countries by international conventions.

Practical aspects of protecting the rights of spouses and children include custody, paternity and protection from domestic violence. In this context, it is important to note studies aimed at protecting children's rights and preventing domestic violence. For example, Melnik<sup>3</sup> examines the legal nature of the marriage relationship and emphasises the need to protect children's

**Table 1 | The legal consequences of divorce**

Legal consequences of a non-property nature	
Between spouses	Remarriage, renewal of marriage, change of surname
Between spouses and children	With whom the children will live after the marriage is dissolved, the possible change of the child's surname, the participation of parents in the upbringing of the child after the marriage is dissolved
Between spouses, children and other persons	Participation of grandparents in the upbringing of grandchildren and great-grandchildren; the possibility of communication between brothers and sisters who live separately
Legal consequences of a property nature	
Between spouses	Division of property, alimony relations
Between spouses and children	Alimony relations, inheritance
Between spouses, children and other persons	Division of property, inheritance

Source: Compiled by the author.

rights in family law. A person who acts as a guardian of a child who has reached the age of 14 is called a guardian. It can only be a legally capable person approved by the guardianship and custody authorities who can care for the child's life, upbringing and wishes.

In recent years, prenuptial agreements that regulate property and other relations between spouses have become increasingly popular. Mykhalniuk<sup>18</sup> explores new approaches to defining the concept of a prenuptial agreement, emphasising its importance for conflict prevention and the protection of spouses' rights.

An analysis of court practice shows that law enforcement in family legal relations often faces problems interpreting and applying legal norms. Specific focus should be on judicial practice on the distribution of marital property. The ruling of the Supreme Court of Ukraine serves to explain the presumption of the joint ownership of the property acquired in marriage, and it is important to note that the contribution of both the partners, both financial and non-financial ones, should be considered. The enforceability of prenuptial agreements and the recognition of the pre-marital property have also been the subject of recent rulings. In spite of all these clarifications sometimes courts are forced to struggle in valuation particularly where business assets or property is registered in a foreign country. This explains why the statutory standards relating to property valuation and the scope of the spousal contributions are badly needed.

The Ukrainian judicial practice has both problematic and progressive elements in terms of the enforcement of the family law. The Constitutional Court and the Supreme Court decisions are more and more developed with references to the European human rights standards, especially in child custody, alimony, and domestic violence defense cases. Nevertheless, the lack of uniformity in enforcing protective orders and the disparity in methods of enforcing the term of prenuptial marriage agreement demonstrate the necessity of more precise legislative guidance. Mechanisms of mediation, formal in the legislation of Ukraine, are not yet well-developed in practice; judges hardly refer to mediation, and mediation in family conflicts is not taught to trained mediators. The institutionalisation of

mediation can be expanded to a large extent, which would effectively decrease the case load and facilitate the use of consensual dispute resolution. It can be observed by looking at the experience of Scandinavian nations like Sweden or Norway how effective mediation systems and a high value placed on spousal equality in both the law and case law contribute to more equitable results. Another possible template of a compulsory mediation in family conflict may be developed with specific procedural guarantees. The parties must be made to undergo one mediation session that should be conducted by a certified mediator before starting the proceedings in court in a divorce, custody or alimony case. An exception should be made under domestic violence or other pressing child protection matters so that victims should still have direct access to judicial protection. This system should be encouraged by the state by accreditation and training of mediators, legal assistance of vulnerable families and partial subsidizing of mediation services. The agreements that are made as a result of mediation could be formalised and accepted by the courts, which gave them the binding power. The latter would be a hybrid of the benefits of the consensual resolution and procedural safeguards, and would leave the Ukrainian courts with a much smaller load.

These systems focus on equal shared responsibility with parents, clear separation of property, and wide access to state-provided family counselling with models that can guide Ukrainian reforms. This is especially true in cases where the law is outdated or does not correspond to modern realities. Havrik<sup>31</sup> highlights the importance of updating legal norms and adapting them to current conditions.

Thus, the practical application of family law reveals many aspects that require attention and improvement. Effective regulation of family rights and obligations of spouses is possible only if all the above factors are considered, and law enforcement practice is constantly monitored.<sup>29</sup> To replace general statements with a structured doctrinal framework, the findings are presented in four interrelated themes: (1) Gender equality and non-discrimination; (2) International marriages and cross-border disputes; (3) Protection of children

and prevention of domestic violence; and (4) Property relations and divorce consequences. Each theme integrates statutory provisions, doctrinal debates, and enforcement practices. This is a thematic framework that is further supported by judicial practice. In the example of custody conflicts, the Supreme Court of Ukraine (No. 761/16541/18, decision of 12 June 2019) highlighted the best interests of the child as the primary element, which is in line with the domestic norms and the jurisprudence of the European Court of Human Rights (ECtHR). In alimony, the Supreme Court (Case No. 372/1804/19, decision of 17 March 2021) has made it clear that the obligation is a continuous one and proportionate to the parental income, thereby enhancing the protection of children. In terms of protective orders in domestic violence cases, the Constitutional Court of Ukraine (Case No. 4-r/2020, decision of 25 June 2020) did not reveal the constitutionality of urgent restraining orders and stated that the state has the responsibility to safeguard vulnerable family members. There has also been judicial clarification on property division and prenuptial agreements: the Supreme Court (Case No. 6-84311515, decision of 24 February 2016) accepted the bindingness of notarised prenuptial agreements, which meant that legal certainty in the relationship of spouses was also introduced. This structure is further systematised in an analytical matrix that maps the problem identified, the current normative regulation, and the proposed reform measures, ensuring coherence between diagnosis and recommendations.

This comparative aspect of the work is centered on a few jurisdictions of European Union (Germany, France, Poland) and common law countries (United Kingdom, United States) as these jurisdictions have different legal traditions and impacts on the process of Ukrainian family law formation. Statutory same-sex marriage in Germany puts partners on par with other heterosexual couples, whereas in France the PACS system includes an alternative legal framework of civil partnerships. In Poland, however, the situation is different, as the country preserves a restrictive stance, denying same-sex relationships any legal status, which defines the conflict

between the EU norms and the national legislation. Common law jurisdictions, including the UK, place greater focus on the doctrine of the best interests of the child in custody proceedings, reinforced by a wide judicial discretion, but the U.S. jurisdictions adopt a very uneven approach to prenuptial agreements and child custody policies. These comparisons emphasise the variety of doctrinal arguments and application, providing both good examples (e.g., German equality law, UK doctrine on child custody, etc.) and bad (e.g., Polish opposition to EU harmonisation). These contrasts can be further explained by a closer examination of statutory frameworks. In Germany, Spousal equality and joint responsibility are governed by the Bürgerliches Gesetzbuch (BGB),<sup>32</sup> especially by §1353–1362, which is a solid legislative basis to gender-neutral marriage. The Code civil of France has a section on the *pacte civil de solidarité* (PACTS, Arts. 515-1 to 515-7),<sup>33</sup> which establishes an alternative legal institution to marriage between couples, which entails rights and duties in the as far as property and support are concerned. The checklist of the best interests of the child is codified in the United Kingdom by the Children Act 1989, s.1,<sup>34</sup> as the checklist affirms the judicial discretion in cases of custody. In comparison, the *Kodeks rodzinny i opiekuńczy* (Family and Guardianship Code, Arts. 56-61)<sup>35</sup> of Poland still has prohibitive provisions regarding divorce and it does not recognize same-sex relationships, being inconsistent with EU equality principles. These statutory differences are upheld in practice: German courts focus on gender equality and neutrality in the distribution of duties, French practice balances PACS with the right to marry, judges of the UK use a flexible welfare test and the jurisprudence of Poland shows consistent anxiety to restrict reform through the protection of traditional family structures.

Problems and contradictions in the legal regulation of family rights and obligations of spouses are an essential aspect of modern legal research, as they directly affect the well-being of families and society as a whole. Tables 2 and 3 below summarise the main problems and contradictions in the legal regulation of

**Table 2 | Central problems in the legal regulation of family rights and responsibilities**

Problem	Reason	Possible Solutions
Imbalance of rights and obligations of spouses	Traditional gender roles, outdated legal norms	Introduction of gender-neutral legislation, raising awareness of equal rights
Lack of harmonisation of international family law	Differences in national legal systems, lack of international cooperation	Developing international agreements and standards, strengthening interstate legal cooperation
Problems of property division during divorce	Difficulties in property valuation, imperfect legal mechanisms	Improve procedures for property valuation and division, introduce mandatory marriage contracts
Incomplete protection of children's rights in families	Lack of protection mechanisms, low awareness of children's rights	Strengthening legislation on the protection of children's rights, conducting educational programmes for parents and professionals
Unresolved issues of custody and alimony	Imperfect legal regulation, difficulties in court practice	Developing explicit legal norms, improving the skills of judges and lawyers
Lack of regulation of new forms of family relations	Uncertainty in legislation, changing social norms	Introduction of legal regulation of new forms of family relations (e.g. civil partnerships), adaptation of legislation to modern realities

Source: Compiled by the author based on Apriana and Silvia,<sup>1</sup> Baranovska et al.,<sup>2</sup> Chashkova,<sup>22</sup> Melnik.<sup>3</sup>

**Table 3 | Contradictions in the legal regulation of family rights and responsibilities**

Contradictions	Description	Possible Solutions
Conflicts between national and international law	Differences in the regulation of family rights and obligations in different countries	Developing unified international standards, strengthening cooperation between states
Differences in approaches to protecting the rights of spouses and children	Discrepancies between the rights and obligations of spouses in different jurisdictions	Comparative analysis of legislation, implementation of best practices in national law
Conflicts between personal and property rights	Difficulties in balancing personal and property rights of spouses	Establishing explicit legal norms governing personal and property rights, introducing mandatory mediation procedures
Lack of legal protection in case of domestic violence	Inadequate legal protection, lack of resources	Strengthening legislation on domestic violence, ensuring access to legal aid and resources for victims

Source: Compiled by the author based on Apriana and Silvia,<sup>1</sup> Baranovska et al.,<sup>2</sup> Chashkova,<sup>22</sup> Melnik.<sup>3</sup>

family rights and obligations of spouses and suggest possible ways to resolve them.

Table 2 below describes each problem, its cause, and possible solutions to provide a clearer picture of the main problems and contradictions in the legal regulation of family rights and obligations.

Table 3 presents the contradictions in the legal regulation of family rights and obligations.

The tables above demonstrate that the legal regulation of spouses' rights and obligations requires constant attention and improvement to ensure fairness and protect the interests of all family members. The identified problems and contradictions can only be resolved through a comprehensive approach, including legislative changes, raising legal awareness, and developing international cooperation. Thus, improving the legal regulation of family relations will strengthen the family institution and protect the rights of spouses and children in different legal systems.

The main suggestions are also tabulated in Figure 1 (Recommendations and suggestions to make the legislative framework in the sphere of family rights better). To be accessible, they may be formulated in a textual format: introduction of gender-neutral drafting of family laws, introduction of model clauses of prenuptial agreements and property valuation principles, harmonisation of recognition of marriage and divorce decisions across borders, and standardisation of protective orders with specialised victim-supportive centres. It is also relevant to develop the mechanisms to provide participation of children in custody and adoption process and to organize legal awareness programs related to each of the parents and professionals, and to enhance interstate cooperation within the frames of the Hague and EU regulations. The reinforced child protection within cross-border family relations is also to be considered with the special attention. Ukraine ought to enforce the application of the Hague Conventions by ensuring that a powerful central body is formed with adequate resources to deal with the cases of international child abduction. The legislative changes may be the requirement to directly involve children in custody hearings when it is reasonable so that their voices are heard according to international principles. Secondly, the bilateral arrangements with the neighbouring countries can facilitate the procedure of recognizing and enforcing decisions regarding custody and

visitation, which will curb the chances of engaging in lengthy litigation that adversely impacts children. Enhancement of child protection during the cross-border family relations should also be given special attention. Ukraine should strengthen the application of the Hague Conventions through the creation of a strong central government that has enough resources to deal with cases of international child abduction. Such changes in the legislation can be required to direct the involvement of children in the custody hearings when the need arises, so that they are heard according to the international standards. Moreover, bilateral accords with the neighbouring states might facilitate the acknowledging and implementing of custody and visitation rulings, and thus, there is less chance of lengthy wrangles to the detriment of children.

Improvement of the legal framework in the field of family rights requires a comprehensive approach, including amendments and harmonisation of legislation, raising legal awareness and developing international cooperation. To make the proposals practical, there are a number of specific steps that are suggested. In the case of marital property, a model provision on prenuptial agreements may be provided by the Family Code and the contracts which are to be notarised in such case with the clear valuation schemes to prevent any litigation. When considering international marriages, cross-border recognition of divorce and custody decisions should be covered by identical standards, as is carried out by Rome III Regulation and Hague Conventions. In order to tackle domestic violence, the protective orders that are immediately enforceable must be standardised and be backed by specialised family courts. In the question of the rights of children, a law should include a mechanism that the child will have a say in the custody and adoptions process which is in line with the UN Convention on the rights of the Child. Lastly, all family law statutes should be drafted according to gender-neutral rules so that they do not recreate the stereotypes or exclude non-traditional forms of family.

An even more detailed solution to gender-neutral lawmaking would be a systematic examination of the current laws, to substitute the gendered language with gender-neutral language, such as husband and wife with spouse or partner. Reformulation of custody and alimony needs to be based on responsibilities of

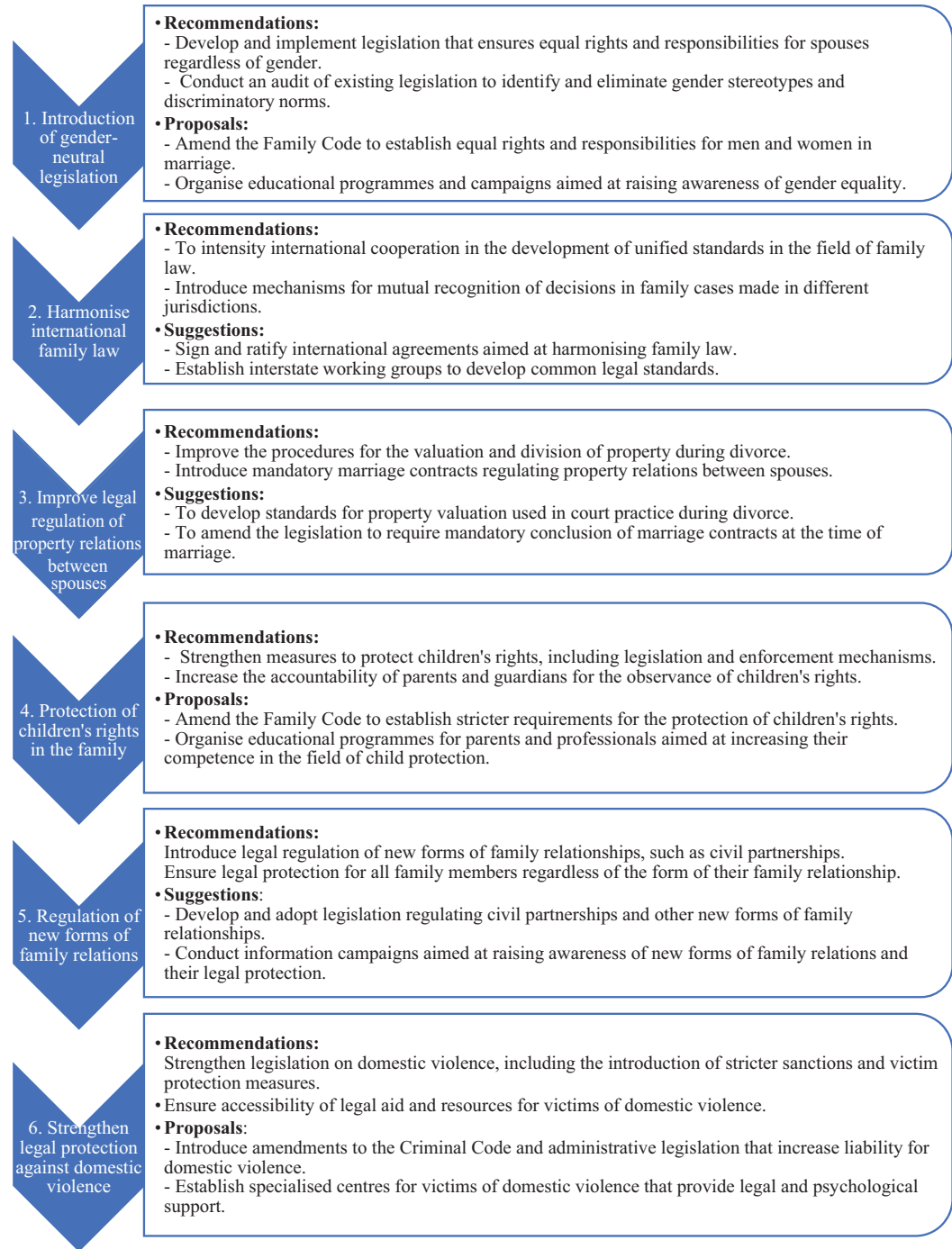


Fig 1 | Recommendations and suggestions for improving the legislative framework in the field of family rights

parents rather than on matriarchal or patriarchal roles and thus implied bias should be avoided. The writing of guidelines might involve model clauses that provide an inclusive language, comments by explanations to the legislators and compulsory training of legal drafters. Such measures, in addition to aligning the Ukrainian law with the European equality standards, would also help avoid the discriminatory interpretation of the law in court practice. Implementing the proposed recommendations and suggestions will ensure more effective protection of the rights of spouses and children,

strengthen the family institution and increase the level of legal culture in society.

In order to assess the impact of the existing legislation on the exercise of rights and obligations of spouses in marital relations, a table with key aspects and their impact is presented below. Table 4 presents the impact of current legislation on the exercise of rights and obligations of spouses.

Existing legislation significantly impacts spouses' rights and obligations in marital relations. It provides essential legal protection and regulates critical aspects

**Table 4 | Impact of current legislation on the exercise of rights and obligations of spouses**

Aspect	Positive Impact	Negative Impact	Possible Improvements
Property relations	Precise regulation of property rights in marriage, availability of mechanisms for division of property in case of divorce	Difficulties in the valuation and division of property, possible conflicts due to the lack of a marriage contract	Introduce mandatory marriage contracts, improve property valuation procedures
Rights and obligations of parents	Laws that protect the rights of children and establish the responsibilities of parents for their upbringing and maintenance	Lack of measures to ensure children's rights, low level of legal awareness among parents	Strengthening legislation on the protection of children's rights, conducting educational programmes for parents
Protection from domestic violence	The existence of legislation providing for protection measures for victims of domestic violence	Insufficient law enforcement practice, limited access to legal aid and resources	Toughening sanctions for domestic violence, establishing specialised victim assistance centres
International marriages	Regulation of rights and obligations of spouses in international marriages, cooperation with other countries	Conflict of laws issues and differences in legal systems, difficulties in recognising and enforcing judgements	Harmonisation of international family law, development of unified standards
Gender equality	The principles of equality of rights and obligations of spouses are enshrined in the law	The existence of gender stereotypes and possible discrimination in law enforcement practice	Introduction of gender-neutral legislation, raising awareness of gender equality

Source: Compiled by the author based on: the Constitution of Ukraine,<sup>36</sup> the Family Code of Ukraine,<sup>30</sup> the Civil Code of Ukraine,<sup>29</sup> the Law of Ukraine "On Prevention and Combating Domestic Violence",<sup>37</sup> the Law of Ukraine "On State Assistance to Families with Children",<sup>34</sup> the Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>39</sup> Regulation (EU) No. 2019/1111 ("Brussels II bis"),<sup>40</sup> the Charter of Fundamental Rights of the European Union,<sup>28</sup> the Convention on the Rights of the Child (UN),<sup>21</sup> Directive 2011/36/EU "On Preventing and Combating Trafficking in Human Beings and Protecting its Victims".<sup>41</sup>

of family life. However, certain shortcomings and problems require attention and improvement. Introducing mandatory marriage contracts, strengthening measures to protect the rights of children and victims of domestic violence, harmonising international family law and combating gender stereotypes could significantly improve the legal protection of spouses and increase the effectiveness of their rights and obligations.

### Discussion

Modern legal regulation of family rights and obligations is subject to numerous discussions and contradictions caused by changes in society and legislation. One of the most debated issues is the problem of gender equality in marriage.<sup>42</sup> Despite significant advances in women's rights, many legal systems still contain elements of discrimination based on gender stereotypes. As noted by Apriana and Silvia,<sup>1</sup> the imbalance of rights and responsibilities between spouses can lead to various legal and social problems, which require a review and modernisation of existing legislation. An essential aspect of the debate is the regulation of international marriages, which are becoming increasingly common in globalisation. According to Ostapyuk, the peculiarities of personal non-property rights, as well as the rights of spouses, are their non-property, long-term nature, their existence as long as a woman or a man is in the legal status of a spouse, that is, during the existence of marriage.<sup>10</sup> Divorce can often be caused by domestic violence in the family. According to the law of Ukraine on combating domestic violence, the following key terms should be distinguished:

- A child victim is a child who has suffered from domestic violence.
- Domestic violence is all types of psychological, physical or sexual violence, as well as financial violence committed within the family.

- Prevention of domestic violence - a set of measures aimed at preventing any manifestations of violence against children, which contributes to the eradication of discrimination
- A restraining order is a court measure to temporarily restrict the rights of a person who has committed domestic violence,
- Risk assessment is a set of measures to assess the likelihood of continuing domestic violence

The Law of Ukraine "On Preventing and Combating Domestic Violence" clearly defines the forms of punishment for different types of domestic violence and, above all, the prevention of its root causes.<sup>37</sup>

According to the Law of Ukraine, "On State Assistance to Families with Children," the calculation of maternity benefits is mainly inconsistent with this law. The calculation is based primarily on the minimum subsistence level, and women are paid only 25% of this amount.<sup>38</sup>

Based on Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting victims, the prevention of human trafficking is a simultaneous guarantee of gender equality.<sup>41</sup> The vital conceptual categories of this law are

- "human trafficking", which is the exploitation of a person to obtain profit, including the recruitment, transportation, transfer, harbouring or receipt of persons using the threat or use of force or other forms of coercion, forced abduction, fraud, or deception;
- "victim" means an individual who is the object of human trafficking.

Additional complexities arise in the legal regulation of new forms of family relationships, such as civil partnerships and same-sex marriages. In countries with different legal and cultural traditions, approaches to regulating such relationships differ significantly.

Research conducted by Lee<sup>6</sup> shows that in Germany, the rights and obligations of spouses in same-sex marriages are regulated similarly to traditional marriages, which is an essential step towards ensuring equality. The issues of property rights and obligations of spouses also remain the subject of active debate. Chashkova<sup>22</sup> discusses the legal consequences of divorce, including cases of gender reassignment by one of the spouses, and emphasises the need for precise legal regulation of such situations to prevent legal conflicts.<sup>30</sup>

Thus, discussions around the legal regulation of family rights and obligations reflect many problems and contradictions that require a comprehensive and interdisciplinary approach. The systematic study of international instruments and jurisprudence is an important aspect of the strengthening of the legal analysis. Huge standards in preventing and combating domestic violence are defined by the Istanbul Convention of the Council of Europe,<sup>43</sup> whereas the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>44</sup> and its General Recommendations offer a normative perspective to the elimination of the discrimination with gender in the family law. The Hague Conventions of 1980 (on International Child Abduction)<sup>45</sup> and 1996 (on Parental Responsibility and Protection of Children)<sup>46</sup> are also essential in resolving inter-country family dispute as well as Regulation (EU) No. 1259/2010 (Rome III)<sup>47</sup> provides uniformity in the laws of divorce applicable in international marriages. In June 2022, Ukraine ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>48</sup> and since then introduced the implementation measures by introducing amendments to the Law of Ukraine on Prevention and Combating Domestic Violence.<sup>37</sup> CEDAW and its General Recommendation No. 19 and 35<sup>49,50</sup> are still the basis in integrating gender equality in family law-reform. Ukraine also ratified the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction<sup>45</sup> and the Hague Convention of 19 October 1996<sup>46</sup> on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, the Ministry of Justice of Ukraine being the Central Authority.<sup>51</sup> The Brussels IIb Recast (Reg. (EU) 2019/1111)<sup>27</sup> is rightly called Brussels IIb and ensures procedural homogeneity in EU cross-border family matters, whereas the Rome III Regulation (Reg. 1259/2010)<sup>47</sup> on applicable law in a divorce is only binding within the EU Member States; in the case of Ukraine, it must be viewed as an approximation of the legislation as opposed to direct applicability.

Jurisprudence of the European Court of Human Rights, *Opuz v. Turkey*, *Oliari v. Italy*, and *Fedotova v. Russia*, evidences how the Court contributes to creating norms to fight the domestic violence and provide the equality to same-sex couples.<sup>52,53</sup> In *Opuz v. The ECtHR* decided that state inaction in instances of domestic violence contravenes Article 2, 3, and 14 of the

European Convention and that they imposed positive duties to prevent gender-based violence (Turkey, App. No. 33401/02, judgment, 9 June 2009). In *Oliari and Others v. The Court in Italy* (App. Nos. 18766/11 and 36030/11, judgment of 21 July 2015) realised that the lack of legal acknowledgement of same-sex couples was against the requirements of Article 8, requiring states to offer legal frameworks of partnership. Lastly, in *Fedotova and others v. The Court* observed the violation of the Article 8 by the fact that no legal status was provided to same-sex unions (Russia (App. Nos. 40792/10, 30538/14, and 43439/14, Grand Chamber judgment of 17 January 2023)). These possessions have a direct influence on Ukrainian reforms: the former reinforces domestic violence prevention, and the other two brings convincing power to the introduction of the legal status of civil relationships and same-sex marriages. In the case of Ukraine, the international obligations are accompanied by the constitutional and supreme court jurisprudence, which is more and more inclined to refer to the European standards when adjudicating family law cases, which supports the necessity of harmonisation of national and international legal frameworks.. These are issues that come in direct contact with the family law reforms. Surrogacy in Ukraine brings up the issue of parental responsibility, custody, and recognition of parents and children relations across the border, and thus has to entail a harmonisation process of surrogacy regulations with the Family Code and the international child protection conventions. On the same note, the more generalized process of modernization of the private law determines the structure of marital property, inheritance, and contractual autonomy which directly impacts on how prenuptial agreements are drafted, and spousal conflict resolved. Therefore, there is no peripheral role of surrogacy regulation and civil law reforms, but they are interconnected and inseparable with each other and with the success and integrity of family law. These insights reinforce the necessity of aligning family law reforms with wider civil law modernization processes. Improvements to legislation in this area should be based on an analysis of international experience, historical traditions and current social realities.

Judicial practice plays a decisive role in translating legal norms into real protection. In Ukraine, Supreme Court rulings increasingly incorporate references to the jurisprudence of the European Court of Human Rights, yet fragmentation persists. A more systematic approach, combined with institutionalised mediation procedures, would align Ukrainian practice with European trends. The Scandinavian experience, where equality of spouses is firmly embedded in both legislation and court practice, underlines the importance of consistent judicial enforcement. The combination of statutory clarity, effective mediation, and gender-equality jurisprudence provides a roadmap for strengthening Ukrainian family law.

An overview of the best European practices shows that there are a number of models that may be of direct

application to Ukraine. In the German experience of complete equality of the spouses, the statutory reform proves to be a way of erasing the presumptions of the gender factor, and the French law of the civil partnership (PACS) suggests a way of the middle ground between the traditional marital relations and the protection of the couples that do not marry. A British principle of the best interests of the child will provide uniform results on the custody issues in instances and might be adopted as a principle in Ukrainian legislation. Scandinavian nations are good examples of introducing mandatory mediation and state-funded family counselling into the family legislation. The options towards adapting these practices to Ukraine are changes to the Family Code to explicitly codify gender-neutral language, the introduction of child-focused custody frameworks, the testing of PACS-like systems of civil partnerships, creating a system of state-funded mediators. Such a stratification would enable Ukraine to align with the European standards and reforms would be made to suit the national legal and social realities.

#### Limitations of the Study

This research is limited in some way. It is more doctrinal and comparative, and does not involve any primary empirical data: it is based on the analysis of legislation, case law and secondary sources. This leads to the findings giving an excellent conceptual and normative framework that is not representative of lived experiences of families and the practical realities of legal practitioners. Besides that, the range of jurisdictions that work are chosen to be compared is narrowed to some European and common law jurisdictions, which, though illustrative, cannot reflect the global diversity of family law systems.

#### Conclusion and Prospects for Further Research

The study identified critical problems and contradictions in the legal regulation of family rights and responsibilities. Current legislation must be reviewed and updated to reflect gender equality, international experience and new forms of family relations. Issues of gender imbalance require the introduction of gender-neutral legislation to ensure equal rights and obligations of spouses. The regulation of international marriages should include unified standards and mechanisms for mutual recognition of legal decisions. An important aspect is to strengthen measures to protect children's rights and prevent domestic violence. Particular attention should be paid to the legal regulation of new forms of family relations, such as civil partnerships and same-sex marriages. The issues of property rights and obligations of spouses require precise legal regulation to prevent conflicts. Thus, improving the legal regulation of family rights and obligations should be based on a comprehensive approach that includes legislative changes, legal awareness raising and international cooperation.

Prospects for further research include developing and implementing new legal norms and mechanisms

to more effectively regulate family rights and obligations in the context of modern social and legal challenges. From a policy and practice perspective, the findings point to several priorities. Legislators should move towards gender-neutral drafting and harmonisation with international instruments, while courts and practitioners must ensure consistent enforcement of protective orders, child participation rights, and recognition of cross-border family decisions. For policymakers, integrating family law reform into broader civil law modernisation and post-war recovery strategies will be essential to ensure both legal certainty and social justice. In order to give more practical recommendations, several model clauses may be presented to be incorporated in the Ukrainian family law. (a) The template of a prenuptial agreement must contain compulsory clauses on will of disclosure of assets, restrictions on waiving of child support and a requirement to have them notarised. (b) The valuation standards of property could introduce court appointed certified professionals, with timetables and guidelines of challenging valuations. (c) It should provide a compulsory mediation program with at least one certified session before litigation, but the cases of domestic violence and immediate child protection should be excluded; the results would be formalised and signed by courts. (d) Child participation may be ensured since the age of 10, younger children not heard until they are sufficiently mature, under judicial control and psychological protection. (e) Standardised protective orders ought to identify the scope (contact, residence, financial restrictions), period (up to six months with extensions), enforcement through police and consequences of violation such as criminal liability. All of these measures can be undertaken within the Ukrainian laws with the help of the changes in the Family Code and the corresponding procedural laws.

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