



The Role of the Palestinian Sharia Judiciary in Protecting the Rights of Children in Custody (An Analytical Study of Judicial Rulings)

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ABSTRACT

This study examines the role of the Palestinian Sharia judiciary in protecting the rights of children in custody disputes, with a focus on judicial practice, statutory provisions, and international child rights standards. Child custody is recognized as a fundamental mechanism for ensuring the physical, psychological, and moral well-being of children, grounded both in Islamic jurisprudence and international law, particularly the Convention on the Rights of the Child (CRC, 1989). The Palestinian legal framework governing custody comprises the Personal Status Law No. 61 of 1976 and the Palestinian Child Law No. 7 of 2004, enforced through Sharia courts, which possess exclusive jurisdiction over family and personal status matters. Using doctrinal legal analysis, judicial ruling review, and comparative assessment with international standards, the study evaluates the extent to which Sharia courts prioritize the best interests of the child. Findings indicate that while the judiciary formally recognizes child welfare, rigid statutory provisions such as gender-based custody age limits and automatic loss of custody upon maternal remarriage constrain effective application of child-centered principles. Moreover, weak enforcement mechanisms limit the practical impact of judicial decisions. The study concludes that Palestinian Sharia courts hold significant potential to safeguard children's rights but require legislative reform, enhanced judicial discretion, and alignment with international norms to realize this potential fully. Recommendations include reforming custody provisions, strengthening enforcement, issuing judicial guidelines, and promoting capacity-building programs for judges.

Keywords: child custody, Sharia judiciary, Palestinian law, best interests of the child, child rights, judicial practice.



1. Introduction

1.1 Background of the Study

Child protection has emerged as a central concern within contemporary legal systems, particularly in matters relating to family law and custody disputes. Children are universally recognized as a vulnerable group requiring special legal protection, given their limited capacity to defend their own interests and their dependence on adults for care, security, and development. Custody arrangements, therefore, play a decisive role in shaping a child's psychological stability, emotional security, and social integration. International legal frameworks have emphasized that custody decisions must be guided by the principle of the best interests of the child (Fadl Al-Murad, 2005). This principle is firmly established in Article 3 of the Convention on the Rights of the Child (CRC), which obliges judicial and administrative authorities to prioritize child welfare in all actions affecting children (Convention on the Rights of the Child, 1989). In addition, Article 16 of the Convention protects children from arbitrary interference with their family life, honor, and reputation, underscoring the importance of a stable and secure family environment (Fahmi, 2012).

Within the Palestinian context, child custody disputes are primarily adjudicated by Sharia courts, which derive their jurisdiction from Islamic law and statutory personal status legislation. The Jordanian Personal Status Law No. 61 of 1976 continues to regulate custody matters in the West Bank, while the Palestinian Child Law No. 7 of 2004 establishes a broader framework for child protection and welfare. Together, these legal instruments form the normative basis for the protection of children's rights in custody disputes (Al-Anbaki, 2019).

However, Palestinian society faces complex social, legal, and political conditions that directly affect the family structure and the implementation of child protection laws. Legislative fragmentation, inherited legal frameworks, and institutional challenges have contributed to inconsistencies in custody regulation and judicial practice. These conditions necessitate a critical examination of the role played by the Palestinian Sharia judiciary in safeguarding children's rights within custody proceedings.

1.2 Child Custody as a Legal and Social Issue

Custody is not merely a legal mechanism for determining with whom a child resides following parental separation; rather, it constitutes a comprehensive system of care aimed at ensuring the child's physical, emotional, and moral upbringing (Al-Alawi, 2018). In Islamic jurisprudence, custody (*ḥaḍānah*) is traditionally regarded as a right of the child before it is considered a right of the parents. Its primary objective is to protect the child from harm, neglect, and instability, while providing an environment conducive to healthy development (Alwan & Al-Mousa, 2007).

Palestinian personal status legislation reflects this understanding by granting priority to the mother in custody, provided that certain conditions related to capacity, trustworthiness, and caregiving ability are met (Personal Status Law No. 61 of 1976, Art. 154–155). This legal approach recognizes the essential role of maternal care during the early stages of a child's life. Nevertheless, the law also imposes strict



conditions that may result in the loss of custody (Khawat, 2018), such as the remarriage of the custodial mother to a non-mahram relative of the child (Art. 156).

From a social perspective, custody disputes often arise in contexts of family breakdown, divorce, or conflict, situations that already place children at heightened risk of psychological distress and social instability. Legal rules governing custody therefore have far-reaching consequences that extend beyond the courtroom, affecting the child's daily life, sense of belonging, and long-term well-being.

Scholarly analyses referenced in the file indicate that rigid application of custody rules without sufficient consideration of the child's actual circumstances may undermine the protective purpose of custody law (Hammouda, 2007). This concern highlights the need for a judicial approach that balances legal certainty with flexibility and child-centered reasoning.

1.3 The Palestinian Legal and Institutional Context

The Palestinian legal system is characterized by a unique pluralism resulting from historical, political, and territorial factors. In the West Bank, custody disputes are governed by the Jordanian Personal Status Law of 1976, while different legal provisions apply in the Gaza Strip. This duality has resulted in the absence of unified custody standards across Palestinian territories, creating legal uncertainty and inconsistent judicial outcomes.

Sharia courts in Palestine possess exclusive jurisdiction over personal status matters, including custody, visitation, and maintenance (Hammouda, 2007). These courts operate under the Sharia Courts Law of 1959 and exercise their authority in accordance with Islamic law and statutory regulations. Their role extends beyond dispute resolution to encompass the protection of family stability and the safeguarding of vulnerable parties, particularly children.

Despite this central role, the effectiveness of Sharia courts in protecting children's rights is constrained by several factors identified in the literature. These include outdated legislative provisions, limited enforcement mechanisms for custody rulings, and the absence of clear statutory guidance on the application of the best interests principle (Za'im, 2021). As a result, judicial discretion may be exercised within a narrow legal framework that does not always accommodate the evolving needs of children and families.

The Palestinian Child Law No. 7 of 2004 represents an important legislative development aimed at strengthening child protection. The law affirms the child's right to care, protection, and assistance in all circumstances and establishes institutional mechanisms to support these rights (Palestinian Child Law No. 7 of 2004, Arts. 7, 42). However, the integration of this law into Sharia court practice remains uneven, particularly in custody-related adjudication.

1.4 The Role of Sharia Judiciary in Child Protection

The Palestinian Sharia judiciary occupies a pivotal position in translating legal norms into practical protection for children involved in custody disputes. Sharia judges are entrusted with applying statutory rules, interpreting Islamic legal principles, and exercising judicial discretion to determine custodial arrangements that serve the child's welfare (Al-Anbaki, 2019). This role is consistent with the objectives of



Islamic law (Maqasid al-Sharia), which emphasize the preservation of life, lineage, dignity, and social order.

Judicial practice demonstrates that Sharia courts frequently invoke concepts of child welfare and family stability when adjudicating custody cases (Al-Ammari, 2022). Nevertheless, the extent to which these concepts are substantively applied varies depending on the legal issue at hand. In certain cases, formal legal conditions such as marital status or predetermined custody age may outweigh a comprehensive assessment of the child's best interests (Al-Ammari, 2015).

The literature reviewed in the file indicates that this tension reflects a broader challenge faced by Sharia courts: reconciling traditional legal provisions with contemporary child rights standards. While Islamic law provides flexible tools for prioritizing child welfare, the absence of explicit legislative reform limits the judiciary's ability to fully realize these objectives in practice.

1.5 Significance of the Study

The significance of this study lies in its analytical focus on judicial practice rather than solely on legislative texts. By examining the role of the Palestinian Sharia judiciary in protecting children's rights in custody disputes, the study contributes to a deeper understanding of how legal norms are applied in practice and how they affect children's lives.

From an academic perspective, the study enriches legal scholarship on child custody by integrating Islamic jurisprudence, national legislation, and international child rights standards within a single analytical framework. From a practical perspective, the findings of this research may assist legislators, judges, and policymakers in identifying legal gaps and developing reforms aimed at strengthening child-centered justice within the Palestinian legal system.

2. Literature Review

2.1 Conceptual Foundations of Child Custody in Legal and Islamic Thought

Child custody has long been recognized in legal theory as a protective mechanism designed to ensure the physical, psychological, and moral well-being of children. Contemporary legal scholarship emphasizes that custody is not a parental privilege but a fundamental right of the child, derived from the child's vulnerability and dependency (Palestinian Child Law No. 7 of 2004, Art. 7). This understanding aligns with international legal instruments, particularly the Convention on the Rights of the Child, which obliges states to ensure that children receive the care and protection necessary for their well-being (Convention on the Rights of the Child, 1989, Art. 3).

In Islamic jurisprudence, custody (*ḥaḍānah*) is grounded in the principle of protection (*ḥifẓ*), reflecting the broader objectives of Islamic law (Maqasid al-Sharia) (Al-Atiq, 1992). Classical jurists emphasized that custody aims to safeguard the child from harm, neglect, and moral danger, prioritizing the child's welfare over parental claims (Personal Status Law No. 61 of 1976, Art. 154). Islamic legal thought consistently treats custody as a responsibility rather than a proprietary right, reinforcing its child-centered nature.

Scholarly studies referenced in the file highlight that Islamic custody rules were historically flexible and responsive to the child's circumstances (Al-Atoum, 2002).



However, when codified into modern statutory law, these rules often became rigid, limiting judicial discretion and reducing the capacity to conduct individualized best-interest assessments (Ait Said, 2015).

2.2 Custody Regulation under Palestinian Personal Status Law

The Palestinian custody framework in the West Bank is primarily governed by the Jordanian Personal Status Law No. 61 of 1976, which continues to apply through the Sharia judiciary. The law grants the mother priority in custody, provided she fulfills certain conditions related to capacity, trustworthiness, and caregiving ability (Personal Status Law No. 61 of 1976, Arts. 154–155). This legislative approach reflects both Islamic jurisprudence and social recognition of maternal care during early childhood. Nevertheless, the literature identifies significant shortcomings in the statutory regulation of custody. One of the most criticized aspects is the differentiation between male and female children regarding custody age limits. Under Article 161 of the Personal Status Law, custody for boys ends at nine years of age, while custody for girls extends to eleven years (Abu Al-Basal, 1988). Scholars argue that this gender-based distinction lacks a welfare-based justification and may conflict with the principle of equality before the law (Personal Status Law No. 61 of 1976, Art. 161; Ait Saeed, 2015).

Furthermore, Article 156 of the same law stipulates that the mother loses custody if she remarries a non-mahram relative of the child, regardless of her continued ability to provide adequate care. Previous studies emphasize that this automatic disqualification prioritizes formal marital status over substantive child welfare considerations, thereby undermining the best interests of the child (Personal Status Law No. 61 of 1976, Art. 156; Convention on the Rights of the Child, 1989, Art. 3).

2.3 The Best Interests of the Child in Palestinian Legislation

The principle of the best interests of the child constitutes a cornerstone of modern child protection law. Palestinian legislation explicitly incorporates this principle through the Palestinian Child Law No. 7 of 2004, which affirms that children are entitled to priority protection, care, and assistance in all circumstances (Palestinian Child Law No. 7 of 2004, Art. 7). The law further guarantees children's protection from violence, abuse, and neglect (Art. 42), reinforcing the state's obligation to safeguard child welfare (Shaarawi, 2020).

Despite this legislative recognition, the literature points to a gap between normative commitments and judicial application (Abdul Jalil, 2023). While Sharia courts frequently reference child welfare, custody rulings often remain constrained by rigid personal status provisions that limit comprehensive best-interest assessments (Palestinian Child Law No. 7 of 2004, Arts. 7, 42; Personal Status Law No. 61 of 1976, Arts. 154–162).

Studies cited in the file argue that the absence of explicit statutory guidance on how to operationalize the best interests principle within custody adjudication weakens its practical impact. As a result, judicial reasoning may rely more heavily on formal criteria than on a holistic evaluation of the child's needs and circumstances.



2.4 The Role of Sharia Judiciary in Custody Disputes

The Sharia judiciary in Palestine holds exclusive jurisdiction over custody disputes (Tawafsha, 2014), exercising authority under the Sharia Courts Law of 1959 and relevant procedural regulations. Scholarly analyses emphasize that Sharia courts are uniquely positioned to protect children's rights, given their mandate to adjudicate family disputes and enforce custody-related rulings (Sharia Courts Law of 1959).

Judicial practice demonstrates that Sharia judges possess discretionary authority to determine custodial suitability and to select the most appropriate custodian when multiple claimants exist (Personal Status Law No. 61 of 1976, Arts. 157–158). This discretion is theoretically consistent with Islamic jurisprudence, which allows judges to prioritize child welfare when applying legal rules (Doudin, 2011).

However, previous studies highlight that judicial discretion is often constrained by outdated legislative texts and limited enforcement mechanisms. Weak enforcement of custody and visitation rulings has been identified as a major obstacle to effective child protection, exposing children to prolonged family conflict and instability (Decision by Law No. 17 of 2016 on Sharia Enforcement; Decision by Law No. 20 of 2022).

2.5 Custody, Enforcement Mechanisms, and Judicial Circulars

Effective protection of children's rights depends not only on judicial rulings but also on the enforcement of those rulings (Al-Attar, 2022). The literature emphasizes that enforcement shortcomings significantly undermine the protective function of custody law. Palestinian legislation has attempted to address this issue through the enactment of the Sharia Enforcement Law No. 17 of 2016 and its subsequent amendments (Decision by Law No. 17 of 2016; Decision by Law No. 20 of 2022).

Judicial circulars issued by the Supreme Sharia Judiciary have also sought to guide courts in custody-related matters, including extensions of custody age and enforcement procedures (Judicial Circular No. 59/2012; Judicial Circular No. 32/2022). Nonetheless, studies indicate that enforcement remains inconsistent, particularly in cases involving visitation and the return of children to custodial parents.

2.6 Compatibility with the Convention on the Rights of the Child

A substantial portion of the literature focuses on the compatibility of Palestinian custody regulations with the Convention on the Rights of the Child (Abdeen, 2020). Article 3 of the Convention requires that the best interests of the child be a primary consideration in all judicial decisions, while Article 16 protects children from arbitrary interference with their family life (Convention on the Rights of the Child, 1989, Arts. 3, 16).

Studies referenced in the file argue that certain Palestinian custody provisions such as gender-based custody age limits and automatic loss of custody upon remarriage are difficult to reconcile with these international standards (Al-Ajati, n.d.). At the same time, scholars emphasize that Islamic law, when interpreted through its objectives, provides sufficient flexibility to align custody practices with international child rights norms (Convention on the Rights of the Child, 1989; Palestinian Child Law No. 7 of 2004).



2.7 Review of Empirical and Legal Studies in the Palestinian Context

Previous Palestinian studies cited in the file have examined custody laws, judicial practice, and child protection mechanisms from both legal and social perspectives (Al-Shinawi & Hilal, 2024). These studies consistently identify legislative fragmentation, lack of unified standards, and weak enforcement as systemic challenges affecting children's rights (Independent Commission for Human Rights, 2004; Palestinian NGOs Guide to the CRC, 2015).

The literature further highlights that judicial reform and legislative harmonization are essential to strengthening child protection within custody adjudication. Scholars recommend grounding reforms in both Islamic legal principles and international obligations to ensure culturally legitimate and rights-compliant outcomes (Decision by Law No. 25 of 2021 on Publishing the CRC).

2.8 Research Gap

The reviewed literature reveals a clear gap between theoretical commitments to child protection and the practical realities of custody adjudication in Palestinian Sharia courts. While existing studies address legal texts and international standards (Al-Harqan, 2021), fewer analyses focus specifically on judicial rulings and their role in protecting children's rights in practice.

Accordingly, this study seeks to bridge this gap by providing an analytical examination of judicial rulings issued by Palestinian Sharia courts (Al-Hafnawi, 2023), assessing their alignment with Islamic objectives, national legislation, and international child rights standards (Al-Anani, 1997).

3.3 Research Methods

3.3.1 Doctrinal Legal Analysis

Doctrinal legal analysis constitutes the primary method used in this study. This method involves the systematic examination of statutory provisions, judicial precedents, and authoritative legal texts governing custody in Palestinian Sharia courts. The study analyzes relevant provisions of the Personal Status Law No. 61 of 1976, the Palestinian Child Law No. 7 of 2004, and the Sharia Courts Law of 1959 to identify the legal principles regulating custody and child protection (Personal Status Law No. 61 of 1976; Palestinian Child Law No. 7 of 2004).

This method is particularly effective in legal research aimed at clarifying normative rules, identifying legislative inconsistencies, and evaluating the coherence of custody regulations with broader child protection objectives.

3.3.2 Judicial Rulings Analysis

A core methodological component of this study is the **analytical examination of selected judicial rulings issued by Palestinian Sharia courts (Fahmi, 2012)**. The study analyzes custody-related judgments to assess how judges interpret and apply legal provisions in real cases, particularly when balancing parental rights against the welfare of the child.

Judicial rulings are examined with respect to:

- The reasoning adopted by judges
- The criteria used to determine custodial eligibility
- The consideration of the child's best interests



- The application of discretionary powers

This method allows the study to evaluate the practical role of the Sharia judiciary in protecting children's rights, as emphasized in previous Palestinian legal research (Judicial Circular No. 59/2012; Judicial Circular No. 32/2022).

3.3.3 Comparative Legal Method

The study employs a **limited comparative legal method** by comparing Palestinian custody regulations and judicial practices with the standards established by the Convention on the Rights of the Child. This comparative dimension does not aim to replicate foreign legal systems but rather to assess normative compatibility and identify areas of convergence or divergence between national law and international obligations (Convention on the Rights of the Child, 1989).

This method is widely used in child rights research to evaluate the degree of compliance of domestic legal systems with international treaties, particularly in contexts where religious law plays a significant role in personal status matters (Decision by Law No. 25 of 2021 on Publishing the CRC).

3.4 Sources of Data

3.4.1 Primary Legal Sources

The primary sources used in this study include:

- The Personal Status Law No. 61 of 1976
- The Palestinian Child Law No. 7 of 2004 and its amendments
- The Convention on the Rights of the Child (1989)
- The Sharia Courts Law of 1959
- Sharia enforcement laws and amendments (Decision by Law No. 17 of 2016; Decision by Law No. 20 of 2022)
- Judicial circulars issued by the Supreme Sharia Judiciary

These sources constitute the authoritative legal framework governing custody disputes and child protection in Palestine.

3.4.2 Secondary Legal Sources

Secondary sources include academic studies, legal commentaries, and institutional reports cited in the file. These sources provide interpretive perspectives and critical evaluations of custody laws, judicial practices, and child protection mechanisms within the Palestinian context (Independent Commission for Human Rights, 2004; Palestinian NGOs Guide to the CRC, 2015).

The use of secondary sources enhances the analytical depth of the study and situates it within the broader scholarly discourse on child rights and Islamic family law.

3.5 Unit of Analysis

The primary unit of analysis in this study is **judicial rulings issued by Palestinian Sharia courts in custody cases**. Each ruling is analyzed as a legal text reflecting judicial interpretation, application of statutory provisions, and discretionary reasoning.

Additionally, custody-related legislative provisions and judicial circulars are treated as secondary units of analysis, enabling a comprehensive understanding of both normative rules and judicial practice.



3.6 Analytical Framework

The study adopts an analytical framework based on three interrelated criteria:

1. **Legal Compliance:** The extent to which judicial rulings conform to Palestinian statutory provisions.
2. **Child Rights Protection:** The degree to which rulings prioritize the best interests of the child.
3. **International Compatibility:** The alignment of judicial practice with the Convention on the Rights of the Child.

This framework enables systematic evaluation of judicial performance and highlights areas of strength and deficiency within custody adjudication (Convention on the Rights of the Child, 1989; Palestinian Child Law No. 7 of 2004).

3.7 Validity and Reliability

To enhance validity, the study relies on authoritative legal texts and officially published judicial circulars. Reliability is reinforced through consistent application of the analytical framework across all examined rulings and legal provisions.

Triangulation between statutory texts, judicial rulings, and scholarly interpretations further strengthens the credibility of the findings, as recommended in previous Palestinian legal research (Independent Commission for Human Rights, 2004).

4. Analysis and Results

4.1 Analytical Framework of Judicial Rulings

In accordance with the methodological approach adopted in this study, the analysis of judicial rulings issued by Palestinian Sharia courts is conducted through a structured analytical framework that integrates legal compliance (Al-Anbaki, 2019), child rights protection, and international compatibility. This framework directly reflects the research objectives, which aim to assess the effectiveness of the Sharia judiciary in safeguarding children's rights in custody disputes and to evaluate the extent of alignment between judicial practice (Khawat, 2018), national legislation, and international child rights standards (Convention on the Rights of the Child, 1989; Palestinian Child Law No. 7 of 2004).

Judicial rulings were analyzed as normative texts that embody judicial interpretation, discretionary reasoning, and practical application of custody-related legal provisions. This approach is consistent with doctrinal legal analysis and judicial decision analysis, as outlined in the methodology section (Al-Ammari, 2015), enabling an in-depth assessment of how custody rules are operationalized in practice (Personal Status Law No. 61 of 1976).

4.2 Judicial Interpretation of Custody Provisions

The analysis reveals that Palestinian Sharia courts largely adhere to the statutory framework governing custody as established under the Personal Status Law No. 61 of 1976. Judicial rulings consistently prioritize the mother as the primary custodian during early childhood, provided that statutory conditions are met, reflecting both Islamic jurisprudence and legislative intent (Personal Status Law No. 61 of 1976, Arts. 154–155).

However, the findings indicate that judicial interpretation remains predominantly text-oriented rather than welfare-oriented. In many rulings, judges relied strictly on age



limits and formal eligibility criteria without engaging in a comprehensive assessment of the child's psychological, emotional, and social needs (Al-Ammari, 2022). This practice limits the effective application of the best interests of the child principle, despite its explicit recognition in Palestinian legislation (Palestinian Child Law No. 7 of 2004, Art. 7).

These findings align with earlier Palestinian studies that criticized the rigidity of custody adjudication and the limited incorporation of child-centered evaluations in judicial reasoning (Independent Commission for Human Rights, 2004).

4.3 Application of the Best Interests of the Child Principle

One of the central objectives of this study was to examine the extent to which Sharia courts operationalize the best interests of the child principle in custody rulings (Shaarawi, 2020). The analysis demonstrates that while judges frequently reference child welfare rhetorically, the principle is rarely translated into concrete evaluative criteria within judicial decisions (Abdul Jalil, 2023).

5. Conclusions and Recommendations

5.1 Conclusions

This study examined the role of the Palestinian Sharia judiciary in protecting the rights of children in custody disputes through an analytical review of relevant legislation, international standards, and judicial rulings. Based on the qualitative doctrinal and judicial analysis adopted in the methodology, several key conclusions can be drawn.

First, the study concludes that the Palestinian Sharia judiciary occupies a central institutional position in regulating child custody and safeguarding children's rights within the family law system. Sharia courts exercise exclusive jurisdiction over custody disputes and possess discretionary authority that, in principle, enables them to prioritize child welfare in judicial decision-making (Personal Status Law No. 61 of 1976; Sharia Courts Law of 1959). This institutional role underscores the judiciary's potential as a primary mechanism for child protection in the Palestinian legal system.

Second, the analysis demonstrates that judicial practice remains predominantly constrained by rigid statutory provisions governing custody. Although Palestinian legislation recognizes the principle of the best interests of the child, particularly in the Palestinian Child Law No. 7 of 2004, judicial rulings often prioritize formal legal criteria over substantive child-centered evaluations (Palestinian Child Law No. 7 of 2004, Art. 7). As a result, the best interests principle is frequently applied in a declaratory manner rather than as an operative standard guiding judicial reasoning.

Third, the study concludes that gender-based custody age limits and automatic loss of custody upon remarriage represent significant structural limitations within the current custody framework. Judicial adherence to Articles 156 and 161 of the Personal Status Law reflects a formalistic approach that insufficiently accounts for the individual needs and circumstances of children (Personal Status Law No. 61 of 1976, Arts. 156, 161). These findings confirm conclusions reached in previous Palestinian studies that identify such provisions as incompatible with contemporary child protection standards (Independent Commission for Human Rights, 2004).



Fourth, the study finds that weak enforcement mechanisms significantly undermine the protective role of judicial rulings. Despite legislative reforms aimed at strengthening enforcement, custody and visitation orders are often delayed or ineffectively implemented, exposing children to prolonged parental conflict and instability (Decision by Law No. 17 of 2016; Decision by Law No. 20 of 2022). This enforcement gap reduces the practical impact of judicial decisions and limits the judiciary's ability to ensure sustained child welfare.

Fifth, the study concludes that there is partial but incomplete alignment between Palestinian custody practices and the Convention on the Rights of the Child. While Palestinian legislation and judicial discourse formally acknowledge international child rights standards, substantive compliance remains limited due to legislative rigidity and inconsistent judicial application (Convention on the Rights of the Child, 1989; Decision by Law No. 25 of 2021).

Collectively, these conclusions confirm the study's central argument that the protective role of the Palestinian Sharia judiciary is constrained not by institutional absence, but by structural and normative limitations within the existing legal framework.

5.2 Recommendations

In light of the above conclusions, the study proposes the following recommendations, aimed at enhancing the role of the Palestinian Sharia judiciary in protecting children's rights in custody disputes:

5.2.1 Legislative Reform of Custody Provisions

It is recommended that the Palestinian legislator undertake a comprehensive reform of custody-related provisions in the Personal Status Law. Such reform should prioritize the explicit incorporation of the best interests of the child as a binding legal standard, applicable to all custody determinations without exception (Palestinian Child Law No. 7 of 2004; Convention on the Rights of the Child, 1989).

Gender-based custody age limits should be reconsidered and replaced with flexible criteria that allow judges to assess custody continuation based on the child's individual needs, maturity, and welfare rather than fixed age thresholds.

5.2.2 Limiting Automatic Loss of Custody upon Remarriage

The study recommends abolishing or substantially restricting provisions that mandate automatic loss of custody due to remarriage. Instead, remarriage should be treated as a contextual factor subject to judicial evaluation, with custody decisions grounded in empirical assessments of the child's well-being and stability (Personal Status Law No. 61 of 1976, Art. 156).

5.2.3 Strengthening Judicial Discretion and Guidelines

To enhance child-centered adjudication, the Supreme Sharia Judiciary should issue binding judicial guidelines that clarify how judges should apply the best interests of the child principle in custody cases. These guidelines should include clear evaluative criteria covering psychological, social, educational, and emotional factors affecting the child (Judicial Circular No. 59/2012; Judicial Circular No. 32/2022).



5.2.4 Enhancing Enforcement Mechanisms

Effective protection of children's rights requires robust enforcement of custody and visitation rulings. The study recommends strengthening coordination between Sharia courts and enforcement authorities, expanding judicial oversight of enforcement procedures, and imposing proportionate sanctions for non-compliance with judicial orders (Decision by Law No. 17 of 2016; Decision by Law No. 20 of 2022).

5.2.5 Judicial Training and Capacity Building

Continuous judicial training programs should be implemented to enhance judges' understanding of international child rights standards and their practical application within Islamic legal frameworks. Such programs would promote harmonization between Sharia principles and international obligations, reinforcing judicial competence in child-centered adjudication (Convention on the Rights of the Child, 1989).

5.2.6 Harmonization with International Child Rights Standards

Finally, the study recommends continued legislative and judicial efforts to harmonize Palestinian custody regulations with the Convention on the Rights of the Child. This harmonization should be grounded in the objectives of Islamic law, demonstrating that international child rights norms are compatible with Sharia principles when interpreted through a welfare-oriented lens (Decision by Law No. 25 of 2021).

5.3 Contribution of the Study

This study contributes to the existing literature by providing a comprehensive analytical assessment of judicial rulings in Palestinian Sharia courts, highlighting the structural and normative factors that shape child protection in custody disputes. It bridges the gap between legal theory and judicial practice and offers evidence-based recommendations to enhance child-centered justice within the Palestinian legal system.

st interests of the child be a primary consideration in all judicial decisions affecting children (Convention on the Rights of the Child, 1989, Art. 3).

The findings confirm conclusions reached by previous studies cited in the file, which emphasize the absence of clear judicial guidelines for implementing the best interests principle in custody adjudication (Palestinian NGOs Guide to the CRC, 2015).

5.4 Gender-Based Custody Age Limits and Judicial Practice

The analysis further reveals that Palestinian Sharia courts strictly apply gender-based custody age limits, as stipulated in Article 161 of the Personal Status Law. Judicial rulings consistently terminate custody for male children at nine years of age and for female children at eleven, with limited consideration of the child's actual needs or preferences (Personal Status Law No. 61 of 1976, Art. 161).

This practice was found to be one of the most significant areas of tension between judicial application and international child rights standards. Article 2 of the Convention on the Rights of the Child prohibits discrimination based on sex, while Article 3 emphasizes individualized assessments of child welfare (Convention on the Rights of the Child, 1989, Arts. 2–3).



The findings corroborate prior legal studies referenced in the file, which argue that gender-based custody distinctions lack empirical justification and undermine substantive child protection (Independent Commission for Human Rights, 2004).

5.5 Remarriage and Automatic Loss of Custody

Judicial rulings analyzed in this study demonstrate strict adherence to Article 156 of the Personal Status Law, which provides for the automatic loss of maternal custody upon remarriage to a non-mahram. Courts rarely examine whether remarriage negatively affects the child's welfare, treating remarriage as a decisive legal ground rather than a contextual factor (Personal Status Law No. 61 of 1976, Art. 156).

This approach reflects a formalistic interpretation of custody rules that prioritizes legal certainty over child-centered analysis. The findings confirm arguments advanced in previous studies that such automatic disqualification mechanisms are inconsistent with the best interests principle and may conflict with Article 16 of the Convention on the Rights of the Child, which protects children from arbitrary interference in family life (Convention on the Rights of the Child, 1989, Art. 16).

5.6 Enforcement of Custody and Visitation Rulings

The analysis highlights that enforcement remains one of the weakest aspects of custody protection within the Palestinian Sharia judicial system. Despite the enactment of the Sharia Enforcement Law No. 17 of 2016 and its amendments, judicial rulings related to custody and visitation are often undermined by delayed or ineffective enforcement mechanisms (Decision by Law No. 17 of 2016; Decision by Law No. 20 of 2022).

Judicial circulars issued by the Supreme Sharia Judiciary aim to improve enforcement practices; however, the findings indicate that enforcement inconsistencies persist, exposing children to prolonged parental conflict and instability (Judicial Circular No. 59/2012; Judicial Circular No. 32/2022).

These findings align with prior empirical and legal studies that identified enforcement as a structural weakness in the Palestinian child protection system (Palestinian NGOs Guide to the CRC, 2015).

5.7 Judicial Discretion and Its Limits

While Palestinian Sharia judges possess discretionary authority in custody adjudication, the analysis reveals that such discretion is exercised within narrow boundaries imposed by rigid statutory provisions. Judges rarely deviate from formal custody rules, even in cases where deviation could better serve the child's interests.

This limited exercise of discretion reflects a broader structural issue identified in previous studies, namely the tension between codified personal status laws and the flexible, welfare-oriented principles of Islamic jurisprudence (Personal Status Law No. 61 of 1976; Independent Commission for Human Rights, 2004).

5.8 Discussion of Results in Light of Research Objectives

The findings directly address the research objectives by demonstrating that:

1. The Palestinian Sharia judiciary plays a central role in regulating custody but remains constrained by outdated legislative frameworks.
2. Judicial practice prioritizes statutory compliance over substantive child welfare analysis.



3. There is partial but insufficient alignment between judicial rulings and international child rights standards.

These results confirm the research hypothesis that legislative rigidity and weak enforcement mechanisms limit the judiciary's capacity to fully protect children's rights in custody disputes.

5.9 Relation to Methodology and Previous Studies

The findings validate the methodological choice of qualitative doctrinal and judicial analysis, as this approach effectively revealed the gap between normative commitments and judicial practice. The analytical framework proved suitable for evaluating legal compliance, child rights protection, and international compatibility. Moreover, the results are consistent with conclusions reached in previous Palestinian studies cited in the file, reinforcing the credibility and reliability of the findings (Independent Commission for Human Rights, 2004; Palestinian NGOs Guide to the CRC, 2015).

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Journal of Arts, Literature, Humanities and Social Sciences

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