

The Legal Framework for the Protection of Children in Islamic Sharia and International Human Rights Law

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Abstract

The protection of children's rights in international law has evolved gradually. For a long period, these rights remained largely within the sphere of state sovereignty, which contributed to widespread violations. Beginning in the late nineteenth century, the international community moved toward the internationalization of children's rights through non-binding declarations and later through binding international conventions. In contrast, Islamic jurisprudence developed an integrated legal framework for protecting children's rights. It safeguards the child's fundamental rights from before birth and regulates family matters—such as care, upbringing, and financial maintenance—while emphasizing the principle of the best interests of the child. This reflects the legislative precedence of Islamic law and its capacity to converge with modern concepts of child protection.

Keywords: Children's rights; Child protection; International human rights law; International conventions; Islamic law (Sharia); Islamic jurisprudence (Fiqh); Best interests of the child.

Introduction: Children's rights are among the most rapidly developing areas in contemporary international law. The international community has shown increasing interest in establishing legal principles and standards aimed at protecting children and guaranteeing their fundamental rights. However, this protection did not take practical shape until the emergence of international organization. Before that, human rights—including children's rights—were primarily considered a matter of domestic law, governed by the principle of state sovereignty. This granted states broad discretion in how they treated their populations, without meaningful international oversight, which in turn contributed to serious violations of children's rights.

From the late nineteenth century and early twentieth century onward, international awareness grew regarding the dangers of such violations. This encouraged efforts to internationalize human rights and to move them from the domestic sphere to the domain of international law. Initially, child protection took the form of moral and non-binding instruments—international declarations expressing general principles. It later developed into legally binding protection through international treaties, which addressed human rights broadly and children's rights specifically.

In comparison to this relatively modern development in international law, Islamic jurisprudence offers a comprehensive legal system that addresses human rights in an integrated manner, defining rights and assigning duties and responsibilities in a way that balances the individual and society. Islamic law gave special attention to children's rights: it guaranteed protection and care from the stage preceding birth—and even before pregnancy—by emphasizing the sound choice of spouses and the fulfillment of the pillars and conditions of lawful marriage, thereby promoting family stability and healthy upbringing.

Islamic jurisprudence also regulates the child's upbringing and care through detailed rules: it strengthens lineage rules to preserve identity and organizes breastfeeding, custody, and maintenance in order to secure the material and moral care necessary for healthy development. This shows that child protection in Islamic jurisprudence was not a temporary or reactive response, but rather an essential component of a broader legal and ethical framework that preceded many aspects of modern international regulation.

Accordingly, this study offers a comparative analysis of the legal protection of children's rights in contemporary international law and Islamic jurisprudence. It maps where the two approaches meet and where they depart, while drawing attention to the distinctive reach of the Islamic framework in this field.

Part One: Legal Protection of the Child in International Law

The Industrial Revolution in Europe created conditions that facilitated the development of human rights, especially in response to the harsh social realities of that period. Rising

awareness and social struggle—particularly regarding living standards and labor conditions—contributed to the growth of human rights discourse. The period in which attention to human rights began to expand also coincided with the emergence of international organization, represented by the League of Nations, established in 1920. The League worked through its institutions to promote international peace and security until 1939. Yet, it is notable that the Covenant of the League of Nations contained no explicit provisions on human rights in general, nor on children's rights in particular.

First Requirement: Protection of Children's Rights in International Declarations

Early concern for children's rights appeared through certain efforts related to the protection of minorities and the rights of peoples living in territories under mandate systems, as well as through the work of the International Labour Organization, which fought to protect workers and combat the exploitation of child labor. Over time, these initiatives led to calls for international instruments grounded in moral commitment to protecting children's rights—most notably early declarations.

Branch One: The Geneva Declaration of 1924

The international struggle to protect children's rights initially developed through civil society. The International Save the Children Union, founded in Britain in 1919, aimed to protect children from famine, particularly during periods of blockade and deprivation. The Union relied on charitable work, fundraising, and public campaigns, and received moral support from religious authorities, which strengthened its influence in the fight against starvation and fear affecting children¹.

¹Mermoun Rachida, *The Protection of Children's Rights under the African Charter on the Rights and Welfare of the Child: A Comparative Study with the*

International Convention on the Rights of the Child, Doctoral Thesis in Public Law, Faculty of Law, University of Constantine, 2016/2017, p. 245.

Collective and cooperative work expanded through involvement by doctors, lawyers, and other civil society actors, supported by organized publicity and relief campaigns. Practical relief efforts began in 1920, and between 1921 and 1923 the Union intensified its food assistance activities in regions such as Russia and Turkey². Cooperation with relief initiatives led the League of Nations to recognize the Union's activities and support its humanitarian role. As the approach evolved from relief to rights, the idea emerged that childhood required a formal declaration. Consequently, the League of Nations adopted the first declaration on children's rights on 26 September 1924³: The **Geneva Declaration of 1924**.

Because this declaration represented a foundational step, the League reaffirmed it in 1934 and urged member states to implement its provisions and incorporate its key principles into domestic legislation. Among the most important principles were⁴:

- Children must be provided with the means necessary for healthy development and well-being.
- Children must be protected from hunger, homelessness, and delinquency.
- Children must be given priority in receiving relief during disasters.

- Children must be protected from exploitation, especially in labor.
- Children should be raised on values of cooperation, mutual assistance, and fairness.

Branch Two: The Universal Declaration of Human Rights (1948)

Following the Second World War, there was an urgent need for an international document devoted to human rights. This resulted in the **Universal Declaration of Human Rights (UDHR)**, which adopted human rights principles that had already begun to take shape in earlier initiatives, including the spirit of the Geneva Declaration⁵. While the UDHR reflected political and philosophical compromises in a divided international environment, it nevertheless succeeded in establishing a universal reference for human dignity and rights⁶.

The UDHR can also be understood within a longer historical trajectory that includes earlier documents such as the **Magna Carta (1215)** and the **American Bill of Rights (1718)**, as well as the **French Declaration of the Rights of Man and of the Citizen (1789)**⁷. Yet earlier declarations were mainly domestic in nature, whereas the UDHR addressed humanity as a whole and was produced through international participation⁸.

²<https://hrite.co/wp-content/uploads/2020/05/df>

³ <https://hrlibrary.umn.edu/arab/child1924.htm>

⁴Jaafar Khadija, *Protection of Children's Rights in International Instruments and Domestic Laws*, Journal of Legal and Human Sciences, Vol. 15, 2022, p. 268.

⁵Mohammad Irfan Al-Khatib, *The Dialectic of the United Nations' Role in the Protection of Human Rights: The International Bill of Human Rights*, The Jordanian Journal of Law and Political Science, Vol. 6, No. 4, p. 45.

⁶Safaa Al-Din Muhammad Abd Al-Hakim Al-Safi, *The Human Right to Economic Development and Its*

International Protection, 1st ed., Al-Halabi Legal Publications, Lebanon, 2005, p. 87.

⁷Al-Jouz Ezzedine, *Protection of Human Rights through the Right of Humanitarian Intervention: A Reappraisal of International Law*, PhD Dissertation, Department of Public Law, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2005, p. 381.

⁸Safaa Al-Din Muhammad Abd Al-Hakim Al-Safi, *The Human Right to Economic Development and Its International Protection*, 1st ed., Al-Halabi Legal Publications, Lebanon, 2005, p. 87.

Izz Al-Arab Al-Hakim Benani, *The Universal Declaration of Human Rights: Principles and Values*, Al-Afaq Journal, p. 381.

The first French Declaration of the Rights of Man and of the Citizen was issued on 26 August 1789. It is

The drafting process began roughly two years before its adoption on 10 December 1948. The idea was proposed by Ricardo Alfaro during the opening session of the United Nations in 1945. Drafting was assigned to the UN Commission on Human Rights under the Economic and Social Council, which held intensive meetings in New York (28 January–10 February). The Commission included eighteen members representing diverse political, cultural, and religious backgrounds⁹.

The draft was debated extensively within the UN General Assembly's Third Committee and ultimately adopted in Paris on 10 December 1948 with broad support¹⁰. The UDHR became a foundational reference for modern international human rights law and is often described as the "Magna Carta of the twentieth century."

Although the UDHR does not focus exclusively on children, several articles directly or indirectly protect children's rights, including:

- **Article 1:** All human beings are born free and equal in dignity and rights (children included).

considered one of the most renowned historical documents in humanity's struggle against injustice and tyranny. It was hastily drafted and adopted by the National Constituent Assembly of the Great French Revolution, wherein it explicitly and unequivocally affirmed equality among all citizens, recognized human rights and fundamental freedoms, and affirmed the sovereignty of the people. At the time of its promulgation, this Declaration carried profound implications regarding the nature of governance in France, as the monarchy came to be founded upon democratic theory, according to which the source of authority lies in the will of the people. It also conferred upon the individual a new status within the state, distinct in political life, to the extent that it may be regarded as the birth certificate of the modern citizen.

Despite the promulgation of the first constitution of the French Revolution on 3 September 1791, the National Constituent Assembly was unable to amend the Declaration due to the sanctity it had acquired among the people. Consequently, the Declaration and its principles were incorporated into subsequent French

- **Article 3:** Everyone has the right to life, liberty, and security of person.
- **Article 4:** Prohibition of slavery and servitude (relevant to trafficking and forced labor involving children).
- **Article 6:** Recognition as a person before the law, which applies to children as well, as legal personality begins at birth and is recognized in many systems even during pregnancy in certain contexts¹¹.
- **Article 15:** Right to a nationality (central for legal identity and protection).
- **Article 25:** Motherhood and childhood are entitled to special care and assistance, without discrimination based on birth status.
- **Article 26:** Right to education, including free elementary education, with responsibility shared between parents and the state¹².

constitutions issued in the years 1946, 1948, 1958, and 1973. The French Declaration was influenced by pre-revolutionary theories and philosophies, particularly the ideas of Jean-Jacques Rousseau, and was also clearly influenced by the American Declaration of Independence issued earlier in 1776. For further reference, see: Slimani Hani Al-Tuaimat, *Human Rights and Fundamental Freedoms*, 1st Arabic ed., Dar Al-Shorouk for Publishing and Distribution, Amman, 2003, p. 15.

⁹Mohammed Irfan Al-Khatib, *previous reference*, p. 48.

¹⁰Abdel Karim Alwan, *Public International Law: Human Rights and International Organizations*, Dar Al-Maaref Publishing, Alexandria, 2007, p. 36.

¹¹Article 6 of the International Covenant on Civil and Political Rights (ICCPR).

¹²Marmoun Rachida, *previous reference*, p. 243.

Second Requirement: Protection of Children's Rights in International Human Rights Treaties

The UN Charter affirmed equality in human rights and fundamental freedoms without discrimination based on race, language, religion, or sex. The UDHR further clarified prohibited grounds of discrimination¹³, including color, language, sex, religion, political opinion, and other opinions. These principles were later reinforced through binding treaties—most notably the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**—both of which provide special protection relevant to children.

Branch One: Children's Rights in the Two Covenants (1966)

The primary purpose of the two Covenants was to give binding legal force to rights that had previously been expressed mainly as moral commitments in the UDHR. The UN Commission on Human Rights referred to this set of instruments as the “International Bill of Human Rights.”¹⁴

The Covenants were adopted during a period of relative international détente after the Cuban Missile Crisis (1962). They were called “International” rather than “Universal” because they are directed at states and impose obligations of compliance. With their adoption, the rights proclaimed in the UDHR were transformed

into treaty-based legal duties derived from international conventional law, largely resolving debates about the legal value of those rights¹⁵.

The preambles of the Covenants emphasize that civil and political rights and economic, social, and cultural rights are equal in value and mutually reinforcing¹⁶. They are interrelated, indivisible, and interdependent: enjoyment of one category supports realization of the other¹⁷.

In addition, two Optional Protocols to the ICCPR were adopted: the first allows for individual complaints to the Human Rights Committee regarding¹⁸ alleged violations¹⁹, and the second concerns the abolition of the death penalty.

Examples of child-relevant protections include:

- **ICESCR Article 10:** protection of the family, motherhood, and children without discrimination.
- **ICESCR Article 12:** protection of infants through improved maternal healthcare for pregnant women.
- **ICESCR Article 13:** free and compulsory primary education.
- Under the ICCPR, children appear in a more limited way, including separation of juvenile accused persons from adults

¹³Baya Abdelkader, *The Two International Human Rights Covenants: Between Obligation and Reservation*, Dar Houma for Publishing and Distribution, Algeria, 2014, p. 10.

¹⁴Baya Abdelkader, *previous reference*, p. 12-13.

¹⁵Nawal Qamous, *Human Rights in the International Covenant on Civil and Political Rights (1966)*, Algerian Journal of Legal and Political Sciences, Vol. 55, No. 3, 2018, p. 357.

¹⁶The same reference, p. 358.

¹⁷Marmoun Rachida, *previous reference*, p. 236.

¹⁸It was adopted by virtue of United Nations General Assembly Resolution No. 2200 A (XXI) dated 16 December 1966 and entered into force on 23 March 1976.

¹⁹felali Kamal, Lectures for First Year Master's Program, Major in Public International Law, Academic Year 2017/2018, p. 23.

and procedural safeguards that consider the child's age, especially under **Article 14**.

- Other provisions protect children indirectly because they guarantee rights for “everyone,” without excluding minors.

Branch Two: Children's Rights under the 1989 Convention

The Convention on the Rights of the Child (CRC) is among the most important specialized instruments devoted to children's rights. Nearly all states are parties, with the United States as an exception. The Convention is binding on States Parties and applies to all children within a state's jurisdiction, whether nationals or residents. It is founded on core principles, including:

- **Non-discrimination:** displaced and refugee children enjoy the same rights as other children in the host state.
- **Best interests of the child (Article 3):** decisions must ensure the care necessary for the child's well-being, while taking into account the rights and duties of parents or legal guardians²⁰.
- **Right to life, survival, and development (Article 6):** requiring appropriate measures to protect life, including prohibiting the death penalty for children and ensuring adequate living standards (reinforced through provisions such as Articles 27 and 18)²¹.
- **Respect for the child's views (Article 12):** children have the right to express their views and be heard in judicial and administrative matters, and to partici-

pate in cultural and social life, including forming associations and peaceful assembly.

- **Freedom of thought, conscience, and religion (Article 14)**²²: subject to lawful limitations necessary for public safety, public order, morals, and the rights of others; some Islamic states entered reservations due to perceived incompatibility with Islamic Sharia.

Part Two: Protection of Children's Rights in Islamic Jurisprudence

The child represents the foundation of the future and the wealth of nations. For this reason, children need protection and care that preserve dignity, strengthen identity, respect rights, and ensure effective safeguards. Before moving into details, this part examines (1) the forms of protection granted to children in Islamic Sharia and (2) the protection of children's financial rights in Islamic jurisprudence.

First Requirement: Forms of Protection of Children's Rights in Islamic Jurisprudence

Islamic jurisprudence provides comprehensive protection of children's rights in different aspects of life, beginning with the right to life and lineage and extending to care, upbringing, and education. It establishes detailed rules to secure these rights and adopts the best interests of the child as a governing standard, making child protection in Islamic law a coherent approach that combines moral responsibility with the safeguarding of human dignity.

²⁰Article 13 of the 1989 Convention on the Rights of the Child.

²¹Berrabah Said¹, Mermoune Rachida L'exécution des arrêts de la cour européenne des droits de l'hommeThe execution of judgments of the European Court of

Human Rig Revue Algérienne de Droit et des Sciences Politiques - Volume 06, N. 01 - (2021)- p. 71

²²Article 14 of the 1989 Convention on the Rights of the Child.

Branch One: Protection of the Child's Right to Lineage (Nasab)

Islamic jurisprudence pays close attention to the causes and methods of establishing lineage, seeking to prevent harm and achieve legitimate interests. While lineage from the mother is always established by birth—whether the pregnancy resulted from a valid or invalid marriage, intercourse under a mistaken belief, or adultery—lineage from the father is linked to specific legal situations and conditions.

1) Establishing lineage through a valid marriage

The Prophet (peace be upon him) confirmed the attribution of the child to a lawful marital relationship: **“The child belongs to the bed (of marriage), and the adulterer gets nothing.”** This rule protects the child's dignity and the mother's honor and treats birth within marriage as a presumption that the child is from the husband.

Commonly stated conditions include²³:

- The husband must be capable of procreation and have reached maturity.
- It must be possible for the spouses to meet. Hanafis consider the valid contract sufficient, while the majority (Malikis, Shafi'is, Hanbalis) require that consummation be possible, either through actual meeting or legally valid seclusion.
- Birth must occur after a minimum of **six months**: from the contract date according to Hanafis, and from the possibility of consummation/valid seclusion according to the majority.
- The husband must not deny lineage through **li'ān** before a judge; if denial

is established, the child is attributed to the mother.

2) Establishing lineage through an invalid (defective) marriage (Nikāḥ Fāsīd)

Defective marriage has a special status in Islamic law and is not treated as adultery in its general nature. If a child results from such a marriage, the child is not regarded as a “child of adultery.” Schools differ on when the pregnancy period is calculated (contract, intercourse, or possibility of consummation). A child-protective approach favors interpretations that prevent the child from “losing” lineage²⁴.

3) Establishing lineage through intercourse under mistaken belief (Wat' bi-Shubha)

A woman is lawful only through a valid marriage, yet circumstances may create a mistaken belief. In such cases, punishment is not applied due to doubt, and lineage may be established if pregnancy and birth timelines make it possible—typically requiring birth at least six months after intercourse. If not, lineage is not established unless the man acknowledges the child, because another form of mistaken belief may be involved.

4) Establishing lineage after separation

Separation may occur in different forms, and lineage rulings vary accordingly, including:

- lineage of the child of a divorced woman;
- lineage of the child of a widow.

5) Lineage by acknowledgment and evidence

Acknowledgment and proof remain fundamental means of resolving lineage disputes.

6) Lineage by physiognomy (Qiyāfa) and modern DNA methods

²³Abdul Karim Zidan, *Al-Mufasssal fi Ahkam al-Mar'ah wa al-Bayt al-Muslim fi al-Shari'ah al-Islamiyyah*, Vol. 9 – Al-Risalah Foundation, Beirut, Lebanon, 3rd Edition, 1997, p. 332.

²⁴The same reference, p. 332.

Qiyāfa refers to identifying lineage based on physical resemblance. Jurists differed: Abu Hanifa and others rejected it, whereas al-Shafi'i and the majority accepted it, supported by Prophetic tradition and practice among Companions and later scholars²⁵.

Modern science provides more accurate tools for what qiyāfa sought to achieve, especially DNA testing ("genetic fingerprinting"). The Islamic Fiqh Academy approved its use (2002) in specific cases, such as disputes over unknown parentage, hospital mix-ups, assisted reproduction-related confusion, and cases of lost or mixed children after disasters.

Ultimately, lineage is essential because it connects the child to family and protects the child from denial and social loss, enabling access to many other associated rights.

Branch Two: Protection of the Child's Right to Care, Upbringing, and Education

Islamic jurisprudence affirms a child's right to comprehensive care from birth. Breastfeeding and custody are treated as core rights²⁶ that ensure sound physical and psychological development, grounded in Qur'anic guidance and Prophetic teachings that require full care and responsibility. Islamic law obliges both parents to provide the child's health and psychological care, taking into account natural needs and developmental requirements. It also gives the mother priority in custody due to her nurturing capacity, while placing the **best interests of the child** as the decisive criterion.

Custody is both a right and a duty: it is an absolute right of the child and a corresponding

obligation on the parents. In practice, custody issues often arise in exceptional circumstances such as divorce²⁷, and custody becomes one of the most important consequences of marital dissolution²⁸.

This protection includes:

- **Education:** formal schooling as a right of every child, guaranteed free of charge and compulsory until the child's capacities and aptitudes are developed enough to choose an educational path.
- **Protection from harm:** ensuring the child is not exposed to physical violence (beating, torture), exploitation, intimidation, or verbal abuse that may cause psychological or cognitive harm.
- **Moral protection:** ensuring proper discipline and nurturing so the child becomes a well-balanced and upright individual, protected from harmful environments and destructive companionship.
- **Health protection:** ensuring medical care, vaccinations and check-ups, and access to treatment when needed, because physical well-being is vital for healthy moral and academic development²⁹.

Islamic jurisprudence also emphasizes sound upbringing as a shared responsibility of family and society, reflected in the Prophetic teaching: **"Each of you is a shepherd, and each of you is responsible for his flock."**³⁰ It further guarantees the child's right to education as a

²⁵Ibn Kathir, Ismail ibn Kathir, *Tafsir al-Qur'an al-Azim*, Commentary on verse (At-Talaq: 7), Dar Tayyibah, Vol. 1, p634.

²⁶Ghalia Riyad Al-Nabsha, *Children's Rights between Domestic Laws and International Conventions*, 1st edition, 2010, Al-Halabi Publications, p. 39.

²⁷Badis Diabi, *Effects of Dissolving the Marital Bond*, Dar Al-Huda, Ain M'lila, Algeria, 2008, p. 49.

²⁸Badis Diabi, *Ibid.*, pp. 51–53.

²⁹Sahih al-Bukhari, *Book of Jumu'ah / Book of Judgments*, in the chapter on responsibility and care (Hadith No. 2417).

³⁰Ibn Majah, Muhammad ibn Yazid al-Qazwini, *Sunan Ibn Majah*, Book of Introduction, Chapter on the Virtue of Scholars and Encouragement to Seek Knowledge, Hadith No. 224.

pillar of personal development, supported by general texts encouraging the pursuit of knowledge without discrimination between male and female³¹.

Second Requirement: Protection of Children's Financial Rights in Islamic Jurisprudence

Islamic jurisprudence safeguards children's financial rights as part of its comprehensive concern for childhood. It affirms that a child has an independent financial capacity and recognizes fixed rights intended to preserve and develop the child's property and protect it from neglect or aggression. This protection is regulated through detailed rules related to maintenance and guardianship, with particular emphasis on safeguarding the property of orphans, in line with the best interests of the child and the preservation of dignity.

Branch One: Maintenance (Nafaqah) as a Fixed Financial Right

The basis for the obligation of child maintenance includes Qur'anic guidance: **"Upon the father is their provision and clothing according to what is acceptable."** The Prophet (peace be upon him) also told Hind, the wife of Abu Sufyan: **"Take what suffices you and your child, according to what is acceptable."** These texts establish the father's primary responsibility for maintenance.

Causes of the obligation

Jurists agreed in principle that relatives may owe maintenance to one another, but differed on which kinship relations create the obligation:

- **Hanafis:** maintenance between ascendants and descendants is based on birth; for other relatives it is linked to prohibited marriage degrees.
- **Malikis:** maintenance is largely confined to the direct line of descent (parents and legitimate children), excluding other relatives³².
- **Shafi'is:** maintenance is based on birth broadly, for ascendants and descendants without limiting degrees.
- **Hanbalis:** among the broadest approaches; some views link maintenance to birth alone, while others connect it to inheritance eligibility.

A general observation in the text is that the Maliki view is among the narrowest, while the Hanbali view is among the broadest in expanding the circle of relatives who may be responsible.

Conditions for the child's entitlement to maintenance

Commonly noted conditions include:

- established lineage between the child and the person obligated to provide maintenance;
- the child's poverty and lack of accessible property³³;
- inability to earn due to age, illness, or disability (and in certain discussions, inability due to being engaged in learning);

³¹Badran Abu Al-Aynain Badran, *Children's Rights in Islamic Sharia and Law*, Sebab Al-Jamia Publishing, Alexandria, Egypt, 1st Edition, 1981, p. 105.

³²Abdel Karim Zaidan, *Al-Mufasssal fi Ahkam al-Mar'awa al-Bayt al-Muslim fi al-Shari'a al-Islamiyya*, Vol.

10, Al-Risala Publishing, Beirut, Lebanon, 3rd Edition, 1997, pp. 159-160.

³³Badran Abu Al-Aynain Badran, *Ibid.*, p. 115.

- the obligor's financial capacity (wealth beyond essential needs) or ability to earn;
- when maintenance is sought from relatives beyond the father, the obligor is typically a close inheriting relative.

If the poor child has no relative able to provide maintenance, responsibility transfers to the public treasury (Bayt al-Māl), which is tasked with meeting the needs of the vulnerable.

Who must provide maintenance?

-The Hanafis hold that guardianship belongs first to the father, then his guardian, then the guardian of the guardian, followed by the grandfather, then the guardian of the grandfather, then the judge, and finally whomever the judge appoints as guardian of the minor.

-The Malikis consider guardianship over the minor to be first for the father, then his guardian, followed by the guardian of the guardian, and finally the ruler.

-The Shafi'is align with the Hanafi view regarding the inclusion of the grandfather in guardianship, arranging it as father, then grandfather, then their respective guardians, followed by the judge or whomever the judge appoints.

-The Hanbalis hold that guardianship over the minor's property belongs to the father, then his guardian, and then the ruler.

From the above, it is clear that jurists agree on giving precedence to the father in guardianship. The grandfather is considered by the Hanafis in the line of guardianship, but the father's guardian takes precedence over him. The Shafi'is place the grandfather directly after the father, followed by the guardian, then

the guardian of the grandfather. The Malikis and Hanbalis do not grant the grandfather guardianship over the minor. According to the Malikis, the sequence is the father, his guardian, the guardian of the guardian, then the ruler, or any guardian chosen if no guardian is appointed by consensus.

The rationale for the Malikis and Hanbalis excluding the grandfather is as follows: The Malikis reasoned that the grandfather shares inheritance with the minor's father, unlike the father, making him subordinate to the father and thus ineligible for guardianship. The Hanbalis exclude the grandfather because he cannot act independently but only through the father, making him akin to a sibling, while the property remains a trust. Anyone not mentioned is considered incapable of safeguarding the property of the minor³⁴

Branch Two: Guardianship over the Child's Property

Jurists agree that the father has priority in guardianship over a minor's property, but they differ on succession³⁵:

- **Hanafis:** father → father's appointed guardian → guardian's guardian → grandfather → grandfather's guardian → judge → judge's appointee.
- **Malikis:** father → father's appointed guardian → guardian's guardian → ruler.
- **Shafi'is:** father → grandfather → their appointed guardians → judge or judge's appointee.
- **Hanbalis:** father → father's appointed guardian → ruler.

The schools that exclude the grandfather provide different reasoning related to inheritance

³⁴Ali Abdullah Al-Aoun, Abdullah Ibrahim Al-Kilani, *Al-Siyasa Al-Shar'iyya fi Ri'ayat Amwal Al-Qasireen wa Man Fi Hukmihim: Dawlat Qatar Namoudajan, Dirasat: 'Ulum Al-Shari'a wal-Qamun*, Vol. 43, No. 02, 2016, p. 614.

³⁵Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami wa Adillatuh, Dar Al-Fikr Al-Mu'asir, Damascus, 4th Edition, 1997*, p. 6701.

dynamics and the nature of trust in managing property³⁶.

Conditions for private guardianship

Key conditions include³⁷:

- **Sound mind:** no guardianship for the insane or mentally incapacitated.
- **Maturity:** the guardian must be an adult capable of sound judgment.
- **Islam:** a non-Muslim cannot be a guardian over a Muslim child.
- **Justice (uprightness):** disputed. Shafi'i (and the preferred Hanbali view) require it³⁸; Hanafis and Malikis do not treat it as a strict condition, arguing that guardianship is fundamentally based on compassion and protection of interests³⁹.

Additional debated conditions include:

- **Male gender:** generally required by the three schools (Maliki, Shafi'i, Hanbali) particularly in marriage guardianship, while Hanafis do not require it⁴⁰.
- **Rashd (prudence/financial responsibility):** treated as a condition by⁴¹ Shafi'is and Hanbalis, though its definition varies.⁴²

Conclusion

This study concludes that protecting children's rights is a fundamental pillar for building a balanced and just society. Contemporary international law has increasingly addressed these rights through declarations and binding conventions aimed at establishing enforceable legal protection for children. Yet, despite its importance, this attention emerged relatively late due to the historical dominance of state sovereignty over human rights matters.

In contrast, Islamic jurisprudence demonstrates clear legislative precedence in protecting children's rights. It provides an integrated system of rights beginning before birth and encompassing the right to life, lineage, care, upbringing, education, and financial protection. Across these domains, the principle of the best interests of the child functions as a central standard. This convergence between Islamic legal principles and modern international approaches confirms that child protection is not a newly invented concept, but a deeply rooted human value recognized and institutionalized in Islamic law for centuries.

Recommendations

In light of the study's findings, the following recommendations may strengthen the protection of children's rights:

³⁶Badran Abu Al-Aynain Badran, *Ibid.*, p. 115.

³⁷Wahba Al-Zuhayli, *Al-Fiqh*, *Ibid.*, Vol. 9, p. 6700

³⁸Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami wa Adillatuh*, *Ibid.*, Vol. 9, p. 6702.

³⁹Othman bin Hasnin Al-Bari Al-Jaali Al-Maliki, *Siraj Al-Salik*, Vol. 2, Dar Al-Fikr, Beirut, 1982 Edition, p. 37.

⁴⁰Ibn Al-Qayyim Al-Jawzi, *Zad Al-Mihād fī Hudā Khayr Al-'Ibād*, Vol. 3, Dar Al-Kitab Al-Arabi, Beirut, Lebanon, p. 22.

⁴¹Mansur bin Yunus Al-Bahuti, *Kashaf al-Qina' 'an Matn al-Iqna'*, commentary by Sheikh Hilal Musailhi, Vol. 5, Maktabat al-Nashr al-Haditha, p. 55.

⁴²Sadiq Abd Al-Rahman Al-Gharbani, *Madkhal Al-Fiqh Al-Maliki wa Adillatuh*, Vol. 2, Al-Rayan Printing House, Beirut, 1st Edition, 2002, p. 558. Ibn al-Qayyim al-Jawzi, *Zad al-Mahād fī Hudā Khayr al-'Ibād*, Vol. 3, Dār al-Kitāb al-'Arabī, Beirut, Lebanon, p. 22.

1. Promote the integration of Islamic jurisprudential principles on child protection into national legislation, as a coherent framework grounded in the best interests of the child.
2. Align domestic legislation with international child-rights conventions in ways that do not conflict with established Sharia principles and societal values.
3. Strengthen the preventive role of family, educational, and religious institutions in protecting children's rights, especially in care, upbringing, and education.
4. Increase legal and Sharia-based awareness of children's rights among guardians and society through awareness programs, media, and educational curricula.