

## **Jurisdiction in Cases of Homeless Children “A Comparative Study between Islamic Jurisprudence and the Saudi Judicial System”**

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### **Abstract**

Addressing the issues faced by children living outside traditional family structures requires more than simply applying legal or religious texts; it necessitates a deep understanding of the nature of these situations and an awareness of the responsibility of judicial authorities to protect this vulnerable group. Homelessness is not merely the absence of shelter, but a complex social and legal situation that can lead to direct violations of a child's rights to care and protection. This research examines this phenomenon from two complementary perspectives: the first, derived from Islamic jurisprudence, which includes principles and rulings that uphold the protection of minors and their dignity; and the second, through the Saudi judicial system, which has sought to codify and implement these principles within a modern legal framework. Through this comparative study, the research aims to highlight how both jurisprudence and the legal system address this issue, in terms of concepts, methods, and outcomes. The study discusses the extent to which Islamic jurisprudence and the Saudi legal system converge in recognizing the principle of "the best interests of the child," the state's responsibility, and the judge's authority to take appropriate measures for the child's protection. It also addresses areas of divergence, particularly in judicial structure and procedural rules, compared to the flexibility of jurisprudential approaches based on the objectives of Islamic law (Maqasid Al-Shari'ah). This study seeks to move beyond mere description, analyzing the extent to which the Saudi judicial system has succeeded in providing effective solutions that respect religious principles without neglecting institutional and legal realities. The study concludes with a critical perspective that examines points of convergence and divergence, and suggests areas for development to achieve more comprehensive legal protection that is consistent with religious principles and practical requirements.

**Keyword:** Saudi, Legal, Judicial, Comparative, Child

**Introduction**

Children are the cornerstone of building and sustaining societies; they are the true wealth upon which the future depends. Therefore, providing them with protection and care is not merely a moral obligation, but a legal, social, and ethical imperative imposed by society's responsibility towards its most vulnerable members. Various legislations and regulations have been keen to establish a set of guarantees that ensure the protection of children and safeguard their fundamental rights, foremost among them the right to family care, education, and protection from neglect or homelessness. Contemporary societies are witnessing numerous social and economic challenges that have affected family stability and cohesion, leading in some cases to the emergence of social problems that directly impact children, most notably the phenomenon of child homelessness. This phenomenon is considered a serious social issue due to its negative repercussions on societal security and stability, in addition to exposing children to the loss of their fundamental rights to care, protection, and education.

The research problem lies in the lack of clarity regarding the powers of the official bodies concerned with this issue among some segments of society. Therefore, it is necessary to highlight the issue of jurisdiction when dealing with this phenomenon, as it is undeniably a shared responsibility between social and judicial institutions. The aim is to protect homeless children and ensure their upbringing in a safe environment that preserves their dignity and rights. In the Islamic context, Islamic law has given great attention to protecting children and safeguarding their interests. It has established a comprehensive system of rulings that guarantee their protection from loss and neglect, and obligate society and the state to care for them when family care is lost. It has also assigned the judiciary an important role in protecting the rights of minors and intervening in cases where a child is subjected to neglect or homelessness in a way that serves their best interests and preserves their dignity. In the Kingdom of Saudi Arabia, based on the principles of Islamic law, the judicial system has been keen to regulate mechanisms for protecting children by establishing specialized judicial bodies such as juvenile courts and personal status courts, in addition to regulations and bylaws aimed at protecting children and ensuring their care in cases of loss of family care. The importance of addressing this topic stems from the need to study judicial jurisdiction in cases involving homeless children and to clarify the legal and regulatory foundations upon which it rests, especially given the scarcity of comparative studies that have examined this issue between Islamic jurisprudence and the Saudi judicial system. While some previous studies have focused on the general social or legal aspects of child protection, the issue of judicial jurisdiction in cases of homelessness has not received the attention of a comparative analytical study that combines jurisprudential principles with contemporary judicial organization. This is precisely what this research aims to address. Hence the idea for this research, entitled: "Judicial Jurisdiction in Cases of Homeless Children: A Comparative Study between Islamic Jurisprudence and the Saudi Judicial System," which seeks to identify the judicial foundations upon which the handling of homelessness cases is based in both Islamic jurisprudence and the Saudi judicial system. This research addresses the topic through three main sections, examining the issue from various theoretical and practical, legal and regulatory perspectives. The first section addressed the judicial jurisdiction over cases of homeless children in Islamic jurisprudence, clarifying the judiciary's authority over children, the bodies responsible for addressing homelessness from the perspective of Islamic jurists, and the legally permissible judicial measures that can be taken regarding homeless children. The second section examined the judicial jurisdiction over cases of homeless children within the

Saudi judicial system, identifying the judicial bodies competent to hear these cases, such as juvenile courts, personal status courts, and the Public Prosecution, in addition to their specific litigation procedures and the legal measures that can be taken to protect homeless children. The research concluded with a third section that presented a comparative study between Islamic jurisprudence and the Saudi judicial system in addressing cases of homeless children, highlighting the points of agreement and disagreement between them and the extent to which the Saudi judicial system reconciles Islamic jurisprudence with the requirements of contemporary legal systems in protecting children and ensuring their best interests. Therefore, this research does not only aim to provide a descriptive overview of the jurisprudential rulings and judicial systems, but also seeks to provide a comparative analysis that highlights the extent of the integration of the Saudi judicial system with the principles of Islamic Sharia in protecting homeless children, which contributes to strengthening efforts aimed at protecting this group and rebuilding society.

### **Literature Review**

A study by Ashwaq Faraj Al-Subaie and others, Academy of Islamic Civilization, Faculty of Social and Islamic Sciences, Universiti Teknologi Malaysia 2025, entitled "Child Rights in Islam, the International Convention on the Rights of the Child, and their Applications in the Kingdom of Saudi Arabia", This study investigates the status of children's rights in Saudi Arabia, underscoring their significance within both international and Islamic frameworks. Grounded in Islamic principles that emphasize the protection and well-being of children, the Kingdom has made efforts to harmonize its legal system with global standards, particularly following its ratification of the Convention on the Rights of the Child in 1996. The research assesses the extent to which Saudi legislation upholds children's rights in accordance with Islamic teachings and international commitments. It also identifies key legal, social, and cultural obstacles that impede the full realization of these rights. Employing a qualitative literature review approach, the study draws on an analysis of religious texts, academic research, legal documents, and reports from authoritative sources such as government agencies and UNICEF. The findings indicate that Saudi Arabia's legal framework is broadly aligned with international child rights standards, especially in safeguarding the rights to life, education, and healthcare. Furthermore, the study underscores notable legislative advancements, particularly the enactment of the Child Protection Law in 2014. Despite the importance of this study, it did not address the issue of homeless children and related matters, and this is what we will do in this paper.

A study by Jehan Saleh Lardhi, Journal of Sociology and Social Work, entitled "Protecting Children in Saudi Arabia: Preparing Trainee Social Workers 2016", the study focus on the child protection has gained more attention in Saudi Arabia since new laws were introduced in 2013 that made child abuse a criminal offence. Consequently, there has been pressure placed on social services to prepare specialist social workers to deal with the challenge of protecting children. Social work trainees at three universities in Riyadh were surveyed to find out their perceptions on how well they were prepared for working in child protection. Their experiences in practice placements seem to have benefitted them in their understanding and application of theory, but many have not had the advantage of suitable placements. Whilst their confidence in dealing with child abuse appears to be high, there is no indication that they will have the same confidence in dealing with situations when they are not supported and need to make difficult decisions on their own. Relevant training that

will motivate them and engage their interest needs to be negotiated with trainees and may help to raise the quality of prospective social work trainees in the field of child protection. Despite the importance of this study, it did not address the issue of homeless children and related matters, and this is what we will do in this paper.

A study by Dr. Hassan bin Qasim Muhammad Al-Ahdal, Naif Arab University for Security Sciences, entitled "The Legal Protection of Children in the Saudi System: A Comparative Foundational Study," 1434H - 2013G. the study objective is to identify the criminal policy followed by Saudi legislation to protect the child in accordance with Islamic teachings and international obligations, and to examine the extent of compatibility and deficiency between these aspects. The methodology applied is on the descriptive analytical method, inductively and foundationally, comparing Islamic jurisprudence and Saudi legislation. Similarities between the studies: Both studies are based on a jurisprudential and regulatory comparison to address the issue of childhood from a legislative perspective, with attention to Sharia objectives (Maqasid) and their application. Differences between the studies: This study focuses on the general protection of childhood from a criminal perspective, whereas my specific study concerns "judicial jurisdiction" only in cases of homeless children, i.e., a more specific discourse and analysis of issues of judicial mobility and institutional intervention. Distinction of this research: Its precision on the topic of homelessness and its focus on the specialized judicial framework, rather than only the general criminal treatment of children.

A study by Dr. Hani bin Ali bin Ibrahim Al-Yahya, Islamic University in Madinah, entitled "The Rights of the Child in Islamic Sharia and the Saudi System," 1431H - 2010G. the study objective is to analyze children's rights through the sources of Islamic Sharia and the laws of the Kingdom of Saudi Arabia, comparing definitions, concepts, and applications, and rooting them in the modern legislative framework. The methodology relies on a textual analysis of children's rights, tracing the stages of childhood in the Saudi system, and deducing their roots in Sharia. Similarities between the studies: Both researchs are concerned with defining the religious and legal rights of the child within the Saudi system and focus on the objectives of Sharia in protecting childhood. Differences between the studies: Dr. Hani's study addressed the definition of childhood and its general rights on several levels, while my study addresses a specialized issue related to homelessness and when and where judicial intervention is warranted. Distinction of this research: It goes beyond studying rights to focus on the dimensions of judicial jurisdiction and practical effectiveness in confronting the phenomenon of homelessness.

A study by Dr. Abdul Ilah bin Saeed Ahmed Al-Shahrani, Taif University, entitled "Legal Care for Children of Unknown Identity in Saudi Law compared to Islamic and International Jurisprudence," 1442H - 2020G. Study Objective: To compare the provision of legal care for children of unknown identity in Saudi Arabia with the framework of international conventions and Islamic jurisprudence. Methodology, this study relied on comparison and analysis of legal and jurisprudential texts and international convention standards. Similarities between the studies: A shared interest in jurisprudential and regulatory references for protecting categories of children, and comparing this with international standards. Differences between the studies: The study's focus is on children of unknown identity, while my study's focus is on homeless children in terms of the competent judicial authority. Distinction of this research: Its specialization in the judicial framework, not just legal care, and its deep dive into the

concept of jurisdiction and its application specifically to the homeless category, not other groups.

### **Research Methodology**

This research relied on a set of scientific methodologies that suit its nature, as follows:

1. Analytical Method: Used to analyze jurisprudential and regulatory texts related to cases of homeless children and deduce the governing principles of this treatment in light of the objectives of Islamic Sharia and the goals of the Saudi judicial system.
2. Comparative Method: Relied upon to draw a comparison between Islamic jurisprudence and the Saudi judicial system, both in terms of concepts and perceptions, and in terms of the procedures and mechanisms followed in addressing cases of homeless children.
3. Inductive Method: Through which jurisprudential rulings and relevant regulatory texts were tracked, and the developments that have occurred in the judicial treatment of this phenomenon in the contemporary Saudi system were monitored.

### *Judicial Jurisdiction in Cases of Homeless Children in Islamic Jurisprudence*

Islamic Sharia gives great importance to children as a vulnerable group needing special protection and continuous care. The texts of the noble Sharia reinforce this meaning, having established the child's rights since birth, and even before that, and legislated what guarantees them a dignified life and proper upbringing within the family and society. From this standpoint, Sharia has not overlooked emergencies or societal deviations that a child may face, including homelessness, where the child loses their shelter or family care and becomes exposed to loss, deviation, or exploitation. Since the judiciary is the body concerned with protecting rights and redressing wrongs, it has played a pivotal role in addressing cases of homeless children, being tasked with intervention when the guardianship of the natural guardian weakens or ceases, or when the child's interest conflicts with the inadequacy of caring entities. Jurists have considered that among the tasks of the Islamic judiciary is to look into the affairs of minors, assess their interests, and take necessary measures that preserve their dignity and rehabilitate them in society. This chapter discusses the jurisprudential basis for the judiciary's jurisdiction in cases of homeless children through three main sections: Section One addresses the concept of the judiciary's guardianship over children in Islamic Sharia, the foundation upon which this guardianship is built, and the Sharia objectives it achieves related to protection, care, and upbringing. Section Two highlights the competent judicial authority for handling homelessness cases according to the determinations of jurists from different schools of thought (Madhahib), and clarifies how this authority carries out its role in the absence of a guardian or when there is a dispute or harm affecting the child. Section Three covers the possible legitimate judicial measures towards a homeless child, which include: handing them over to someone who meets the conditions for custody, sheltering them in a trusted care entity, or subjecting them to discipline if their deviation is behavioral, all according to precise Sharia controls that prioritize the "best interest of the child."

Through this chapter, it becomes clear how Islamic jurisprudence addressed this issue with depth and balance, combining the preservation of the child's right to care and dignity with the protection of society from the consequences of neglect or deviation, highlighting the flexibility of Sharia and its ability to keep pace with contemporary social issues.

*The Guardianship of the Judiciary over Children in Islamic Sharia*

The guardianship of the judiciary over children in Islamic Sharia is an issue to which jurists have paid special attention, due to the necessary protection it provides for the child in the absence of a natural guardian, their negligence, or a conflict between their interest and the child's interest. This guardianship was not founded solely on a practical need but emanated from the very objectives of Sharia (Maqasid Al-Shari'ah), which focus on preserving life, intellect, progeny, and wealth—the five necessities upon which Islamic legislation is built. If a child is exposed to homelessness or neglect, the intervention of the judiciary becomes a religious obligation to protect their rights, whether related to their physical, psychological, educational, or financial care. The majority of jurists have held that the judge has the authority to manage the affairs of the minor in the absence of a guardian, or if the guardian exists but has not performed their duties properly. This authority is not limited to a specific extent but extends according to the child's best interest, such as granting permission for custody, choosing a caregiver, or even managing their finances if needed. The importance of this judicial guardianship is evident in that the judge represents a guarantor entity for the rights of minors, intervening when family bonds weaken or care responsibilities are disrupted, and is responsible for restoring balance to the child's life and ensuring their upbringing in a safe and stable environment. Jurists based this role on a set of religious texts and scholarly interpretations (Ijtihadat) that highlight Sharia's keenness that no minor be left without someone to manage their affairs, lest they be exposed to loss or deviation. Thus, the guardianship of the judiciary over children in Sharia is not merely a procedural authority but an original guardianship that enables the judge to perform a social and religious function simultaneously, achieving the objectives of Sharia, meeting the needs of society, and protecting vulnerable groups, foremost among them children, who are among the groups most deserving of protection and care.

*In-Depth Scholarly Points on the Judiciary's Guardianship over Children in Islamic Sharia:*

1. The Judge is the "Guardian for those who have no Guardian. (Ibn al-Qayyim, p245) "The jurisprudential schools unanimously agree that the Sharia judge takes charge of the affairs of those who have no guardian from among minors and the insane, whether in their financial or educational matters. Ibn Al-Qayyim Al-Jawziyya emphasized that the judge's guardianship is not limited to managing wealth but extends to include custody, discipline, education, and all other affairs of the minor that fall under the umbrella of Sharia guardianship. This makes the judge's function in Sharia comprehensive, not limited to dispute resolution but extending to preserving society from disintegration and deviation.
2. The Judge's Guardianship Encompasses the Person and Upbringing, Not Just Wealth. Ibn Al-Qayyim views (Ibn al-Qayyim p245) that complete judicial guardianship entails the judge being responsible for the person, not just wealth, meaning they must protect the child psychologically and educationally, and decide their fate when proper care is absent, by handing them over to someone who meets the conditions for custody or to an institutional entity that provides care. This concept is established in Islamic jurisprudence under the principle: "Care before Authority," meaning the emphasis is on preservation and care, not merely hereditary status.
3. The Judge Intervenes in the Absence or Negligence of the Guardian. (Al-Mawardi, p110) If the child loses their natural guardian or if the guardian's negligence in performing their duties is proven—whether through neglect, maltreatment, or causing homelessness—the judge becomes the religious reference who intervenes in the child's favor. Al-Mawardi

stated in Al-Ahkam Al-Sultaniyya that the judge is responsible for appointing someone to manage the minor's affairs or taking measures to prevent harm from befalling them, based on the principle of "removing harm" and the maxim "the Imam's action is tied to the public interest (Maslahah)."

4. Judicial Guardianship is Among the General Powers of the Judiciary within the Functions of Hisbah. Al-Mawardi explains in Al-Hawi Al-Kabir that judiciary over minors falls under what is known as "Judicial Hisbah" (commanding right and forbidding wrong), which is the judiciary's responsibility in regulating society's affairs and safeguarding the rights of the weak. This makes the judge responsible for protecting homeless or abandoned children, even if there is no apparent litigation, because protecting their interests falls within their general Sharia jurisdiction. ( Al-Mawardi, p1).

#### *The Competent Judicial Authority for Addressing Homelessness*

Islamic Sharia has given great care to the protection of minors, especially those deprived of family care. It entrusted this task to a judicial authority with an authentic religious character, through which the state assumes the care of those who have no guardian. However, jurists did not make this religious guardianship merely an individual effort (Ijtihad); rather, they regulated the competent authority that exercises it, defined its powers, and framed its intervention, so that it is responsible for the homeless child according to the objectives of Sharia and the requirements of the public interest.

In-Depth Scholarly Points on the Competent Judicial Authority for Addressing Homelessness:

1. The Sharia Judge: The Direct Judicial Authority in Homelessness Cases. Islamic jurisprudence does not recognize a multiplicity of judicial authorities as in contemporary systems; rather, it assigns this responsibility to the Sharia judge, who handles all types of cases, including those of homeless children. The judge is authorized to rule on matters related to custody, discipline, shelter, and even marriage if necessary, in the absence of a guardian. (Al-Maliki, p26)
2. The Sharia Judiciary Operates with Direct Executive Authority Without Needing a Lawsuit. The judge is not required to wait for a lawsuit to be filed; rather, they can initiate action by virtue of their general guardianship if they learn of a child without shelter or without a legal guardian. This power is not contentious but executive and regulatory, exercised to ensure the child's physical and psychological safety. (Al-Shawkani, p202).
3. The Judicial Authority Operates Within the Religious Mandate from the Ruler. In Islamic systems, the judge is appointed by the ruler (the Caliph or Governor), which grants them the legitimacy of judicial intervention in the affairs of minors, including homelessness. Consequently, the judicial authority derives its legitimacy from the state, not just from jurisprudence, and is considered an official arm for protecting society. (Al-Mawardi, p72).

#### *Legitimate Judicial Measures towards the Homeless Child "Custody, Shelter, Care, Discipline*

The judiciary in Islamic jurisprudence is considered responsible for protecting homeless children from anything that may threaten their safety and proper development. Its role is not limited to adjudicating disputes only but extends to taking practical measures aimed at securing a safe and stable environment for the child. These legitimate measures vary between custody, shelter, care, and even discipline, ensuring the child's best interest according to the objectives of Sharia. These procedures are viewed as an embodiment of Islam's mercy and its concern for the rights of minors, while maintaining a balance between protection, care, and

constructive discipline. In this section, we review the most important legitimate judicial measures taken in addressing cases of homeless children.

1. **Legitimate Custody (Al-Hadhanah): Protecting the Child in the Care of a Responsible Guardian.** Custody in Islamic jurisprudence is considered a fundamental right of the child. The judiciary places great importance on selecting a suitable custodian who achieves the child's best interest, taking into account that the custodian be a sane Muslim of good character and religion, capable of upbringing and education. Sharia prefers the mother as custodian due to her deep innate bond with the child, which helps her meet their physical and psychological needs. Additionally, Sharia sets controls for custody to ensure the child is not exposed to any harm, whether physical or psychological, obligating the custodian to comprehensive care including education and proper upbringing. The judge also has the right to transfer custody if the custodian is proven negligent or causes harm to the child, indicating Sharia's keenness to preserve the child's safety and psychological health. This concept also entails the judge's responsibility to follow up on the child's situation to ensure their continued interest, not limited to the custody decision alone. (Ibn Qudamah, p378).
2. **Shelter and Care: Protecting the Child through Legitimate Institutions.** When the family or relatives are unable to provide a safe environment for the homeless child, the judiciary resorts to directing the child to specialized care institutions under strict judicial supervision, ensuring that Sharia and humanitarian conditions for their shelter are met. These institutions work to provide safe housing, healthy nutrition, medical care, and comprehensive education, in addition to psychological care that helps the child overcome the traumas they may have been exposed to due to homelessness. The judiciary ensures regular monitoring of these institutions to guarantee that the child's rights are not violated and works to reintegrate them into society in the best possible way. Jurists have considered these measures a religious necessity falling under the principle of Hisbah, where the judiciary must protect the rights of the weak, especially homeless children, who may face the danger of loss or deviation. Thus, these institutions serve as a last resort to provide appropriate protection and care. ( Al-Qurtubi,P 145)
3. **Legitimate Discipline: Behavior Regulation and Enhancing Psychological and Social Growth.** Discipline in Islamic jurisprudence is not aimed solely at punishment; rather, it is an educational tool intended to guide the child and correct their behavior in line with their best interest. Discipline is practiced within a religious framework that respects the child's dignity and rights, away from cruelty or humiliation. (Al-Shafi'i, p 99) The judge and those responsible for the child's care bear the responsibility of monitoring their behavior and guiding them, ensuring that discipline is not a source of lasting pain or fear but a means to reform behavior and build a sound personality capable of integrating into society. Sharia emphasizes the importance of discipline in the best manner, considering the child's circumstances and psychological state, especially in cases of homelessness that may negatively affect their behavior. Therefore, discipline is considered part of the comprehensive process of child care, which includes education, protection, and psychological and social care.

#### *Judicial Jurisdiction in Cases of Homeless Children in the Saudi Judicial System*

This chapter deals with the jurisdiction of the Saudi judicial system in cases of homeless children, focusing on the competent judicial authorities such as juvenile courts, the personal

status court, and the Public Prosecution, which play a fundamental role in protecting children's rights and ensuring the application of relevant laws. It also highlights the special judicial procedures followed to ensure the speed and effectiveness of dealing with these cases, in addition to the regulatory measures issued by judicial ruling, including shelter, education, and protection, which aim to provide a suitable environment for the child's development and integration into society. This chapter reflects the efforts made by the Saudi judicial system to achieve a balance between applying the law and ensuring the interests of homeless children.

*The Competent Judicial Authority "Juvenile Courts, Personal Status Court, Public Prosecution*

The competent judicial authorities are among the fundamental pillars of the Saudi judicial system for addressing cases of homeless children. The system distributes these cases among several courts and bodies, all aiming to protect children's rights and ensure their best interests. Juvenile courts form the cornerstone for adjudicating cases involving juveniles, including homelessness, while the personal status court handles matters related to guardianship and custody. The Public Prosecution plays a role in overseeing investigations and ensuring the integrity of procedures, in addition to protecting the child from any violations. This distribution reflects the Saudi system's keenness to provide a specialized and balanced judicial environment where authorities integrate to achieve the best outcomes for homeless children.

1. **Juvenile Courts:** Juvenile courts are considered the competent judicial authority for cases related to juveniles, including cases of homeless children. (Al-Fawzan, p45) These courts are characterized by a special system that considers the child's age and psychological and social condition. Their role is not limited to issuing rulings only but extends to guiding and rehabilitating the child within a legal and humanitarian framework. These courts are granted broad powers to take necessary measures that ensure the child's protection and serve their best interest, such as shelter, care, and rehabilitation. They also aim to reintegrate the child into society away from the homeless environment that may negatively affect their future. The Saudi system is keen to provide a specialized judiciary that understands the particularities and psychological and social needs of children, making juvenile courts a central axis in protecting the rights of homeless children.
2. **Personal Status Court:** The personal status court plays a pivotal role in adjudicating cases related to children, especially concerning matters of guardianship and custody, which are fundamental to protecting the homeless child. (Al-Fawzan, p112) The court considers who should legally assume the child's care, taking into account the special circumstances of each case to ensure the child's best interest. This court is viewed as a religious and regulatory reference aimed at providing a stable environment for the child, away from homelessness or neglect. The court also deals with cases of separation and guardianship, which may be causes of homelessness, regulating them according to strict religious and regulatory controls. Thus, the court represents an effective tool for achieving family and social security for children.
3. **Public Prosecution:** The Public Prosecution plays an effective supervisory and investigative role in cases of homeless children. (Al-Sadhan, p78) It oversees the progress of investigations and ensures that the concerned authorities comply with the law and applicable regulations. The Prosecution works to protect the child's rights through early intervention to prevent them from being exposed to any harm or exploitation and by

providing appropriate legal support in cases that require it. The Prosecution is also an important part of the judicial protection system, as it monitors the implementation of measures issued by judicial ruling, such as shelter and protection, to ensure their correct execution. The Prosecution highlights the importance of coordination between judicial and civil entities to provide comprehensive support for the homeless child, contributing to improving their conditions and reducing homelessness.

### *Cultural Procedures Related to Issues of Homeless Children*

The issue of homeless children is one of the most dangerous social phenomena reflecting significant imbalances in the value system, societal structure, and cultural frameworks. Homelessness does not only express poverty or family disintegration but is also a result of the lack of societal awareness of the culture of child protection. Hence, the importance of cultural procedures emerges as a means of prevention and treatment, due to their active role in reintegrating these children into society. Culture is an incubator for awareness, a guide for behavior, and a shaper of identity. Therefore, building conscious cultural strategies is considered one of the essential axes in addressing the phenomenon of child homelessness. (Hijazi, p145-150).

### *Cultural Procedures for Cases of Homeless Children:*

1. **Spreading Societal Awareness about Children's Rights and the Dangers of Homelessness:** One of the most prominent cultural steps to confront the phenomenon of child homelessness is enhancing societal awareness about children's rights and clarifying the psychological and social damages resulting from this phenomenon. This requires efforts from media, schools, places of worship, and civil society organizations. Awareness contributes to changing society's view of these children from being "deviants" to being "victims" who deserve protection and care. Understanding children's rights as stipulated by international conventions, such as the Convention on the Rights of the Child (CRC), helps promote a humanitarian sense and moral duty towards them.
2. **Integrating Homeless Children into Cultural and Artistic Activities:** Involving homeless children in cultural and artistic activities is an effective means of rehabilitating them psychologically and socially. Theater, music, drawing, and literature allow these children to express their suppressed feelings, enhance their self-confidence, and give them an opportunity to develop their skills. These activities often reveal hidden talents that can completely change the course of a child's life. Therefore, official cultural institutions and youth centers should adopt special programs targeting this group, in coordination with social and educational authorities.
3. **Preparing Alternative Educational Curricula that Consider the Circumstances of Homeless Children:** Homeless children are often deprived of their right to formal education, which exacerbates their suffering and pushes them further to the margins. Hence, the importance of creating alternative or flexible educational curricula that consider their special circumstances in terms of time, place, and content. Instead of ignoring them or trying to forcibly integrate them into a system that does not suit them, non-formal education should be provided that enhances life skills and gives them the minimum necessary knowledge and skills for later integration into society. This education should also include a cultural dimension that nurtures their sense of belonging and dignity.

*Regulatory Measures Issued by Judicial Ruling "Shelter, Child Education, Protection*

Regulatory measures issued by judicial ruling are among the most prominent means relied upon by states to protect homeless children and ensure their basic rights. When a child is brought before a competent judicial authority, the primary goal is not to punish them but to secure their essential needs and protect them from the circumstances that led to their homelessness. Hence, the importance of judicial rulings that include educational, shelter, and protective measures that address the child's situation from its roots. These measures form a legal and humanitarian framework that ensures the safe and sound reintegration of the child into society.

**Most Prominent Regulatory Measures Issued by Judicial Ruling:**

1. **Shelter in Child Protection and Care Institutions:** Shelter is one of the first measures that competent judicial authorities resort to when dealing with homeless children. (Samuel, p89-104). This measure aims to provide a safe and stable environment for the child away from the street and its dangers. Shelter is usually provided in care homes or protection centers affiliated with the state or licensed associations. These environments include psychological, social, and health services that enable the child to gradually stabilize. Shelter is not viewed as a punishment but as a temporary solution that prepares the child for the stage of reintegration into society, whether through return to the family or providing safe alternative family arrangements.
2. **Obliging the Child to Education or Vocational Training:** In many cases, the competent judge issues a decision to enroll the homeless child in a school or alternative educational/vocational center. This decision aims to protect the child from ignorance and idleness that may lead them to deviation and gives them an opportunity to acquire the knowledge and skills that qualify them for a stable life. The judicial ruling may also include periodic monitoring by social authorities to ensure the child's regularity and benefit from the educational programs. Education here is both a right and a therapeutic means, given its significant role in shaping the child's awareness and guiding their behavior.
3. **Providing Social Protection and Continuous Supervision:** One of the most important regulatory measures is also imposing social supervision on the child's situation after they leave homelessness. The judicial ruling may assign a social or educational entity to follow up on the child in their new environment, whether their original family or a shelter institution. This supervision ensures that the child does not return to the street and helps detect any disruptions that might bring them back into the circle of danger. It also enables specialists to provide continuous psychological and social support, which is essential in treating the effects of trauma, separation, and violations the child was exposed to during the period of homelessness.

*A Comparison between Islamic Jurisprudence and the Saudi Judicial System in Addressing Cases of Homeless Children*

The phenomenon of child homelessness is one of the dangerous social phenomena that threaten the structure and stability of societies, due to its negative effects on the individual, family, and state. The importance of addressing this phenomenon systematically and legally has increased as it has become one of the most prominent indicators of social disintegration and the absence of social justice. In this context, the role of Islamic jurisprudence emerges as a religious reference rich in preventive treatments and protection for children. Homelessness in its modern concept did not exist in its complete form in early Islamic societies, but jurists

addressed the rulings concerning orphans, the homeless, foundlings, and children neglected by their families, providing comprehensive solutions based on principles of mercy, justice, and social solidarity. In the modern era, Islamic states, including the Kingdom of Saudi Arabia, have sought to establish judicial systems based on the principles of Islamic Sharia, while simultaneously benefiting from some modern positive legal experiences aimed at protecting the child and providing their basic rights. Hence comes the importance of comparing Islamic jurisprudence and the Saudi judicial system in addressing cases of homeless children, in terms of points of agreement, difference, and the extent of reconciliation between religious reference and the requirements of the age. This comparison is not merely an academic exercise but an attempt to evaluate the effectiveness of the Saudi justice system in dealing with one of the most vulnerable groups, namely homeless children, under the duality of authenticity and contemporaneity, and under the umbrella of Islamic Sharia, which made the preservation of life and progeny among the five necessary universals (Al-Kulliyat Al-Khams).

*Similarities between Islamic jurisprudence and the Saudi judicial system in dealing with cases of homeless children:*

There is significant alignment between Islamic jurisprudence and the Saudi judicial system, which is fundamentally structured upon Islamic Sharia as its primary source of legislation. (Abu Arad,p105-112) This foundational reliance has established the Saudi judiciary as one closely aligned with jurisprudential principles, particularly in rulings designed to protect vulnerable populations, including homeless children. Both systems converge on the imperative to safeguard children, provide for their essential needs, and ensure their comprehensive well-being—physical, psychological, and social. This consensus forms a cornerstone of a legal and social policy rooted in the twin pillars of mercy and justice.

Among the prominent points of agreement between Islamic jurisprudence and the Saudi judicial system in addressing cases of homeless children:

1. The Principle of Child Care and Sponsorship (Kafalah): Jurists have unanimously agreed on the obligation to care for the foundling (Laqet) and the orphan, which Saudi Arabia has applied through social care homes and state sponsorship for children of unknown parents.
  2. The Absolute Prohibition of Harming the Child or Exposing Them to Danger: Islam forbade the abuse of the young, and the Saudi system criminalizes physical or psychological abuse of the child and holds those responsible accountable.
  3. The Child's Right to Education, Maintenance (Nafaqah), and Care: These rights are guaranteed by Sharia and are officially implemented by the Saudi state, which obligates the concerned authorities to enroll the child in school and provide their basic needs.
- Furthermore, both systems are keen to prevent the child's deviation and protect them from loss, and they share the principle of "prevention first, then treatment," reflecting a clear harmony between jurisprudence and the Saudi judicial system in this aspect.

*Differences between Islamic jurisprudence and the Saudi judicial system:*

Although the Saudi judicial system is based fundamentally on Islamic Sharia, some aspects of modern judicial treatment of cases of homeless children have been influenced by international positive systems and modern legal experiences. This influence appears in some procedural details or legal terminologies that were not familiar in traditional Islamic jurisprudence. The difference between Islamic jurisprudence and the Saudi judicial system does not mean a contradiction in essence; rather, it is often a difference in the means and

mechanisms used in practical application. It is important to study these differences to understand the extent of the system's harmony with the origins of Sharia and the requirements of contemporary reality.

1. **Determining the Age of Responsibility:** In Islamic jurisprudence, criminal responsibility or legal obligation (Takleef) is linked to puberty (Bulugh), which is known by the appearance of clear physical signs.(Al-Sadhan, p267-275) In the absence of these signs, the child is considered to have reached puberty at the age of 15. In the Saudi judicial system, particularly after being influenced by some international standards, "juveniles" are dealt with according to procedural age classifications, such as: under 7 years (non-discernment), 7 to 12 (a discerning minor), and 12 to 18 years (a juvenile), and special measures are applied to them without a full criminal trial. Thus, there is a difference in the reference upon which responsibility is based: physical puberty versus age classification.
2. **Method of Shelter and Care:** In Islamic jurisprudence, the responsibility for caring for a homeless child is often entrusted to the individual and the community, such as the "sponsor of an orphan" or the "guardianship of a foundling," with care typically taking place within the family. In contrast, the Saudi legal system assigns this responsibility to the state, through official institutions such as "observation homes" or "social rehabilitation centers," which are managed with government administrative mechanisms and financial resources. The difference here is that care in Islamic jurisprudence was primarily ethical/social, while in the legal system it has become administrative/institutional.
- 3- **Legal Terminology and Treatments:** Islamic jurisprudence uses concepts derived from the Sharia environment, such as "foundling," "orphan," "maintenance," "sponsorship," and "guardianship." In the Saudi judicial system, some terms are derived from modern laws and international treaties, such as "child protection," "alternative care," "rehabilitation," "shelter," and "child at risk."
- 4- **Protection and Oversight Mechanisms:** Islamic jurisprudence relies on societal and personal oversight, such as the authority of the Sharia judge, the principle of enjoining good and forbidding evil, and offering advice. The Saudi system, however, relies on organized governmental bodies such as the Social Protection Unit, the Human Rights Commission, and the Public Prosecution. These bodies operate under official regulations, issue reports, and are subject to administrative accountability. Consequently, protection mechanisms have evolved from a traditional, individualistic system to an institutional, governmental one.
- 5- **The system's reliance on international systems:** The essential difference lies in the fact that the Saudi system, despite its reliance on Sharia, has also partially committed to some international agreements such as the Convention on the Rights of the Child (CRC), which prompted it to amend some procedures to be in line with these conventions, such as prohibiting the death penalty for those under 18 years of age, or promoting compulsory education.

#### *The Extent to Which the Saudi Judicial System Reconciles Islamic Jurisprudence and Secular Laws*

Since its founding, the Kingdom of Saudi Arabia has strived to establish a judicial system based on Islamic Sharia as the sole and original source of legislation, while making informed use of

certain modern procedural and administrative aspects derived from international secular laws. This reconciliation is clearly evident in addressing childhood issues, particularly those related to homeless children, through the enactment of laws that consider the objectives of Sharia in preserving life and lineage, while simultaneously integrating some contemporary legal concepts without contradicting the fundamental principles of the religion. This balance between established Sharia principles and the demands of contemporary legal reality is one of the most important features of the Saudi judicial system and reveals a high degree of jurisprudential and administrative flexibility.

**Comparative Scientific Analysis:** The Saudi judicial system has succeeded in achieving a significant degree of reconciliation between Islamic jurisprudence and secular laws, especially in matters related to the protection of homeless children. (Al-Saif, p 103-110) New regulatory and procedural systems have been adopted—such as the Child Protection Law and the Juvenile Law—that ensure the integrity of judicial procedures and provide fair standards that achieve dignity and justice for the child, without compromising established Sharia principles. However, the Saudi judiciary has ensured that these laws are based on the principles of Islamic Sharia, referring them to the general objectives of Sharia, such as mercy, justice, preventing harm, and promoting benefits.

Among the most prominent examples of this reconciliation is the integration of concepts such as "shelter," "institutional care," and "psychological rehabilitation"—modern concepts derived from global experiences—within a legal framework that adheres to Islamic principles. Furthermore, the application of rules derived from international conventions (such as the Convention on the Rights of the Child) has been permitted, provided they do not conflict with Sharia rulings. This reflects a flexible and integrated understanding on the part of the Saudi legislator. It is also noteworthy that the Saudi system has established flexible judicial controls that allow judges to assess cases according to the best interests of the child, which aligns with the spirit of Sharia, which takes into account the diversity of circumstances. Moreover, the system has created specialized institutions, such as the Public Prosecution for Juveniles and Social Protection Units, to handle monitoring and protection, thus combining the Sharia dimension with a modern organizational approach. This alignment is not merely a formal agreement, but rather a reflection of the evolution of institutional jurisprudence in the Kingdom and a profound understanding of the necessity for Islamic law to remain the governing framework, without closing the door to beneficial experiences that do not contradict its texts or objectives. Thus, the Saudi judicial system has been able to balance tradition and openness in addressing the cases of homeless children in a comprehensive and humane manner.

### **Conclusion**

This study addressed a highly important topic concerning the jurisdiction of courts in cases involving homeless children. It did so through a scientific and methodological comparison between the provisions of Islamic law in this area and the practices of the judicial systems in the Kingdom of Saudi Arabia. The research was divided into three main sections. The first section reviewed the judicial principles adopted by Islamic jurisprudence in dealing with cases of child homelessness, focusing on the jurisdiction of the courts, the competent legal authorities, and the preventive and remedial measures that guarantee the child's rights to shelter, care, and rehabilitation. The research then moved on to explain the Saudi judicial

system's approach to these cases, identifying the competent judicial bodies such as juvenile courts and personal status courts, the role of the Public Prosecution, and the cultural procedures and modern judicial measures that take on an institutional character to protect homeless children. The third section conducted an analytical comparison between Islamic jurisprudence and the Saudi judicial system. It clarified the points of agreement in the general principles of child protection and the differences in procedural and organizational details. Finally, it demonstrated the extent to which the Saudi judicial system has succeeded in reconciling the provisions of Islamic law with modern legal systems, while adhering to the principles of justice, mercy, and the best interests of the child.

### Key Findings

- 1- Islamic jurisprudence and the Saudi judicial system agree that protecting homeless children is a religious and legal responsibility, emphasizing the obligation to provide them with comprehensive care, whether through sponsorship, shelter, or education.
- 2- Differences exist in procedural and organizational details between Islamic jurisprudence and the judicial system, particularly regarding the age of responsibility, the distribution of judicial jurisdiction, and the nature of the measures taken. These differences stem from the influence of contemporary legal systems.
- 3- The Saudi judicial system has successfully achieved a balanced approach between Islamic legal principles and modern requirements by issuing specialized regulations (such as the Juvenile Law and the Child Protection Law) that adhere to Sharia principles and comply with international standards.

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