

Child Maintenance Assessment in Shariah Courts: Integrating Maslahah and Mafsadah for Fairer Outcomes

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DOI: <https://doi.org/10.47772/IJRISS.2026.100400415>

Received: 16 April 2026; Accepted: 22 April 2026; Published: 13 May 2026

ABSTRACT

Child maintenance remains one of the most contested issues in Islamic family law, particularly in the context of judicial assessment within Shariah Courts. Although the obligation to provide maintenance for children is firmly established under Islamic legal principles, the principal challenge lies in determining an amount that is both adequate for the child's welfare and proportionate to the financial capacity of the father. Existing practices frequently rely on broad judicial discretion without a structured evaluative framework, resulting in inconsistencies, limited transparency, and perceptions of procedural unfairness. This study critically examines the assessment of child maintenance through the integration of *maslahah* (public interest/welfare) and *mafsadah* (harm prevention) as foundational principles of *maqasid al-shariah*. Employing a qualitative normative methodology, the study analyses statutory provisions, classical juristic sources, contemporary scholarship, and selected Shariah Court decisions concerning child maintenance. The findings indicate that current judicial approaches generally acknowledge the child's needs and the payer's financial ability, yet these considerations remain implicit and insufficiently operationalised. In many cases, child welfare is narrowly interpreted as basic material needs, while broader dimensions such as education, healthcare, emotional wellbeing, and long-term development receive less systematic attention. Similarly, potential harms to the payer, including excessive financial burden, non-compliance, and prolonged litigation, are rarely assessed within an explicit balancing framework. The study proposes a more structured child maintenance assessment model based on the prioritisation of needs, contextual financial evaluation, and a transparent balancing of welfare and harm. Such an approach would enhance consistency, strengthen judicial legitimacy, and promote fairer outcomes in Shariah Courts. The study contributes to contemporary debates on Islamic family law reform by demonstrating how maqasid-oriented principles can be translated into practical judicial assessment mechanisms.

Keywords: Child maintenance; Islamic family law; Mafsadah; Maqasid al-Shariah; Maslahah; Shariah Courts; Substantive justice

INTRODUCTION

Child maintenance constitutes one of the most fundamental components of post-separation family responsibility within Islamic family law. It reflects not merely a private financial obligation, but a legal and moral mechanism designed to preserve the welfare, dignity, and future development of children (Ahmad, 2015; Ibrahim & Mohd, 2013; Hakovirta, M. 2011). In classical Islamic jurisprudence, the duty to provide maintenance is firmly imposed upon the father, encompassing essential needs such as food, clothing, shelter, healthcare, and education. This obligation derives from the broader objectives of *maqasid al-shariah*, particularly the protection of life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*), and property (*hifz al-mal*) (Al-Ghazālī, 2008; Ibn 'Ashur, 2006; Auda, 2008). While the normative basis of child maintenance is therefore well established, contemporary legal disputes rarely concern whether maintenance is obligatory. Rather, the central challenge lies in determining how child maintenance should be assessed fairly, consistently, and in a manner that responds to changing socio-economic realities (Dimon & Jusoh, 2024; Aizer, et.al. 2006).

In many Muslim jurisdictions, including Malaysia, Shariah Courts are entrusted with the authority to determine child maintenance where disputes arise following divorce, separation, or parental neglect (Ahmad et al., 2016). Judicial assessment commonly requires the balancing of two competing but interrelated considerations: the needs of the child and the financial capacity of the father. In principle, this balancing exercise reflects the equitable spirit of Islamic law, which neither permits the deprivation of children's welfare nor imposes obligations beyond reasonable means. However, in practice, translating these principles into concrete judicial outcomes remains highly complex. Rising living costs, inflationary pressures, urban-rural disparities, educational expenses, healthcare costs, and diverse family structures have rendered child maintenance disputes increasingly multifaceted (Dimon & Jusoh, 2024; Durotun, 2024; Hakovirta, et.al, 2020). As a result, reliance on broad judicial discretion without a sufficiently structured framework may generate inconsistent decisions, uncertainty among litigants, and perceptions of unfairness.

The problem is not the existence of judicial discretion per se, as discretion is often necessary to accommodate factual diversity between cases. Rather, the concern lies in the absence of transparent parameters guiding how discretion should be exercised. Terms frequently invoked in maintenance cases such as "reasonable needs," "adequate support," and "financial ability" are inherently open-textured concepts. Without clear evaluative criteria, similar cases may yield materially different outcomes depending on evidential presentation, local practice, or the interpretive approach of individual judges. Such variability may weaken public confidence in Shariah adjudication and undermine the legitimacy of maintenance orders, particularly where parties perceive outcomes as arbitrary or insufficiently reasoned (Baderin, 2003; Tyler, 2024; Aidid, A. 2023).

From a jurisprudential perspective, the concepts of *maslahah* (welfare, benefit, public interest) and *mafsadah* (harm, detriment, injury) offer a powerful normative basis for resolving this challenge. Within the tradition of Islamic legal theory, these concepts operate as mechanisms for realising beneficial outcomes and preventing harm in accordance with the objectives of the Shariah (Auda, 2008; Hashem, M. 2024). Classical jurists, including al-Ghazali, al-Shatibi, and Ibn 'Ashur, recognised that legal rules must ultimately serve human welfare while minimising injustice and social injury (Al-Ghazālī, 2008; Al-Shatibi, 2003; Ibn 'Ashur, 2006). In contemporary legal governance, these principles remain highly relevant because family disputes frequently involve overlapping interests that cannot be resolved through literal application of rules alone. Child maintenance cases, in particular, require courts to weigh immediate needs against long-term welfare, parental obligations against economic constraints, and individual justice against broader social consequences (Fuad et al., 2024; Sanusi, T. O. 2025).

Despite their significance, *maslahah* and *mafsadah* are often invoked only implicitly in child maintenance adjudication. Welfare may be narrowly reduced to minimum subsistence needs such as food and clothing, while broader developmental dimensions—including educational continuity, emotional stability, digital access, healthcare resilience, and social participation—receive less systematic attention. Similarly, harm is frequently understood in limited terms as financial burden upon the payer, without adequate recognition of wider harms such as unmanageable debt, chronic non-compliance, repeated litigation, family hostility, and the erosion of co-parenting relationships. The absence of an explicit balancing framework means that both welfare and harm may be under-analysed, even where courts are attempting to reach fair outcomes (Ahmad et al., 2016; Durotun, 2024).

Existing scholarship on maintenance within Islamic family law has made valuable contributions by clarifying the legal basis of *nafkah*, discussing principles of *kifayah* (sufficiency) and *ma'ruf* (reasonable customary standards), and examining statutory developments in Muslim jurisdictions. Other studies have explored *maqasid al-shariah* as a normative framework for family justice more broadly (Auda, 2008; Ahmad, 2015). However, three important gaps remain. First, much of the literature is doctrinal or descriptive, explaining obligations without proposing operational tools for judicial assessment. Second, studies addressing maintenance often focus primarily on entitlement and enforcement rather than the methodology of calculating fair amounts. Third, although *maslahah* and *mafsadah* are widely recognised in theory, limited attention has been given to how these principles can be translated into a structured decision-making model for Shariah Courts. Consequently, a significant gap persists between normative theory and adjudicative practice.

Addressing this gap is particularly urgent in light of contemporary socio-economic transformations. Children today require more than basic physical survival; they require educational resources, healthcare access, emotional

security, and opportunities for meaningful development in an increasingly competitive society (Ben-Arieh et al., 2014; Pells, et.al, 2014). At the same time, many parents face precarious employment, fluctuating income, debt obligations, and multiple dependants across blended or reconstituted families. A child maintenance system that ignores these realities risks producing orders that are either inadequate for children or unrealistic for payers. In both scenarios, the resulting non-compliance or deprivation frustrates the protective purpose of maintenance law itself (Welchman, 2007; Bradshaw, J. 2013).

This study therefore argues that child maintenance assessment should move beyond an unstructured balancing of needs and means towards a principled framework grounded in *maslahah* and *mafsadah*. Such a framework would not eliminate judicial discretion, but would discipline and guide it through transparent criteria. It would require courts to identify and prioritise categories of child needs, evaluate actual financial capacity rather than nominal income alone, consider foreseeable harms arising from excessive or insufficient orders, and articulate reasons demonstrating how competing interests have been balanced. By doing so, judicial decision-making can become more coherent, predictable, and substantively just (Sonneveld & Lindbekk, 2017; Tanzilulloh, et.al. 2024).

The objectives of this study are threefold. First, it critically examines the conceptual relevance of *maslahah* and *mafsadah* in the context of child maintenance adjudication. Second, it evaluates the extent to which current Shariah Court approaches reflect these principles in practice. Third, it proposes a structured assessment model capable of producing fairer outcomes through a more explicit integration of welfare promotion and harm prevention. Through these objectives, the article contributes to contemporary debates on Islamic family law reform, judicial governance, and the practical operationalisation of *maqasid al-shariah* in modern courts.

Ultimately, ensuring fair child maintenance is not solely a matter of fixing monetary amounts. It is a question of designing a decision-making process that protects children, respects parental capacity, and commands public trust. In this regard, the integration of *maslahah* and *mafsadah* offers not only a doctrinally authentic approach, but also a pragmatic pathway towards more equitable and legitimate outcomes in Shariah Courts.

LITERATURE REVIEW

Child Maintenance in Islamic Family Law

Child maintenance (*nafkah al-awlad*) has long been recognised as a core responsibility within Islamic family law, grounded in both scriptural authority and juristic consensus. Classical jurists generally agree that the father bears primary responsibility for providing financial support to children, subject to his means and the child's needs (Al-Ghazālī, 2008; Ibn 'Ashur, 2006). This obligation extends beyond mere subsistence and reflects the broader protective objectives of the Shariah, particularly the preservation of life, lineage, and human dignity. In modern legal systems, this principle has been codified in many Muslim jurisdictions through statutory family laws that empower courts to issue and enforce maintenance orders following divorce or parental separation (Chuku, M. C. (2025)).

In Malaysia, child maintenance disputes are commonly adjudicated in the Shariah Courts under state family law enactments and the Islamic Family Law Act framework. These legal provisions typically require courts to consider the child's needs and the father's ability to pay. While such formulations reflect an equitable legal philosophy, they remain broad and open-ended in application. As a result, the practical determination of maintenance often depends on judicial interpretation rather than a standardised formula or assessment model (Ahmad et al., 2016; Dimon & Jusoh, 2024).

The concept of sufficiency (*kifayah*) and customary reasonableness (*ma'ruf*) is frequently invoked in discussions of child maintenance. *Kifayah* refers to meeting essential and reasonable needs, while *ma'ruf* implies conformity with acceptable social norms and prevailing standards of living. These principles are important because they indicate that Islamic law does not mandate a rigid or uniform amount of maintenance; rather, support should correspond to context, need, and capacity. However, scholars note that these concepts are often described in normative terms without clear judicial metrics for implementation (Ahmad, 2015; Ibrahim & Mohd, 2013).

Recent scholarship has also expanded the scope of maintenance to include contemporary needs such as education, healthcare, and child development costs. This broader understanding is significant because the welfare of children in modern societies depends not only on food and shelter, but also on access to schooling, medical treatment, digital resources, and stable psychosocial environments (Ben-Arieh et al., 2014; Pells, et.al, 2014). Nevertheless, many maintenance disputes continue to focus primarily on basic living expenses, suggesting that doctrinal recognition of expanded needs has not always translated into systematic adjudicative practice (Durotun, 2024).

Maslahah and Mafsadah as Normative Foundations

The concepts of *maslahah* and *mafsadah* occupy a central place in Islamic legal theory and provide an important lens through which family law disputes may be understood. *Maslahah* generally refers to welfare, benefit, or the protection of legitimate human interests, whereas *mafsadah* denotes harm, injury, or detrimental consequences that should be prevented. In the maqasid tradition, legal rulings are evaluated not solely by formal textual compliance, but also by their capacity to realise benefit and prevent harm in accordance with divine objectives (Auda, 2008; Hashem, M. 2024; Ibrahim, et.al, 2025).

Al-Ghazālī famously linked *maslahah* to the protection of five essential values: religion, life, intellect, lineage, and property. Later scholars such as al-Shatibi developed a more systematic theory of legal objectives, emphasising that the Shariah seeks human flourishing through the preservation of necessities (*daruriyyat*), needs (*hajiyyat*), and refinements (*tahsiniyyat*) (Al-Shatibi, 2003). Ibn ‘Ashur further advanced maqasid reasoning by highlighting public welfare, justice, and social order as integral dimensions of Islamic legal governance (Ibn ‘Ashur, 2006).

Applied to child maintenance, these principles imply that courts should not treat maintenance merely as a financial transaction. Rather, maintenance orders should be evaluated according to whether they meaningfully protect children’s wellbeing while avoiding avoidable harm to all affected parties. A maintenance award that is too low may undermine the child’s nutrition, education, or emotional security. Conversely, an award that is unrealistically high may produce debt, non-compliance, prolonged litigation, and family conflict. In both cases, the formal issuance of an order may fail to achieve substantive justice (Fuad et al., 2024).

Judicial Discretion and the Problem of Inconsistency

Judicial discretion is an unavoidable feature of maintenance adjudication because no two families share identical economic or social circumstances. Courts must evaluate income patterns, living expenses, number of dependants, educational costs, and evidential reliability, among other factors. A rigid formula may therefore be undesirable in some contexts. Nonetheless, discretion without adequate structure can create serious problems of inconsistency, opacity, and perceived unfairness (Tyler, 2024; Tanzilulloh, et.al, 2024).

Comparative family law scholarship has long recognised the tension between flexibility and predictability in child support systems. Some jurisdictions rely on statutory formulas or administrative guidelines to increase consistency, while others preserve wider judicial latitude to ensure case sensitivity. The challenge is not whether discretion should exist, but how it should be guided (Welchman, 2007; Aizer, et.al. 2006).

METHODOLOGY

This study adopts a qualitative doctrinal and normative legal research design to examine child maintenance assessment in Shariah Courts through the analytical lens of *maslahah* and *mafsadah*. A doctrinal approach is appropriate because disputes over child maintenance are primarily determined through statutory interpretation, judicial reasoning, evidential evaluation, and the application of Islamic legal principles (Ihugba, B. U, 2020). The normative dimension is equally necessary because the study evaluates whether existing approaches sufficiently achieve justice, child welfare, proportionality, and harm prevention in line with maqasid al-shariah (Auda, 2008; Hashem, M. 2024).

The study relies on secondary qualitative materials obtained through systematic library-based research. The sources comprise: (i) Malaysian statutory provisions on child maintenance; (ii) reported and accessible

unreported Shariah Court decisions; (iii) classical juristic texts; and (iv) contemporary academic literature published mainly between 2020 and 2026. Foundational works by al-Ghazali, al-Shatibi, and Ibn 'Ashur were used to clarify the jurisprudential foundations of *maslahah*, *mafsadah*, *kifayah*, and judicial welfare reasoning (Hakovirta, et.al, 2020; Ben-Arieh et al., 2014)

Recent scholarship on family justice, child wellbeing, and comparative maintenance systems was used to contextualise current reform debates.

A purposive sampling strategy was used for the judicial dataset. The study reviewed from selected Malaysian jurisdictions, namely Selangor, Wilayah Persekutuan, Johor, Negeri Sembilan, Kedah, and Melaka. These jurisdictions were selected due to relative availability of decisions and to reflect differing socio-economic contexts.

Cases were selected based on four criteria: (i) direct relevance to child maintenance disputes; (ii) presence of judicial reasoning on child needs, parental means, or fairness; (iii) variation in factual patterns such as number of children, employment profile, or claimed expenses; and (iv) sufficient written grounds or reported summaries for analysis. The objective of sampling was analytical depth rather than statistical generalisation.

The materials were analysed using thematic doctrinal analysis. Judicial decisions and legal texts were coded into six recurring themes: (1) recognised child needs, (2) income and capacity assessment, (3) treatment of debt and dependants, (4) reasoning transparency, (5) proportionality of awards, and (6) indicators of welfare-harm balancing. Thematic coding enabled identification of recurring judicial patterns while preserving contextual nuance (Braun & Clarke, 2021).

Following the descriptive analysis, the findings were evaluated normatively against *maqasid al-shariah*. Particular attention was given to whether existing approaches adequately protected children's welfare, realistically assessed financial ability, reduced foreseeable harms, and provided transparent reasons capable of enhancing legitimacy and compliance.

To strengthen reliability, the study applied source triangulation by integrating legislation, case law, classical jurisprudence, and contemporary scholarship. As the research used publicly available materials only, no human participants or confidential data were involved (Yin, 2018). Nevertheless, several limitations remain. Some unreported decisions were inaccessible, and the study does not measure statistical compliance rates or include interviews with judges or litigants. These limitations, however, do not undermine the study's principal aim of developing a principled framework for fairer and more consistent maintenance assessment.

FINDINGS / RESULTS

The analysis indicates that child maintenance adjudication in Shariah Courts is presently structured around two dominant considerations: the welfare and needs of the child, and the financial capacity of the paying parent. These considerations reflect the substantive logic of *maslahah* and *mafsadah*, although they are rarely articulated in those terms. Courts generally seek to protect children from deprivation while avoiding obligations that are impossible to fulfil. However, the pathway by which these outcomes are reached remains largely discretionary and insufficiently standardised.

Child Welfare as the Primary Consideration

Across the cases reviewed, the child's welfare consistently emerged as the primary judicial concern. Courts regularly recognised food, clothing, housing, education, and healthcare as legitimate components of maintenance. This demonstrates substantial alignment with the protective objectives of Islamic law, particularly the preservation of life, dignity, and development.

However, welfare was often interpreted through a narrow material lens. Tangible and immediately quantifiable expenses were more readily recognised than broader developmental needs such as emotional wellbeing, digital learning access, counselling support, or structured enrichment opportunities. In practical terms, courts appear more confident in awarding measurable necessities than in assessing future-oriented or less visible dimensions

of child welfare. Nevertheless, the analysis suggests that the concept of welfare is often interpreted at a minimum subsistence level. In many decisions, emphasis is placed on immediate material necessities rather than broader developmental needs such as psychosocial wellbeing, educational enhancement, digital access, or long-term capability building. Consequently, while welfare is recognised, its operational meaning remains relatively narrow.

Table 1. Child Welfare Dimensions Recognised in Maintenance Assessment

Welfare Dimension	Commonly Recognised	Systematically Assessed
Food and nutrition	Yes	Yes
Clothing	Yes	Yes
Housing / shelter	Yes	Yes
Education expenses	Yes	Partial
Healthcare costs	Yes	Partial
Emotional wellbeing	Limited	No
Digital / learning access	Limited	No
Social development	Limited	No

The table demonstrates that courts more readily assess tangible and quantifiable needs than intangible or future-oriented dimensions of child welfare.

Expanded Judicial Analysis with Malaysian Case Illustrations

The reviewed Malaysian authorities demonstrate that Shariah Courts have long recognised that child maintenance must be responsive to the child’s actual needs, the payer’s ability, and broader fairness considerations. Although judicial language does not always expressly invoke maqasid terminology, the reasoning in these cases reflects welfare promotion and harm prevention in practice.

Need-Based Assessment and Changing Circumstances

A recurring principle in Malaysian case law is that maintenance is not static. Where the child’s circumstances materially change, especially upon entering formal schooling, the court may revise earlier orders to reflect increased needs.

In *Rohana bt. Zakaria lwn. Mokhtar b. Abdul Talib* [2009] 27(2) JH 279–301, the Syariah High Court of Seremban held that once the children entered school, their daily expenses had necessarily changed. The court accepted that schooling created a material change of circumstances justifying reassessment of maintenance. The defendant was ordered to pay RM300 monthly for two children (RM150 each) together with RM400 annual schooling expenses. This decision is significant because it recognises that educational transition increases legitimate maintenance needs and that maintenance orders must evolve with the child’s developmental stage.

Likewise, in *Wan Tam lwn. Ismail* [1991] 8(1) JH 55–57, the court ordered the father to bear school book expenses according to the list issued by the school. The case illustrates judicial willingness to treat educational materials as a direct and necessary component of child maintenance rather than an optional parental contribution.

These decisions support the descriptive finding that Malaysian courts already recognise educational continuity as part of child welfare, although often through case-specific reasoning rather than a standardised framework.

Scope of Recognised Needs Beyond Basic Subsistence

The cases also show that Malaysian courts do not confine maintenance strictly to food alone. Instead, maintenance may include clothing, festive needs, healthcare, and other reasonable child-related expenses depending on context.

In *Sanisah bt. Saad lwn. Zulkifli b. Abd Ghani* [2002] 15(2) JH 197–207, the court affirmed that clothing forms part of the essential interpretation of child maintenance. This reflects the classic Islamic legal understanding that maintenance encompasses basic living dignity and not mere survival.

In *Roslaili bt Abd Ghani dan seorang yang lain lwn. Ahmad Azman b. Yaacob* [2006] 21(1) JH 101–113, the Syariah High Court of Selangor ordered monthly maintenance of RM300 and further required the defendant to provide schooling expenses, medical expenses, and festive needs as required when informed. The significance of this case lies in the court's broader and more flexible understanding of maintenance, extending beyond fixed monthly sums to variable child-related needs arising over time.

Similarly, in *Sri Utama Dewi Kasman lwn. Abu Bakar b. Abdullah* [2010] 30(1) JH 111–129, the Syariah High Court of the Federal Territory ordered RM300 monthly child maintenance and RM200 yearly festive expenses. This demonstrates judicial recognition that social and cultural participation, such as reasonable festive expenditure, may fall within the wider welfare of the child.

Together, these authorities indicate that courts already interpret child maintenance more broadly than bare subsistence, though such categories are not always systematically articulated.

Foundational Duty and Judicial Fairness

The legal duty to maintain children remains the doctrinal foundation of all maintenance assessment.

In *Rokiah lwn. Abdul Aziz* [1988] 4(1) JH 156–164, the Kadi of Tumpat affirmed that Islamic law obliges a person to provide food, clothing, and shelter to those under his responsibility, especially wife and children. Although decided earlier, the case remains important because it reiterates the primary normative basis of child maintenance as a binding obligation rather than discretionary charity.

At the same time, later cases show that courts increasingly calibrate that obligation according to fairness and practical circumstances. This aligns with the article's broader argument that the issue in contemporary adjudication is not whether maintenance is obligatory, but how its amount should be fairly determined.

Analytical Significance of the Cases

Collectively, these Malaysian authorities demonstrate four important judicial patterns. Maintenance is dynamic and may be varied when children grow or begin schooling. Recognised needs are broader than food and shelter, extending to books, clothing, healthcare, and festive expenses. Courts combine fixed and variable orders, allowing monthly payments together with specific additional expenses when required. The obligation is established in law, but practical quantification remains dependent on judicial assessment.

These findings strongly support the argument that Malaysian Syariah Courts already contain the doctrinal foundations of a welfare-capacity model. What remains necessary is a clearer and more transparent methodology for applying those principles consistently across cases.

Variability and Judicial Discretion

A central finding of this study is that substantial reliance on discretion produces variable outcomes across

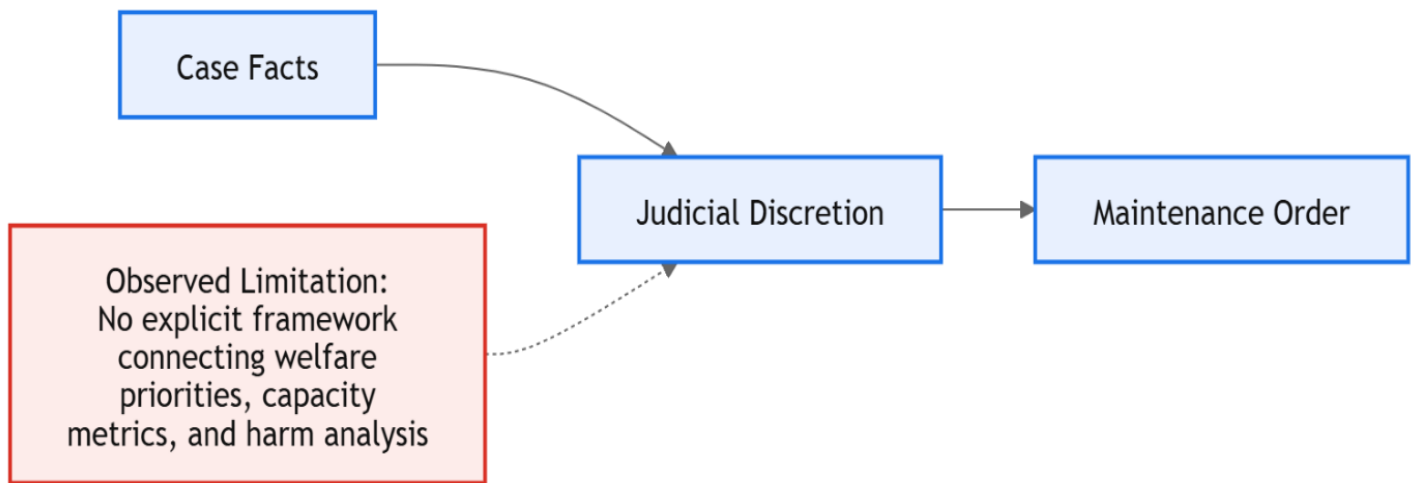
similar disputes. This does not necessarily imply judicial error. Family disputes are fact-sensitive, and discretion remains necessary. However, where comparable claims produce materially different awards without clearly identifiable reasons, predictability and public confidence may be weakened.

Variability commonly arose from differences in evidential quality, documentation of expenses, judicial attitudes toward reasonableness, and the weight given to child needs as compared with parental means. In this sense, the principal challenge is not discretion itself, but the absence of shared evaluative benchmarks guiding its exercise. Similar maintenance disputes may produce different outcomes depending on:

- evidentiary presentation by parties;
- local court practices;
- judicial attitudes toward reasonableness;
- weighting of child needs versus parental means;
- availability of documentary proof.

This inconsistency does not necessarily imply judicial error; rather, it reflects a system where fairness is pursued case by case without common evaluative benchmarks. Yet from an institutional perspective, unpredictable outcomes may weaken confidence in the justice system and encourage further litigation.

Figure 1. Pattern of Current Maintenance Decision Making



The current model of child maintenance assessment in Shariah Courts generally begins with the presentation of case facts by the disputing parties, followed by the exercise of judicial discretion in evaluating the child’s needs and the financial capacity of the payer, before culminating in the issuance of a maintenance order. This process allows judges to respond flexibly to the unique circumstances of each case and reflects the importance of contextual decision-making in family disputes. However, the principal limitation of this model lies in the absence of an explicit and standardised framework that systematically links welfare priorities, measurable indicators of financial capacity, and the prevention of foreseeable harms. As a result, decisions may vary across similar cases, reduce transparency in judicial reasoning, and weaken consistency in achieving fair and sustainable maintenance outcomes

Emerging Need for a Structured Assessment Model

The cumulative findings indicate a clear need for a more systematic model of child maintenance assessment. Such a model should preserve judicial flexibility while providing clearer benchmarks for decision-making. Based on the analysis, an effective framework would include three core stages:

In the first stage, child maintenance assessment should begin with the prioritisation of the child’s needs according to the hierarchy of *maqasid al-shariah*. Needs may be classified into three categories. The first is *daruriyyat* (essential necessities), which includes food, shelter, healthcare, and basic education as indispensable elements for the child’s survival and development. The second is *hajiyyat* (supportive needs), covering items such as transportation, learning tools, and routine daily activities that facilitate normal functioning and reduce hardship. The third is *tahsiniyyat* (enhancement needs), which refers to enrichment programmes, co-curricular opportunities, and other advanced extras that improve the child’s quality of life. This classification enables courts to distinguish between urgent needs and supplementary claims in a more transparent manner.

In the second stage, the court should conduct a realistic assessment of the payer’s actual financial capacity rather than relying solely on gross salary or declared income. This requires consideration of net income after deductions, regular household expenses, the number of dependants, outstanding debts, employment stability, and prevailing local living costs. Such an approach recognises that financial ability is multidimensional and may vary significantly depending on personal and economic circumstances. By evaluating these factors comprehensively, the court can avoid maintenance orders that are either excessively burdensome or insufficiently responsive to the child’s legitimate needs.

In the third stage, the proposed maintenance order should be subjected to a welfare–harm balancing test. The court should determine whether the order adequately protects the child’s welfare, remains realistically payable

by the responsible parent, minimises the likelihood of future disputes, and supports long-term compliance and family stability. This stage is crucial because an order that is fair in principle but unrealistic in practice may lead to default, repeated litigation, and continued hardship. Through this balancing exercise, the assessment process moves beyond mere calculation and becomes a mechanism for achieving sustainable and equitable outcomes consistent with the principles of *maslahah* and *mafsadah*.

Table 3. Proposed Shift in Assessment Logic

Current Approach	Proposed Structured Approach
Broad discretion	Guided discretion
Implicit fairness	Transparent fairness
Basic need focus	Holistic welfare focus
Income-only assessment	Real capacity analysis
Reactive outcomes	Preventive and sustainable outcomes

Overall, the results demonstrate that Shariah Courts already pursue fairness in child maintenance cases through attention to welfare and capacity. However, this pursuit of fairness remains constrained by the lack of an explicit methodology. Welfare is recognised but often narrowly defined; financial capacity is considered but not always comprehensively measured; and judicial discretion is valuable but insufficiently guided.

Accordingly, the study finds that integrating *maslahah* and *mafsadah* into a structured assessment framework would likely improve consistency, transparency, compliance, and substantive justice. Rather than replacing judicial discretion, such integration would refine and legitimise it.

DISCUSSION

Reframing Fairness in Child Maintenance Adjudication

The findings demonstrate that fairness in child maintenance cases cannot be reduced to the final monetary figure alone. A decision may appear lawful yet remain substantively unjust if it inadequately protects the child or imposes an unrealistic burden that leads to non-compliance (Tyler, 2024; Aidid, A. 2023). Fairness should therefore be understood as a reasoned process that balances welfare, capacity, and sustainability.

This insight is important because litigants often evaluate justice not only by what amount is ordered, but by whether they understand how the court arrived at that figure (Tyler, 2024). Transparent reasoning can strengthen acceptance of outcomes, even where one party is dissatisfied. In this respect, procedural fairness and substantive fairness are closely linked.

From an Islamic jurisprudential perspective, this reinforces the relevance of *maslahah* and *mafsadah*. These concepts provide more than moral aspirations; they offer a normative architecture for judicial reasoning. Fairness is achieved not simply when courts identify needs and means, but when they can demonstrate how welfare promotion and harm prevention have been balanced in a principled manner (Auda, 2008; Hashem, M. 2024).

From Broad Discretion to Guided Discretion

Comparative child support systems show that flexibility and consistency need not be opposing values. Many jurisdictions use guideline-based approaches that establish a baseline while allowing judicial adjustment where justified. The lesson for Shariah Courts is not that foreign formulas should be copied wholesale, but that discretion can be strengthened through principled structure.

A guided discretion model would preserve sensitivity to family circumstances while reducing arbitrariness. Courts would remain free to depart from general benchmarks, but such departures would be explained through clear reasons tied to evidence, welfare, and realistic capacity.

Many jurisdictions outside the Muslim world have faced similar tensions between flexibility and consistency. In response, several legal systems have developed guideline-based assessment models that preserve discretion

while reducing arbitrariness. For example, child support systems in jurisdictions such as the United Kingdom, Australia, Canada, and parts of the United States commonly utilise formula-based or administrative guidelines that consider income levels, number of children, care arrangements, and cost adjustments (Hakovirta, M. 2011; Aizer, et.al. 2006). These systems do not eliminate judicial discretion entirely, but they establish predictable baselines from which departures must be justified. The key lesson is that fairness is strengthened when discretion is disciplined by transparent benchmarks.

By contrast, the current Shariah Court approach in many maintenance disputes remains more heavily dependent on case-by-case judicial evaluation. While this allows contextual sensitivity, it may also create variability where comparable cases receive materially different outcomes. The comparative evidence therefore suggests that the central issue is not whether Shariah Courts should retain discretion, but how that discretion can be better structured (Tanzilulloh, et.al, 2024). Importantly, adopting structured guidance does not require importing secular models wholesale. Instead, Shariah Courts may develop their own assessment framework rooted in maqasid al-shariah, local socio-economic realities, and the doctrinal principles of kifayah and ma'ruf. In this sense, comparative law serves as a source of institutional learning rather than normative replacement (Welchman, 2007; Sanusi, T. O. 2025).

Table 4. Comparative Models of Child Maintenance Assessment

Jurisdictional Approach	Main Characteristic	Strength	Limitation
Pure judicial discretion	Case-specific reasoning	High flexibility	Inconsistency
Formula / guideline model	Standardised baseline rules	Predictability	Risk of rigidity
Hybrid guided discretion	Benchmarks + judicial adjustment	Balance of fairness and flexibility	Requires robust data
Proposed maqasid model	Welfare-harm balancing + structured criteria	Normative legitimacy + contextual justice	Requires institutional reform

The proposed maqasid-based model aligns most closely with a hybrid guided discretion approach.

Expanding the Meaning of Child Welfare

The study also challenges narrow understandings of child welfare. In contemporary society, children require more than subsistence. Educational technology, stable healthcare access, transport, psychosocial support, and safe participation in social life may be integral to healthy development (Ben-Arieh et al., 2014; Pells, et.al, 2014). If maintenance law is tied to the preservation of life, intellect, lineage, and dignity, then welfare must be interpreted dynamically rather than minimally.

This does not mean every claimed expense should automatically be granted. Rather, courts should distinguish between essential, supportive, and enhancement needs in a transparent manner. Such prioritisation reflects the classical hierarchy of necessities, needs, and refinements while remaining responsive to present realities. This insight has significant implications for Islamic family law. If maintenance is tied to the protection of life, intellect, lineage, and dignity, then a minimalist subsistence approach may no longer be sufficient in contemporary society. For example, access to internet connectivity or learning devices may now be essential for educational participation. Similarly, counselling or mental health support may be necessary in post-divorce family contexts where children experience emotional stress.

Thus, the concept of *maslahah* should not be frozen in historical economic conditions. Its enduring value lies precisely in its adaptability to changing realities. Courts that recognise only traditional categories of expenditure risk under-protecting children in modern contexts. A maqasid-oriented system must therefore adopt a dynamic understanding of welfare that responds to contemporary forms of vulnerability and opportunity (Auda, 2008; Hashem, M. 2024; Ibrhim, et.al, 2025).

Reassessing Financial Capacity Beyond Salary Figures

The study also reveals the need to refine how financial capacity is assessed. Current approaches often focus on declared salary or visible income, but this may not accurately capture actual ability to contribute. Comparative family law research shows that effective maintenance systems increasingly consider net disposable income, hidden earnings, debt obligations, irregular employment, tax liabilities, and caregiving responsibilities (Hakovirta, et.al, 2020).

This is equally relevant in the Shariah Court context. A father with moderate gross income but high debt burdens and multiple dependants may face genuine constraints. Conversely, a payer with understated formal income but significant assets or informal earnings may possess greater capacity than appears on paper. Without a fuller economic assessment, courts risk producing inaccurate orders.

From the perspective of *mafsadah*, such inaccuracies are consequential. Over-assessment may generate default, resentment, and repeated litigation. Under-assessment may deprive children of legitimate support. Accordingly, financial capacity should be treated as a contextual economic reality rather than a single numerical figure (Fuad et al., 2024).

Compliance and Long-Term Sustainability

An order that exists only on paper provides limited protection. Excessive awards may trigger default and repeated enforcement proceedings, while inadequate awards may leave children in continuing hardship. Sustainable compliance should therefore be viewed as part of substantive justice rather than a separate enforcement issue.

In some circumstances, a moderate order that is consistently paid may better serve child welfare than a higher order that is routinely ignored. One of the most overlooked dimensions of maintenance adjudication is the relationship between the size of an award and the likelihood of compliance. A legally valid order has limited value if it is routinely ignored or unenforceable. The findings suggest that unrealistic orders may inadvertently produce the very harms they seek to prevent. Excessive awards can trigger non-payment, while inadequate awards may force custodial parents and children into economic hardship.

International evidence indicates that compliance improves where orders are perceived as fair, understandable, and realistically calibrated to capacity (Aizer, et.al. 2006). This supports the argument that maintenance should be designed not only for immediate entitlement but also for sustainable implementation. Courts should therefore consider enforceability as part of substantive justice rather than as a separate post-judgment issue. Within a maqasid framework, this means that the prevention of future harm must be integrated into present decision-making. A sustainable order that is regularly paid may better serve child welfare than a larger order that exists only on paper (Tyler, 2024).

Institutional Reform Implications

The findings suggest several institutional reforms for Shariah Courts: (i) maintenance assessment guidelines or benchbooks; (ii) judicial training in financial analysis and child wellbeing; (iii) simplified review procedures when circumstances materially change; (iv) anonymised data collection on maintenance trends; and (v) stronger coordination between adjudication and enforcement bodies.

These reforms would not diminish judicial authority. Rather, they would equip judges with clearer tools for principled and evidence-based decision-making. These may include:

1. Maintenance Assessment Guidelines – Benchbooks or standard guidance notes based on child needs, cost-of-living indicators, and capacity factors.
2. Judicial Training – Capacity-building programmes on financial analysis, child wellbeing, and maqasid-based reasoning.
3. Periodic Review Mechanisms – Simplified procedures to revise maintenance orders in response to inflation, schooling changes, or income fluctuations.

4. Data Systems – Collection of anonymised maintenance trends to improve consistency and evidence-based policymaking.
5. Integrated Enforcement Support – Stronger coordination between courts, welfare institutions, and enforcement agencies.

Such reforms would not diminish judicial authority. On the contrary, they would enhance judicial legitimacy by equipping courts with clearer tools for principled adjudication (Aidid, A. 2023; Tanzilulloh, et.al, 2024).

Theoretical Contribution: Operationalising Maqasid

At a theoretical level, this study contributes to ongoing debates on how *maqasid al-shariah* can move from abstract legal philosophy to practical judicial methodology. Much contemporary scholarship celebrates maqasid as a flexible and reform-oriented framework, yet fewer studies specify how courts should operationalise it in day-to-day adjudication (Hashem, M. 2024; Sanusi, T. O. 2025).

This article argues that child maintenance provides an ideal site for such operationalisation because it involves measurable needs, identifiable harms, and recurring disputes over fairness. By translating *maslahah* into welfare indicators and *mafsadah* into foreseeable risk analysis, maqasid becomes a functional decision-making tool rather than a rhetorical reference.

This has wider implications beyond maintenance law. Similar welfare-harm frameworks may be adapted in custody disputes, matrimonial property division, domestic violence remedies, and social welfare adjudication within Islamic legal systems (Auda, 2008).

Taken together, the discussion demonstrates that the challenge facing child maintenance adjudication is not a lack of legal principle, but a lack of structured implementation. Shariah Courts already possess the normative resources required for fair decision-making through the principles of *maslahah*, *mafsadah*, *kifayah*, and *maqasid al-shariah*. What remains necessary is to convert those principles into transparent institutional practice.

International experience shows that consistency and flexibility need not be opposing values. A guided discretion model adapted through Islamic jurisprudential principles rather than borrowed mechanically from foreign systems offers the most promising pathway forward. Through such reform, child maintenance adjudication can become more predictable, more legitimate, and more responsive to the realities of contemporary family life (Hakovirta, M. 2011; Aizer, et.al. 2006).

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