

JUDICIAL INDEPENDENCE IN PALESTINE'S SHARĪ'AH COURTS: A JURISPRUDENTIAL-ANALYTICAL STUDY OF DECREE LAW NO. (8) OF 2021

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ABSTRACT

The judiciary lies at the core of any legal system, grounded in the foundational maxim: “No law without a judiciary.” This principle highlights the intrinsic interdependence between legislation and adjudication—not only in form, but also in function, authority, and purpose. This study examines the principle of judicial independence within Palestine’s Sharī’ah judiciary by critically analysing its legal framework—particularly the Amended Basic Law, the Judicial Authority Law, and Decree-Law No. (8) of 2021 concerning the Sharī’ah court system. It also evaluates the extent to which these provisions align with Islamic juristic principles on judicial autonomy and impartiality. Using both inductive and comparative methodologies, the study examines statutory texts alongside authoritative sources of Islamic jurisprudence. It identifies the legal and Sharī’ah-based safeguards that uphold the independence of the Sharī’ah judges and assesses their practical implementation. The findings indicate that Decree-Law No. (8) of 2021 represents a significant shift toward reinforcing judicial independence after decades of reliance on foreign legal models. The study concludes by offering new and significant contributions through juristic recommendations for legislative reform, consistent legal interpretation, enhanced public awareness, and a strengthened integration of Islamic principles in judicial practice.

Keywords: Judicial Independence, Sharī’ah Judiciary, Constitutional Legislation, Judicial Safeguards, Decree Law 8/2021.

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KEMERDEKAAN KEHAKIMAN DI MAHKAMAH SYARIAH PALESTIN: SUATU KAJIAN FIQH DAN ANALITIK TERHADAP DEKRI UNDANG-UNDANG NO. (8) TAHUN 2021

ABSTRAK

Badan kehakiman merupakan teras bagi mana-mana sistem perundangan, berlandaskan kepada prinsip asas: “Tiada undang-undang tanpa badan kehakiman.” Prinsip ini menekankan hubungan saling bergantung yang mendalam antara penggubalan undang-undang dan pelaksanaan kehakiman—bukan sahaja dari segi bentuk, tetapi juga dari sudut fungsi, autoriti dan tujuan. Kajian ini meneliti prinsip kebebasan badan kehakiman dalam institusi kehakiman Syariah Palestin dengan menganalisis kerangka undang-undang secara kritikal—khususnya Undang-Undang Asas yang Dipinda, Undang-Undang Kuasa Kehakiman, dan Dekri-Undang No. (8) Tahun 2021 berkaitan sistem mahkamah Syariah. Kajian ini turut menilai sejauh mana peruntukan-peruntukan tersebut sejajar dengan prinsip-prinsip fiqh Islam berhubung autonomi dan ketidakberpihakan badan kehakiman. Dengan menggunakan pendekatan induktif dan perbandingan, kajian ini menganalisis teks-teks perundangan bersama sumber-sumber autoritatif dalam perundangan Islam. Kajian ini mengenal pasti perlindungan undang-undang dan berasaskan Syariah yang menjamin kebebasan para hakim Syariah serta menilai sejauh mana pelaksanaannya dalam sistem kehakiman Palestin. Dapatan kajian menunjukkan bahawa Dekri-Undang No. (8) Tahun 2021 merupakan satu perubahan ketara ke arah pengukuhan kebebasan kehakiman setelah sekian lama bergantung kepada model undang-undang asing. Kajian ini diakhiri dengan sumbangan baharu dan signifikan melalui cadangan fiqh terhadap pembaharuan perundangan, penyeragaman tafsiran undang-undang, peningkatan kesedaran awam, dan pengukuhan integrasi prinsip-prinsip Syariah dalam amalan kehakiman.

Kata Kunci: Kebebasan Kehakiman, Kehakiman Syariah, Perundangan Perlembagaan, Jaminan Kehakiman, Dekri Undang-Undang 8/2021.

INTRODUCTION

In classical Islamic legal thought, the judiciary is viewed as a sovereign and autonomous institution entrusted with the sacred duty of delivering justice in accordance with the provisions and higher objectives (*maqāṣid*) of Islamic law. Muslim jurists unanimously recognised the judicial office as one of the most honourable public functions, due to its profound religious importance and substantial societal obligations. Consequently, Islamic law established a robust normative framework to preserve judicial independence, maintain moral uprightness, and ensure impartial adjudication—thereby portraying the judge as a representative of divine law (Shari'ah), rather than a subordinate to political authority.¹

Islamic jurists consistently emphasised that the judiciary must remain independent from executive control.² Its legitimacy, they argued, stems not from temporal authority, but from divine revelation and juristic reasoning (*ijtihād*). A judge may only be dismissed upon the loss of moral integrity (*'adālah*) or proven vulnerability to external influence. This understanding of judicial independence—deeply rooted in Islamic legal tradition—precedes the modern theory of separation of powers, though both share the same objective: securing justice and preserving the dignity of the judiciary.³ Likewise, John Locke asserted that a legitimate legal order depends on foundational principles,

¹Ramadan Abdel Karim, "مبدأ استقلال القضاء دراسة مقارنة في الفقه الإسلامي والقانون الوضعي" "مبدأ استقلال القضاء دراسة مقارنة في الفقه الإسلامي والقانون الوضعي"

[“The Principle of Judicial Independence,”] *Majallat al-Ḥuqūq lil-Buḥūth al-Qānūniyyah wa al-Iqtiṣādiyyah*, Special Issue (2012): 666-669; Maher al-Sousi, *Abrazu Khaṣā'ishi Fiqh al-Qaḍā' fi al-Islām* (Gaza: Islamic University, 2009), 45; Mohd Hisham Mohd Kamal, “An Islamic Perspective on the Rule of Law,” *IJUM Law Journal* 30, no. 2 (2022): 204-205, <https://doi.org/10.31436/iiumlj.v30i2.750>.

²Ata Rehman, Mazlan Ibrahim, and Ibrahim Abu Bakar, “The Concept of Independence of Judiciary in Islam,” *International Journal of Business and Social Science* 4, no. 2 (2013): 69; Abdul Karim Zaidan, *Niḥām al-Qaḍā' fi al-Shari'ah al-Islāmiyyah* (Beirut: Al-Resalah Publishing House, 1989), 71-74; Nasr Wasel, *al-Sulṭah al-Qaḍā' iyyah wa Niḥām al-Qaḍā' fi al-Islām* (Cairo, al-Maktaba al-Tawfiqiyya, n.d), 218–224; Muḥammad al-Saḥīm, *Istiqlāl al-Qaḍā' fi al-Fiqh al-Islāmī* (Riyadh: Dār Ibn al-Jawzī, 1436 H), 457-458.

³Al-Sousi, *al-Qaḍā' fi al-Islām*, 45-48.

including the supremacy of law, equal treatment under the law, and procedural clarity—each essential to ensuring fair enforcement and protecting judicial independence.⁴

Against this legal backdrop, the enactment of Decree-Law No. 8 of 2021—governing the organisation of the Shari‘ah judiciary in Palestine—marked a significant legislative milestone.⁵ The decree aimed to restructure the Shari‘ah judicial system in line with the Amended Palestinian Basic Law of 2003, particularly Article 97, by formally defining the hierarchical structure, jurisdictional boundaries, and administrative framework of the Shari‘ah courts. Ostensibly, these reforms were designed to reinforce the judiciary’s institutional autonomy and to improve its internal coherence and functional efficiency.⁶

Nevertheless, this legislative initiative encourages continued scholarly reflection on how judicial autonomy may be further supported within the existing legal framework. Although the decree establishes a formal institutional structure, it remains important to consider the extent to which its organisational design and procedural arrangements provide Shari‘ah judges with safeguards within the administrative system. These remarks do not imply deficiencies but rather highlight areas where the stated goal of judicial independence may benefit from closer alignment between normative principles and institutional arrangements. In particular, while Article (2) of Decree-Law No. 8/2021 affirms judicial independence, several provisions also assign administrative responsibilities to the Office of the Chief Justice (e.g., Articles 10, 11, and 45–51). This structure may therefore be viewed as underscoring the value of refinement to ensure coherence

⁴Restu Permadi and Fifiana Wisnaeni, “A Legal Review of the Autonomy and Independence of the Supreme Court within the Indonesian Constitutional System,” *Jurnal Pembangunan Hukum Indonesia* 2, (2020): 399-415, <https://doi.org/10.14710/jphi.v2i3>.

⁵Institute of Law at Birzeit University, “قرار بقانون رقم (8) لسنة 2021م بشأن القضاء الشرعي” [“Decree Law No. 8 of 2021 on the Sharia Judiciary,”] *Majallat al-Waqā’i‘ al-Filasṭīniyyah*, no. 177 (2021).

⁶Institute of Law at Birzeit University, “القانون الأساسي المعدل” [“The Amended Basic Law,”] *Majallat al-Waqā’i‘ al-Filasṭīniyyah*, Special Issue (2003).

between legislative aspirations and administrative mechanisms, thereby supporting the aim of strengthening judicial independence.

The central question concerns the relationship between normative principles and institutional practices. Although judicial independence is grounded in both Islamic jurisprudence and Palestinian constitutional law, its practical expression within the Shari'ah judiciary warrants continued examination. Islamic legal tradition emphasises that judicial authority should operate autonomously and free from external influence. At the same time, the institutional structure outlined in Decree-Law No. 8 of 2021 reflects an administrative configuration that plays an important organisational role—particularly in matters relating to the transfer and secondment of judges under Articles 23–24. These provisions indicate that, while the law affirms judicial independence as a foundational principle, the interaction between administrative procedures and judicial functions may benefit from further clarification. Accordingly, this topic invites analysis of how the Basic Law, the Judicial Authority Law, and Decree-Law No. 8 of 2021 shape the operational environment of the Shari'ah judiciary within a framework consistent with classical juristic standards.

Contemporary challenges further reinforce the urgency of this inquiry. The surge in family-related disputes, growing judicial caseloads⁷, and the accelerating pace of legislative reform necessitate a comprehensive reassessment of the structural and functional autonomy of the Shari'ah judiciary within the broader Palestinian legal framework. What is required is a rigorous and balanced analysis—one that reconciles statutory mandates with juristic objectives and reconsiders the judicial framework in light of shifting institutional dynamics and evolving legal demands. This requirement is directly connected to the issue examined in this study: while Decree-Law No. 8/2021 affirms judicial independence, it also organises several administrative functions within the Office of the Chief Justice. A balanced analysis is therefore useful to understand how the law's

⁷Tomi Agustian and Choirul Salimm, "The Problems of the Independence of Judicial Power in Indonesia," *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 2 (2021): 164; Rakhmanov Abdumukhtor Rejjabbayevich, "Judicial System of Islamic Law," *European Journal of Research Development and Sustainability* 5, no. 7 (2024): 22, <https://www.scholarzest.com>.

structural design supports judicial independence and how administrative arrangements interact with the practical conditions under which judicial impartiality is maintained.

Several studies have examined the principle of judicial independence from various angles; however, their relevance to the specific context of the Palestinian Sharī'ah judiciary remains limited. Notably, Abu Wahdan's study addressed this principle by presenting the provisions of Decree-Law No. 8 of 2021 in detail.⁸ However, its predominantly descriptive nature limited its juristic and analytical contribution, and it lacked the element of *ijtihād* typically expected in research grounded in Islamic legal tradition. For instance, Abu Wahdan's work devoted extended sections to the history and definitions of the judiciary and presented the provisions of Decree-Law No. 8/2021 article by article, without offering an institutional critique or proposing juristic reasoning for reform. While this descriptive approach is informative and provides useful background, it falls short of delivering the analytical depth and juristic engagement normally associated with Islamic legal scholarship. In contrast, the present study seeks to distinguish itself by integrating legal analysis with juristic reasoning, assessing the decree in light of classical Islamic jurisprudence and the higher objectives (*maqāṣid*) of Sharī'ah.

Similarly, Hamad et al.⁹ explored the broader theme of judicial independence within Islamic legal theory and Palestinian legislation. Yet their analysis did not specifically address the Sharī'ah judiciary, nor did it examine Decree-Law No. 8 of 2021 or the institutional safeguards intended to ensure judicial autonomy. Instead, their discussion remained at a general level, focusing on constitutional principles and the regular judiciary, without assessing how the decree reorganised the Sharī'ah courts, concentrated administrative authority

⁸Abdallah Abu Wahdan and Amira Droubi, "استقلالية القضاء في المحاكم الشرعية: دراسة فقهيّة" "Judicial Independence in

Sharia Courts: A Jurisprudential-Analytical Study of Decree-Law No. 8/2021 on the Sharia Judiciary,"] *Majallat al-Shari'a wa al-Dirasat al-Islamiyya* 13, no. 2 (2022): 233–268.

⁹Ahmed Hamad and Haslinda Mohd Anuar, "The Judiciary in Islamic Law, Palestinian Legislation, and Guarantees of Its Independence," *Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (2021): 1-22, <https://doi.org/10.22373/sjhk.v5i1.8927>.

in the Office of the Chief Justice, or affected the appointment and disciplinary mechanisms of Shari'ah judges. This omission left a significant gap in the literature, since the unique institutional structure of the Shari'ah judiciary raises distinct challenges that cannot be captured by a generic treatment of judicial independence. Therefore, the present study addresses this gap by offering a focused juristic and institutional analysis of the Shari'ah judiciary under Decree-Law No. 8/2021.

Beyond the Palestinian context, an Indonesian study titled *"The Problems of the Independence of Judicial Power in Indonesia in a Review of Islamic Law"*¹⁰ examined the impact of executive and legislative interference in the appointment and removal of Supreme Court judges. The study contended that such involvement undermines the core of Article 24(1) of the 1945 Constitution. In contrast, it highlighted the Islamic judicial model—where the power to appoint and dismiss judges rests with the Caliph but is ethically constrained by the judge's awareness of divine accountability—as a mechanism for preserving judicial integrity.

Similarly, al-Sahlani¹¹ and Baltaib¹² addressed judicial independence in the Iraqi and Algerian contexts, respectively, but did not engage with the Palestinian legal framework or the specific features of the Shari'ah judiciary. Reports by the Al-Mezan Center¹³ and Abdel-Baqi¹⁴ focused on broader structural challenges within the Palestinian

¹⁰Agustian and Salimm, "Judicial Power in Indonesia," 164-180.

¹¹Murtadha al-Sahlani, "استقلالية القضاء في الشريعة الإسلامية والقوانين الوضعية: دراسة مقارنة" ["Judicial Independence in Islamic Sharia and Positive Laws: A Comparative Study,"] *Majallat Kulliyat al-Tarbiyah lil-'Ulūm al-Insāniyyah* 8, no. 3 (2018): 153–179.

¹²Fatima Baltaib, "حياد القاضي في ظل مبدأ استقلالية القضاء دراسة فقهية قانونية" ["The Neutrality of the Judge under the Principle of Judicial Independence: A Jurisprudential and Legal Study,"] *Majallat al-Buḥūth al-'Ilmiyyah wa al-Dirāsāt al-Islāmiyyah* 9, no. 2 (2017): 280–313.

¹³Alaa Shalabi, *Istiqlāl al-Qaḍā' wa Dawruhu fī Damān 'Adālat al-Muḥākamāt* (Gaza: Al-Mezan Center for Human Rights, 2021), 1–34.

¹⁴Mustafa Hussein Abdel-Baqi, "واقع النظام القضائي الفلسطيني: بين الاستقلال والفعالية" ["The Reality of the Palestinian Judicial System: Between Independence and Effectiveness,"] *Dirāsāt, 'Ulūm al-Shari'ah wa al-Qānūn* 43, no. 4 (2016): 1611–1624.

judiciary, without analysing the internal organisation or institutional autonomy of the Shari‘ah courts. Internationally, Laliashvili¹⁵ offered an insightful institutional analysis, though without reference to Islamic legal theory or the Palestinian context.

Taken together, these studies highlight a critical gap in the literature: the lack of a contextualised, doctrinally grounded inquiry into judicial independence within Palestine’s Shari‘ah judiciary. This gap is particularly significant in light of recent legislative reforms—most notably Decree-Law No. 8 of 2021—which has yet to be examined through a comprehensive framework that connects statutory design with Islamic legal foundations. Accordingly, this study aims to conduct a critical evaluation of Decree-Law No. 8 of 2021 through a dual lens: legal analysis and Islamic juristic reasoning. It seeks to clarify the institutional status of the Shari‘ah judiciary within the broader Palestinian legal framework and to assess whether the decree provides substantive guarantees for judicial independence and impartiality. Ultimately, this research aspires to support a more coherent legislative vision for the Shari‘ah judiciary by presenting a balanced and jurisprudentially grounded analysis—one that harmonises the ethical and structural imperatives of Islamic adjudication with constitutional principles of judicial independence. This synthesis may provide a valuable reference for policymakers seeking to promote judicial neutrality and protect Shari‘ah judges from improper political or administrative influence.

RESEARCH METHODOLOGY

This study employs a normative legal research approach, utilising a library-based method to collect data from written sources, including statutory texts, Islamic juristic literature, constitutional documents, and relevant academic studies. The research is descriptive-analytical in nature¹⁶, aiming to examine and interpret the legal structure and

¹⁵Tamar Laliashvili, “The Importance and Guarantees of the Judiciary Independence,” *Law and World* 7, no. 1 (2021): 58–74, <https://doi.org/10.36475/7.1.6>.

¹⁶Achmad Irwan Hamzani and Tiyas Vika Widayastuti, “Legal Research Method: Theoretical and Implementative Review,” *International Journal of Membrane Science and Technology* 10, no. 2 (2023): 3611, <https://>

institutional configuration of the Shari'ah judiciary in Palestine, as informed by both the prevailing legal framework and classical Islamic jurisprudence. The central focus of the study is Decree-Law No. 8 of 2021, which governs the organisation of the Shari'ah judiciary. The analysis seeks to determine whether the provisions of this decree adequately support the independence of Shari'ah judges and uphold the principle of judicial impartiality, in accordance with both Islamic legal theory and constitutional norms.

This study employs two primary methodological approaches. The first is the legislative-analytical method, which involves a critical examination of binding legal instruments within the Palestinian legal framework—most notably the Amended Basic Law of 2003, the Judicial Authority Law, and Decree-Law No. 8 of 2021, which regulates the Shari'ah judiciary. This approach evaluates the extent to which these texts support the institutional and functional independence of the Shari'ah judiciary, particularly regarding protection from executive control and administrative subordination. The second is the jurisprudential-theoretical method, drawing upon classical and contemporary Islamic legal sources—including the Qur'an, Prophetic traditions (*ḥadīth*), and authoritative works of Islamic jurists (*fuqahā*). It aims to assess the degree of consistency between existing statutory and institutional arrangements and the principles of Islamic legal reasoning (*ijtihād*), as well as the normative ideals of judicial independence, impartiality, and moral integrity as articulated within the Islamic tradition.

Data Collection Method: This study employs a documentation-based method for data collection, relying on the systematic gathering and examination of legal and academic materials directly relevant to the research topic. The sources include the Palestinian Basic Law, legislative decrees and regulations governing judicial authority, classical Islamic legal texts, judicial rulings, official reports issued by the Office of the Chief Justice (*Dīwān Qādī al-Quḍāh*), and scholarly literature addressing judicial independence within both Islamic jurisprudential and constitutional frameworks.

Data Analysis: The data in this study are analysed using a qualitative, inductive approach. The researcher critically examines the institutional and legal structure of the Sharī‘ah judiciary in Palestine and compares it with Islamic juristic perspectives on judicial independence. The analysis aims to assess the degree of congruence between the Palestinian legal framework and foundational Islamic principles—particularly those emphasising impartiality, autonomy, and insulation from external interference. Additionally, the study considers the higher objectives (*maqāṣid*) of Islamic governance, such as justice and trustworthiness, as normative benchmarks for evaluating the legitimacy and effectiveness of the judicial model under examination.

RESEARCH RESULTS AND DISCUSSION

This section examines the current state of the Sharī‘ah judiciary in Palestine in light of recent legal and juristic developments. It presents and critically discusses the main findings within the context of the judiciary’s historical trajectory and assesses the extent to which judicial independence has been realized under Decree-Law No. 8 of 2021. The analysis also investigates institutional dynamics and the legal and juristic safeguards supporting judicial autonomy.

The Development Trajectory of the Sharī‘ah Judiciary in Palestine and the Features of the New Law

The Sharī‘ah judiciary in Palestine has undergone a complex historical evolution shaped by successive ruling authorities and overlapping legal systems. From the Ottoman era to the British Mandate, followed by Jordanian rule in the West Bank, Egyptian rule in Gaza, and ultimately the establishment of the Palestinian National Authority, legal pluralism has left a lasting imprint. This diversity led to dependence on fragmented legal sources. It highlighted the need for a unified national framework that reflects Palestinian identity and reorganises the judiciary under coherent legislative authority.

The promulgation of Decree-Law No. 8 of 2021 marked a significant milestone in the legal reform process. It repealed outdated legislation—most notably Jordanian Law No. 19 of 1972—and established a foundation for a more coherent Palestinian legal system.

Anchored in Article 43 of the Amended Basic Law (2003), the decree aims to strengthen the independence of the Shari'ah judiciary while preserving its distinct jurisprudential identity within the broader judicial system framework. Despite its importance, the decree did not fully bridge the legal divide between the West Bank and Gaza. Courts in both regions continue to function under separate legal regimes, undermining judicial coherence and the uniformity of rulings. Additionally, the law organises several administrative, representative, and supervisory functions within the Office of the Chief Justice (Qāḍī al-Quḍāh). This organisational structure points to the value of further aligning administrative and judicial functions in support of institutional independence.

The development of the Shari'ah judiciary in Palestine reflects a gradual legislative trajectory leading up to Decree-Law No. 8 of 2021. Presidential Decree-Law No. 1 of 2011 established a Transitional High Council of the Shari'ah Judiciary and elevated the Chief Justice to ministerial rank, though its mandate was temporary.¹⁷ This transitional arrangement was replaced by Decree-Law No. 3 of 2012, which institutionalised the High Council of the Shari'ah Judiciary as a permanent body with defined composition and powers.¹⁸ Further reform was attempted through Decree-Law No. 17 of 2016 on Shari'ah Enforcement, which created specialised enforcement departments and introduced new procedures for execution and judicial supervision. These successive reforms, however, remained fragmented and partial.¹⁹ It was only with Decree-Law No. 8 of 2021 that the legislature consolidated and expanded these earlier efforts into a comprehensive framework, aiming to unify legal sources, restructure judicial administration, and strengthen guarantees of judicial independence. The law reflects the culmination of reform efforts dating back to 2012,

¹⁷Institute of Law, "قرار بقانون رقم (1) لسنة 2011م بشأن القضاء الشرعي" ["Decree Law No. 1 of 2011 on the Shari'ah Judiciary,"] *Majallat al-Waqā'i' al-Filasṭīniyyah*, no. 90 (2011): 12-13.

¹⁸Institute of Law, "قرار بقانون رقم (3) لسنة 2012م بشأن القضاء الشرعي" ["Decree Law No. 3 of 2012 on the Shari'ah Judiciary,"] *Majallat al-Waqā'i' al-Filasṭīniyyah*, no. 93 (2012): 6-7.

¹⁹Institute of Law, "قرار بقانون رقم (17) لسنة 2016م بشأن التنفيذ الشرعي" ["Decree Law No. 17 of 2016 on the Shari'ah Enforcement,"] *Majallat al-Waqā'i' al-Filasṭīniyyah*, no. 125 (2016): 6-12.

including the 2016 draft, and conveys a clear legislative intent to unify legal sources and improve judicial performance under the rule of law. It embodies a broader national aspiration to modernise the judiciary and preserve the integrity of Palestinian family life amid ongoing social change.

This aspiration is clearly reflected in Articles 48–50 of Decree-Law No. 8/2021. Article 48 establishes the Family Guidance and Reconciliation Department under the Chief Justice’s Office, headed by a Shari’ah judge, tasked with mediating family disputes and preparing settlement reports that carry executive force once ratified. Articles 49–50 establish the Shari’ah Prosecution, which is entrusted with pursuing public Shari’ah rights in sensitive matters, such as unlawful marriages, the validation of marriage and divorce, endowments, inheritance, and lineage disputes. Together, these provisions demonstrate the law’s direct concern with safeguarding family stability and social cohesion, thereby grounding the claim that the Decree-Law reflects a national aspiration to protect Palestinian family life in the face of contemporary challenges.

In light of these developments, this analysis evaluates the law’s effectiveness in promoting judicial independence. The discussion centres on the judiciary’s organisational structure, the relationship between the Chief Justice and the Shari’ah Judicial Council, and the procedures for appointment and oversight. This assessment offers a more balanced perspective on the role and institutional standing of the Shari’ah judiciary within the broader Palestinian legal system.

The Relationship between the Palestinian Shari’ah Judiciary and the Presidency: Between Executive Authority and Exceptional Legislation

An examination of the legal context surrounding Decree-Law No. 8 of 2021 indicates that the executive authority, represented by the Presidency, continues to exercise interim legislative powers in the absence of the Legislative Council. Pursuant to Article 43 of the Amended Basic Law (2003), the President is empowered to issue decrees with the force of law in cases of necessity. This arrangement creates a dual dynamic in the relationship between the Shari’ah judiciary and the Presidency: the executive’s ongoing legislative role on one hand, and the requirement of presidential approval for certain

institutional decisions of the Sharī'ah judiciary, as stipulated in Articles 11(4) and 11(13) of the same law, on the other.²⁰

While notable steps have been taken toward institutional independence, the Sharī'ah judiciary's relationship with the Presidency remains shaped by a coordinative framework. This is particularly reflected in judicial appointments, promotions, and secondments—which are issued by presidential decree under Articles 10, 12, 16, and 25. Although these procedures have a clear legal basis, they highlight the value of continued consideration of how constitutional principles and administrative practices may be further aligned to support the practical dimensions of judicial independence.

It may be observed that the continued exercise of interim legislative authority by the Presidency, in the absence of an active legislature, has contributed to a governance framework in which certain legislative and executive functions converge. This situation suggests the usefulness of further clarifying the regulatory boundaries in order to reinforce the practical dimension of judicial independence in harmony with constitutional principles and the doctrine of separation of powers. Reports issued by legal institutions, including the Palestinian Centre for Human Rights, have noted that reliance on Article 43 of the Basic Law for issuing decrees in exceptional circumstances may warrant additional examination to ensure the optimal balance between constitutional mandates and institutional practice.²¹

This situation encourages continued scholarly analysis of mechanisms that may further support the practical implementation of judicial independence.

²⁰Institute of Law, "Decree Law No. 8 of 2021" 6-7.

²¹"Judicial Independence Will Not Be Achieved Through Laws by Decree by the Head of the Executive Authority," Palestinian Centre for Human Rights (PCHR), January 13, 2021, accessed September 11, 2025, <https://pchrgaza.org/judicial-independence-will-not-be-achieved-through-laws-by-decree-by-the-head-of-the-executive-authority/>.

The Office of the Chief Justice and the General Judicial Authority: Organisational Autonomy without Functional Detachment

Decree-Law No. 8 of 2021 established a reorganised Shari‘ah judiciary within an administratively and legislatively autonomous framework, represented by the “Office of the Chief Justice” (*Dīwān Qāḍī al-Qudāh*). This entity was entrusted with managing the Shari‘ah courts and the Shari‘ah Judicial Council, thereby ending the judiciary’s historical subordination to Jordanian and Egyptian legal systems.²² The decree granted the Office an independent budget and internal regulatory authority, marking the emergence of a semi-autonomous administrative body within the judicial apparatus. Nevertheless, the law does not explicitly provide for a structural separation between the Shari‘ah judiciary and the general judicial authority defined in Articles 97–100 of the Amended Basic Law (2003), which affirm the unity of the judiciary and assign core functions—such as appointment, dismissal, and oversight—to the High Judicial Council.

Thus, the Shari‘ah judiciary appears to exercise sectoral administrative autonomy within a unified judicial framework, rather than full institutional independence. For instance, Article 10 of Decree-Law No. 8/2021 grants the Office of the Chief Justice authority over judicial appointments, Article 22 regulates promotions, and Article 42 outlines disciplinary procedures. Yet, these provisions remain anchored in the broader constitutional framework of the 2003 Amended Basic Law, particularly Articles 97–100, which emphasise the unity of the judiciary. This demonstrates that the autonomy granted to the Shari‘ah judiciary is administrative and functional, rather than full institutional independence.²³

This raises several critical questions: To what extent does the Chief Justice participate in the High Judicial Council? Does the Shari‘ah judiciary enjoy constitutional safeguards for its budgetary and structural independence? Is it legally sound to assign the dismissal of Shari‘ah judges to the Shari‘ah Judicial Council instead of the High Judicial Council? And finally, does legislative autonomy alone justify separation from general judicial oversight? Although these issues are not explicitly addressed in the decree, they necessitate a comprehensive interpretive framework that integrates constitutional provisions with

²²Abu Wahdan and Droubi, “Judicial Independence,” 250.

²³Institute of Law, “The Amended Basic Law,” 42-43.

regulatory legislation. This is because the absence of explicit provisions leaves uncertainty regarding the boundaries of authority between the Chief Justice, the Shari'ah Judicial Council, and the High Judicial Council. Without such a framework, administrative decisions on appointments, budgets, and disciplinary matters risk conflicting with constitutional guarantees of judicial independence, thereby generating institutional ambiguity and potential jurisdictional overlap. Such an approach is essential for clarifying inter-authority relations, safeguarding judicial independence without undermining systemic unity, and preventing jurisdictional conflicts or the development of dual legal reference systems.

In conclusion, the Shari'ah judiciary under Decree-Law No. 8 of 2021 has been formally detached from the general judicial authority, thereby acquiring a distinct organisational framework and its own administrative structures. The decree establishes a model of "regulated sectoral autonomy" rather than complete institutional bifurcation. While this arrangement provides administrative flexibility and technical specialisation, it nonetheless requires further legislative refinement to clearly delineate jurisdictional competencies and oversight mechanisms. Several provisions of the law support this conclusion. Article 10 stipulates that the Chief Justice is appointed by presidential decree and assumes office only after swearing an oath before the President, while Article 12 confirms that judicial appointments likewise require presidential decrees upon the recommendation of the Chief Justice. Articles 32–36 assign consultative roles to the High Council of the Shari'ah Judiciary without granting it decisive authority. Articles 41–43 regulate disciplinary measures in a manner that places their execution under the Chief Justice but requires presidential approval for dismissal to take effect.

In practice, appointments and promotions of Shari'ah judges continue to be issued by presidential decrees, and disciplinary sanctions involving dismissal remain subject to presidential ratification. These provisions and practices indicate that although the Shari'ah judiciary has been separated from the general judicial authority, its autonomy remains primarily administrative and functional, with a significant degree of reliance on the executive branch. Accordingly, further legislative refinement is required to ensure judicial independence is upheld while preserving systemic unity within the Palestinian judicial framework.

The Relationship between the Chief Justice and the High Council of the Sharī'ah Judiciary: A Distribution of Powers rather than a Sharing of Authority

Articles 32–36 of Decree-Law No. 8 of 2021 outline the institutional relationship between the Chief Justice and the High Council of the Sharī'ah Judiciary. This relationship is best characterised as coordinative within a unified framework, rather than reflecting a model of independent power separation. This characterisation is justified because, under Articles 32–36, the Chief Justice presides over the Council, convenes its sessions, supervises its Secretariat, and appoints one of its members. Meanwhile, the Council's powers are largely recommendatory—such as advising on judicial appointments, reviewing complaints, and drafting codes of conduct—without independent decision-making authority. The Secretariat itself operates under the Chief Justice's supervision. These features indicate that the Council functions in a coordinative capacity within a unified structure led by the Chief Justice, rather than as an independent body exercising separate institutional authority. This structural dynamic may be examined through the following core components:

The Chief Justice: Presidential Authority Coupled with Administrative and Supervisory Oversight

According to Article 32(1)(a) of Decree-Law No. (8) of 2021, the Chief Justice (*Qāḍī al-Qudāt*) presides over the High Council of the Sharī'ah Judiciary. Article 32(2) further provides that, in his absence, the Vice President or the most senior member of the Supreme Sharī'ah Court substitutes for him. These provisions demonstrate that the Council's leadership is structurally centralised in the Chief Justice, reflecting a hierarchical model that prioritises presidential authority and administrative control over collective deliberation and shared decision-making.

The General Secretariat as a Support Unit within the Presidential Framework

Article 33 of Decree-Law No. (8) of 2021 establishes a General Secretariat within the Council, mandated to assist the Chief Justice in preparing agendas, convening sessions, drafting minutes, and maintaining records. The Secretariat is headed by a Sharī'ah judge of

appellate rank or above, chosen by the Council, who serves as its rapporteur without voting rights. While this provision secures procedural support for the Council, the Secretariat's functional subordination to the Chief Justice underscores its limited autonomy and reinforces the presidential framework of governance. At present, there are no publicly available cases or administrative records that illustrate the Secretariat's independent role, and therefore the analysis remains based solely on the statutory text and its institutional implications.

The Council's Powers are Recommendatory, Not Decisive

Decree-Law No. (8) of 2021 entrusts the Council with advisory powers, most notably the recommendation of judicial appointments under Article 35, while Article 23 authorises the Chief Justice to issue binding administrative decisions. The consultative nature of the Council's role is clearly illustrated by Administrative Decision No. (266) of 2025, which reorganised the Shari'ah judiciary for the judicial years 2025–2026. The decision explicitly stated that it was issued “based on the recommendation (*tansīb*) of the Shari'ah Judicial Council in its Session No. (6/2025),” yet the binding and enforceable order was promulgated solely by the Chief Justice pursuant to Article 23 of Decree-Law No. (8) of 2021.

This demonstrates that the Council's role remains essentially consultative. At the same time, the decisive authority lies with the Chief Justice, thereby reinforcing the Council's status as a non-decisive, advisory body within a centralised administrative framework.

In conclusion, the organisational relationship between the Chief Justice and the High Council of the Shari'ah Judiciary, as set out in Articles 32–35 of Decree-Law No. (8) of 2021, reflects a hierarchical model that concentrates authority in a single office while limiting collective institutional governance. This assessment is validated by the fact that the Chief Justice presides over the Council (Art. 32). It retains decisive authority over judicial appointments and disciplinary measures, while the Council's role under Article 35 is confined to recommendations (*tansīb*). Such a structure secures administrative coherence, as decisions are streamlined under one authority, but it does not reflect genuine institutional autonomy or participatory judicial oversight since the Council lacks binding decision-making powers.

The call for legislative reform is further validated by the limited statutory scope of the Council's functions under Article 35, which restricts it to advisory tasks such as recommending appointments, promotions, and preparing a code of conduct. By contrast, the 2003 Amended Basic Law (Arts. 97–100) emphasises the independence of the judiciary as a constitutional principle. Strengthening the Council's functional authority and introducing mechanisms of accountability between the Chief Justice and the Council would therefore align the Shari'ah judiciary more closely with constitutional guarantees of judicial independence and modern standards of institutional governance.

In sum, while the current arrangement provides administrative coherence, it reflects a model of sectoral autonomy that may benefit from further clarification regarding its institutional dimensions. Future academic discussions may explore ways in which legislative texts could enhance the clarity of the Council's mandate and strengthen cooperative governance mechanisms. Such scholarly exploration may contribute to supporting internal procedural alignment and enriching the broader understanding of how the Shari'ah judiciary operates within the constitutional vision of judicial independence in the evolving Palestinian legal context.

The Formation and Independence of Shari'ah Courts in Light of the Chief Justice's Role

Constitutional and Organisational Structure: A Hierarchical Judiciary under Central Oversight

Article (97) of the Amended Basic Law (2003) stipulates that “the Judicial Authority shall be independent, exercised by courts of different types and degrees; the law shall determine the manner of their formation and jurisdiction; judgments shall be issued in accordance with the law and shall be declared and enforced in the name of the Palestinian Arab People.” This provision constitutionally guarantees the independence of the judiciary, yet it delegates the organisational framework—including that of the Shari'ah judiciary—to ordinary legislation. In line with this mandate, Decree-Law No. (8/2021), Article (4), defined the composition of the Shari'ah judiciary as consisting of: (i) the Chief Justice and his Office, and (ii) the Shari'ah courts of three degrees: the Court of First Instance, the Court of Appeal,

and the High Shari'ah Court. While this tripartite structure mirrors the general hierarchy envisaged by the Basic Law, the explicit inclusion of the Office of the Chief Justice as an integral component underscores a level of administrative centralisation not typically found in the ordinary judiciary.

From an institutional standpoint, the constitutional text safeguards the independence of judges in adjudicating cases; however, the decree-law structurally subordinates the Shari'ah judiciary to the Chief Justice's Office in matters of organisation, territorial jurisdiction, and technical supervision. This duality creates a persistent structural tension: judicial independence in adjudication is formally preserved, but institutional autonomy in administration remains significantly constrained.

This tension was clearly illustrated in 2015, when the Office of the Chief Justice issued an unprecedented administrative decision appointing, for the first time, a woman as a Shari'ah marriage registrar (*ma'dhūn*) in Palestine.²⁴ While this decision represented a progressive step toward expanding women's roles within the Shari'ah judiciary, it simultaneously highlighted the concentration of appointment powers in the hands of the Chief Justice. The absence of a collective judicial mechanism for such appointments reflects the degree of administrative centralisation, raising critical questions about the balance between discretionary administrative authority and the broader principle of institutional independence.

Thus, although the Basic Law constitutionalises judicial independence in principle, the statutory framework entrenches a hierarchical and centralised model of administration that restricts the full institutional autonomy of the Shari'ah judiciary in practice.

²⁴ "تحرير حماد: أول مأذونة شرعية في فلسطين" [“Tahreer Hammad: The First Female Shari'ah Marriage Registrar in Palestine,”] Al Jazeera Net, September 5, 2016, accessed September 11, 2025,

<https://www.aljazeera.net/news/reportsandinterviews/2016/9/5/-حماد-تحرير>

أول-مأذونة-شرعية-في-فلسطين

Courts of First Instance

The Shari‘ah Courts of First Instance constitute the foundational tier of the judicial hierarchy, exercising original jurisdiction over personal status matters such as marriage, divorce, custody, and inheritance. Under Article (53) of Decree-Law No. (8/2021), a court of first instance is to be established in each governorate, presided over by the most senior qualified judge, with hearings conducted by a single judge. Article (54) further entrusts the presiding judge with internal supervisory functions, including oversight of workflow and allocation of cases among peers.

While this framework secures judicial independence in adjudication, the administrative and organisational dimensions of these courts remain subject to the centralised authority of the Chief Justice. Article (52) authorises the Chief Justice, upon the Council’s recommendation, to determine territorial jurisdiction, while Article (55) empowers him to create specialised divisions and assign judges to particular categories of cases. This centralisation was concretely demonstrated through the establishment of the Bedia Shari‘ah Court in the Salfit governorate²⁵ on 4 April 2021, inaugurated by a decision of the Chief Justice to expand access to Shari‘ah judicial services in the area. The creation of the Bedia court illustrates that the establishment of new first instance courts is not a matter of local judicial initiative, but rather a centralised administrative act carried out under the authority of the Chief Justice pursuant to Article (53) of Decree-Law No. (8/2021). This underscores the fact that while trial-level judges retain judicial independence in adjudication, their institutional framework remains dependent on centralised administrative authority.

Courts of Appeal: Review Mechanisms Bound by Centralised Control

The Shari‘ah Courts of Appeal constitute the second tier of the judicial hierarchy, tasked with reviewing judgments and decisions of the Courts of First Instance in accordance with the Shari‘ah Procedure Law and the Shari‘ah Execution Law. Article (56) of Decree-Law No. (8/2021) provides for the establishment of appellate courts in Jerusalem, Nablus,

²⁵ "افتتاح محكمة بديا الشرعية" ["Inauguration of the Bedia Shari‘ah Court,"], Wakālat Ma‘an al-Ikhhāriyyah, April 4, 2021, accessed September 10, 2025, <https://www.maannews.net/news/2036709.html>.

Hebron, Gaza, and Khan Younis, with the possibility of creating multiple panels within each jurisdiction. Panels are composed of a presiding judge and two members, and their rulings are issued by majority vote, thereby ensuring collegial adjudication at the appellate level.

Despite this guarantee of judicial independence in the decision-making process, the organisational framework of the appellate courts reflects continuing centralised control. Article (52) explicitly authorises the Chief Justice, upon the Council's recommendation, to determine the territorial jurisdiction of the appellate courts. This means that the geographical distribution of appellate authority is not determined by legislation or an independent judicial body but remains an administrative prerogative of the Chief Justice's Office.

This pattern of centralisation has been confirmed institutionally, as official records emphasise that the territorial jurisdiction of appellate courts is determined by the Chief Justice's decision. Moreover, administrative measures such as the closure of the Nablus Shari'ah Court of Appeal building during the COVID-19 pandemic—executed through directives from the Chief Justice's Office—further demonstrate how appellate institutions remain subject to centralised administrative authority.

Accordingly, while appellate judges enjoy independence in adjudication and issue decisions collectively, the institutional autonomy of the appellate courts remains constrained by the Chief Justice's centralised role in defining jurisdictions and exercising administrative oversight.

The High Shari'ah Court: Supreme Authority, Limited Autonomy

The High Shari'ah Court represents the apex of the Shari'ah judicial hierarchy in Palestine. Decree-Law No. (8/2021) provides detailed provisions regarding its composition and jurisdiction. Article (58) stipulates that the court shall be composed of a president, a vice-president, and a sufficient number of judges. Its permanent seat is in Jerusalem, but it may temporarily convene in Ramallah or Gaza, or in any other location as determined by the Chief Justice upon the Council's recommendation. Regular sessions require a quorum of at least five judges, including the president or the vice president.

Article (59) defines the court's jurisdiction to review final judgments issued by the Courts of Appeal, including cases of misapplication or misinterpretation of law, procedural nullities affecting judgments, reversal of earlier principles, resolution of contradictions among precedents, and conflicts of jurisdiction between courts. Article (60) further provides that the court may convene in an extended panel of seven judges when addressing novel or complex legal issues or when reconsidering established principles.

According to Article (61), the court's rulings are rendered by majority vote, with dissenting opinions recorded, and are final and binding on all Sharī'ah courts, thereby cementing its role as the supreme judicial authority. Article (63) also establishes a Technical Office within the court to extract and catalogue judicial principles, provide legal research, and support judicial work. However, appointments within this office are made by decision of the Chief Justice, underscoring the persistence of centralised administrative control.

Thus, while the High Sharī'ah Court enjoys the highest judicial authority in ensuring legal consistency and finality of judgments, its institutional autonomy is constrained. Its seat, the convening of its panels, and the functioning of its Technical Office remain tied to decisions of the Chief Justice, reflecting the enduring centralisation of administrative oversight even at the level of the supreme judicial body.

Institutional Analysis: Between Judicial Hierarchy and Administrative Subordination

(1) What counts as an "institution" here?

For purposes of Decree-Law No. (8/2021), "institution" encompasses three interlocking components with distinct functions and powers: The Sharī'ah courts as judicial institutions (trial, appellate, and the High Court): they adjudicate cases and issue binding judgments (Arts. 52–61). The Chief Justice's Office as an administrative institution: it manages the Sharī'ah judiciary's organisation, finance, personnel mobility, jurisdictional mapping, and implementing instructions (Arts. 8(2), 11, 23–24, 39, 63–65, 67). The Judicial Council as a governance/collective body: it recommends appointments, promotions, transfers, issues the annual judicial roster, and adopts internal rules (Arts. 22, 23(1), 32–36). This conceptual delineation clarifies the axes

of authority: adjudication lies in the courts; administration and execution are primarily concentrated in the Chief Justice's Office; and career governance and certain policy inputs are lodged in the Council—over which the Chief Justice presides (Art. 32).

(2) Enforcement and oversight: who implements Decree-Law No. (8/2021)?

Implementation is distributed, but materially centred in the Chief Justice's Office:

- The Chief Justice “manages the Shari'ah courts,” represents the judiciary, executes Council decisions, and issues the necessary instructions (Art. 11(2), (3)–(4), (13), and Art. 67(2)).
- The President formally appoints the Chief Justice and judges and issues certain decisions (Arts. 10, 16, 25).
- The Judicial Council proposes/ “recommends” (*tansīb*) key personnel acts and sets the annual roster (Arts. 16, 22, 23(1), 35).
- Judicial inspection and discipline run through bodies structurally tied to the Chief Justice: the Inspection Department “follows” the Chief Justice (Art. 45(1)); the Chief Justice appoints its head upon the Council's recommendation (Art. 45(2)); disciplinary prosecutions are initiated by the Chief Justice (Art. 41(4)); disciplinary execution is carried out by the Chief Justice (Art. 43(2)); and removal requires a presidential decision upon the Council's recommendation (Art. 43(3)).

Practical upshot: although multiple actors appear in the regulatory design, the operational responsibilities—from issuing instructions and jurisdictional decisions to mobility, secondment, and initiating inspection or disciplinary procedures—are largely centred in the Chief Justice's Office. This arrangement may create areas where additional procedural delineation could further enhance institutional balance, especially given the Chief Justice's role (Art. 32) in chairing the body responsible for career governance.

(3) Procedures set by the Decree-Law—and where the weaknesses arise

- Court establishment & territorial delimitation.

Procedure: trial courts are established per governorate, with new courts possible by presidential decision upon Chief Justice recommendation and Council advice (Art. 53(1)–(2)); appellate courts exist in designated cities (Art. 56(1)); Chief Justice’s decision sets territorial jurisdiction for all courts upon the Council’s recommendation (Arts. 52(1), 56(2)).

From a procedural standpoint, the decisive act takes the form of an administrative decision issued from a single office. The Decree-Law does not explicitly detail statutory requirements regarding criteria, reasoning, publication, or external review for jurisdictional adjustments. Providing clearer guidance on these elements could help reduce the possibility of over-concentration and support more consistent procedural safeguards.

- Panel formation, mobility, and secondment.

Procedure: the Council issues the annual roster (Art. 23(1)); the Chief Justice effects judge transfers per that roster (Art. 23(2)); the Chief Justice may second judges—up to the High Court—within set time limits, with Council involvement for extensions (Art. 24).

Weaknesses: because the Chief Justice both manages deployment and oversees inspection/discipline, there is a structural risk that administrative levers (transfer/secondment) influence judicial behaviour, especially absent external oversight or appeal mechanisms for contested mobility decisions.

- Inspection, discipline, and career governance.

Procedure: The Inspection Department follows the Chief Justice (Art. 45(1)). Its head is appointed by him upon the Council’s recommendation (Art. 45(2)). Inspection reports inform promotion and discipline (Arts. 22, 41–43, 46–47). Disciplinary cases are initiated by the Chief Justice (Art. 41(4)) and executed by him (Art. 43(2)), while the Disciplinary Council is judicial in composition (Art. 40).

Weaknesses: vertical loop: inspection → recommendation → initiation → execution is anchored in the same administrative pole. Even with a judicial disciplinary board and presidential

countersignature for removal, the early and late stages are controlled administratively, which can chill institutional autonomy.

- Technical Office and administrative services.

Procedure: the High Court's Technical Office supports jurisprudence extraction and publication; its staffing is by the Chief Justice's decision (Art. 63(1)).

Institutional Considerations: the central role of the administrative leadership in coordinating technical knowledge and publication processes highlights the importance of ensuring balanced dissemination of guiding principles across the Shari'ah judiciary.

(4) Why these gaps matter (institutional effects)

The Decree-Law secures adjudicative independence (Arts. 2–3) and collegial decision-making at appellate and high-court levels (Arts. 56(4), 58(3), 60–61). Yet, by centralising administration, territory, staffing, inspection, and discipline triggers in the Chief Justice's Office—while the Chief Justice also chairs the Council (Art. 32)—the framework blurs lines between judicial self-government and administrative hierarchy. The likely effects include:

- Path-dependent centralization (jurisdiction and resources follow administrative preferences).
- Limited horizontal procedural coordination within the judiciary.
- Limited transparency/accountability (few hard-law duties to publish reasons, impact assessments, or subject administrative acts to review).

(5) Reform directions (text-tied, minimally invasive to the architecture)

- Re-balance governance: separate the roles of Council chair and Chief Justice, or require supermajority Council votes for territorial and establishment decisions (Arts. 32, 52–53, 56).
- Reason-giving & publication: impose a statutory duty to publish reasoned decisions for jurisdictional delimitation,

panel structuring, and mobility/secondment; link them to objective caseload and access-to-justice metrics.

- Independent review channels: permit judicial review (or an internal appeals committee independent of the Chief Justice's Office) for administrative acts affecting court jurisdiction, panel formation, and secondment (Arts. 23–24, 52, 56).
- Strengthen inspection independence: relocate appointment/power over the Inspection Department from the Chief Justice to the Council with transparent terms; require dual-signoff (Council + High Court President) before initiating discipline; keep execution non-discretionary (Arts. 45–47, 41–43).
- Technical Office autonomy: vest staffing in the High Court President with Council oversight, and mandate periodic, comprehensive publication of principles to avoid agenda-control (Art. 63).
- Budgetary safeguards: operationalise Art. 5 (separate budget chapter) with earmarked lines for inspection, training, publication, and court management not subject to ad hoc administrative discretion.

The Departments of the Office of the Chief Justice: Between Administrative Structure and Supervisory Centralisation

Articles (45–51) of Decree-Law No. (8/2021) Outline the organisational framework for several key departments under the Office of the Chief Justice, including the Judicial Inspection Department, the Family Guidance and Reconciliation Department, the Shari'ah Prosecution, and the Shari'ah Enforcement Department. Each of these units plays an essential role in ensuring the functionality and efficiency of the Shari'ah judiciary. However, their structural and supervisory linkage to the Chief Justice calls for reflection on how institutional autonomy is realised in practice.

Judicial Inspection Department: Internal Oversight under Administrative Subordination

Article (46) of Decree-Law No. (8) of 2021 establishes the Judicial

Inspection Department under the Office of the Chief Justice. Its mandate is to evaluate the performance of Shari'ah judges through periodic assessments and to recommend disciplinary measures when necessary. In practice, the department conducts field visits to Shari'ah courts, reviews case files and judgments, and submits reports directly to the Chief Justice. However, since the Chief Justice appoints the head and members of this department and directly supervises its work, the mechanism of oversight remains administratively dependent. This overlap between the authority of appointment and the authority of supervision highlights the need to consider how impartiality safeguards can be supported and how inspection procedures may be more clearly defined within the administrative framework.

Family Guidance and Reconciliation Department: Mediation under Hierarchical Affiliation

Article (47) provides for the establishment of the Family Guidance and Reconciliation Department under the Office of the Chief Justice. Its function is to address family disputes before they escalate into formal litigation, with reconciliation agreements becoming binding once certified by the court. In practice, Shari'ah courts in Palestine require disputing parties to attend reconciliation sessions before registering cases for divorce or separation, and such procedures have contributed to reducing the volume of family disputes brought before the courts. While the department operates within the organisational structure of the Shari'ah judiciary, its affiliation with the Office of the Chief Justice places it within the broader administrative framework. This arrangement highlights the value of supporting its conciliatory functions in ways that reinforce perceptions of neutrality.

Shari'ah Prosecution: Public Interest Representation within Administrative Centralisation

According to Articles (49–50), the Shari'ah Prosecution is tasked with representing the “rights of God” in cases involving family matters, endowments, and lineage. It actively participates in court sessions, raises objections, and files claims or appeals where public interest and legal order are at stake. Practically, the Shari'ah Prosecution plays a central role in cases such as lineage disputes, annulment of marriages, and disputes over religious

endowments. Its members are appointed through the organisational framework of the Chief Justice's Office, which reflects the administrative structure governing the Shari'ah judiciary. Within this framework, it remains valuable to consider how procedural arrangements may continue to support the clarity and distinctiveness of its prosecutorial functions.

Shari'ah Enforcement Department: Effectiveness under Supervisory Control

Article (51) establishes the Shari'ah Enforcement Department, headed by a judge appointed by the Chief Justice and operating under the supervision of the Judicial Inspection Department. Its mandate is to enforce judicial rulings issued by Shari'ah courts. In practice, the department implements judgments relating to alimony, inheritance, and other family law matters by coordinating with enforcement authorities, securing assets, or arranging wage deductions where required. While the department plays an essential role in ensuring the effective execution of judicial decisions, its organisational placement within the overall administrative structure of the Shari'ah judiciary highlights the importance of supporting procedural clarity and reinforcing confidence in the enforcement process.

Conclusion: Toward a Balanced and Functionally Independent Institutional Model

A close reading of Articles (45–51) of Decree-Law No. (8) of 2021 indicates that the institutional design of the Office of the Chief Justice reflects a model in which several key functions are organised within a single administrative framework. Although the four departments—Judicial Inspection, Family Guidance and Reconciliation, Shari'ah Prosecution, and Shari'ah Enforcement—carry out diverse functions (oversight, mediation, prosecution, and enforcement), they remain formally linked to the Office of the Chief Justice with respect to their establishment, appointment mechanisms, and supervisory structures.

The current organisational arrangement highlights the value of further enhancing procedural frameworks so that the roles of oversight, conciliation, prosecution, and enforcement remain clearly articulated within the broader administrative structure. This perspective points to the importance of ongoing institutional development supporting

effective internal processes. In this context, additional procedural clarity may help strengthen perceptions of neutrality, accountability, and institutional coherence.

In light of the organisational design outlined in the decree, future legislative discussions may find it useful to explore ways of further supporting the functional effectiveness of these departments, particularly by:

- considering approaches that enhance the clarity of appointment and oversight processes;
- developing accountability mechanisms that promote procedural consistency and transparency;
- and strengthening existing measures that support neutrality in inspection, conciliation, prosecution, and enforcement.

Such considerations could contribute to a more coherent and well-structured institutional framework that reflects the principles of independence, impartiality, and good governance, while reinforcing public confidence in the Shari'ah judicial system.

Bridging Judicial Unity and Shari'ah Specificity: A Legislative Agenda for Palestine

Building on the institutional analysis presented in the preceding section, this chapter argues that the current framework of the Shari'ah judiciary in Palestine requires legislative reform to address the structural imbalances of Decree-Law No. (8/2021). While the judiciary's tiers are clearly delineated, the persistence of concentrated administrative powers within the Chief Justice's Office highlights the need for reforms that strengthen judicial independence while safeguarding the Shari'ah-based normative identity of the institution.

The findings demonstrate that key administrative and supervisory powers—appointments, promotions, jurisdictional delimitation, inspection, and disciplinary enforcement—are concentrated in the Chief Justice's Office (Arts. 10–11, 23–24, 39, 41–43, 45–47, 63–65). This arrangement may lessen opportunities for broader collegial participation in administrative matters, making it useful to continue considering ways to strengthen institutional clarity. Legislative reform could therefore focus on further refining the relationship between the Chief Justice and the Council to ensure that

administrative functions operate within a framework that supports collective oversight and transparent procedures.

Affirming Constitutional Status

To ensure stability and legitimacy, the Shari'ah judiciary should be constitutionally affirmed as an independent judicial authority with a dual foundation: legal sovereignty under the Amended Basic Law (Art. 97) and Islamic jurisprudential legitimacy. Current law (Art. 2–3 of Decree-Law No. 8/2021) declares judicial independence but leaves enforcement vulnerable to administrative centralisation. An explicit constitutional guarantee of the Shari'ah judiciary as a self-governing authority, equal in status to the ordinary judiciary, would strengthen its institutional standing and insulate it from executive discretion.

Rebalancing Institutional Powers

Legislative reform should redistribute powers between the Chief Justice and the Judicial Council to reinforce collegial governance. For example, jurisdictional delimitation (Arts. 52, 56) and establishment of new courts (Art. 53) are currently finalised by the Chief Justice; requiring supermajority approval by the Council or dual sign-off with the President of the High Shari'ah Court would further support broader institutional participation. Similarly, transfers and secondments (Art. 23–24) should be subject to transparent criteria and review mechanisms, preventing administrative measures from indirectly influencing judicial decision-making.

Empowering Oversight Mechanisms

Inspection and discipline are structurally tied to the Chief Justice (Arts. 39, 41–43, 45–47), creating a circular process where management, inspection, and execution converge in the same office. Reform should relocate oversight powers to an independent inspectorate under the Council, with clear statutory guarantees of transparency, publication of inspection results, and independent initiation of disciplinary proceedings. This separation of oversight from administration would reinforce accountability and address latent conflicts of interest.

Clarifying Institutional Roles

Finally, legislative amendments should clarify the functional boundaries between the Chief Justice's Office and the Judicial Council. The Chief Justice may remain the symbolic head and external representative of the Shari'ah judiciary (Art. 11), but the Council should exercise decisive authority over career governance, inspection, and systemic policy. Explicit statutory provisions delineating these roles would prevent overlap and reduce the risk of administrative dominance, while preserving systemic coherence within the broader Palestinian judicial framework.

If enacted with prudence and foresight, these reforms would preserve the unity of the Palestinian judiciary under the Basic Law while safeguarding the distinctive doctrinal identity of the Shari'ah judiciary. By harmonising the objectives of Shari'ah (*Maqāṣid al-Shari'ah*) with the principles of modern legal governance, legislative reform can fortify institutional integrity, reinforce public trust, and cultivate a judicial ethos that is both constitutionally legitimate and contextually relevant.

Judicial Independence in the Shari'ah Judiciary: A Jurisprudential Framework within Palestinian Law

Judicial independence constitutes a universally endorsed principle, anchored in the United Nations' Basic Principles on the Independence of the Judiciary.²⁶ These principles emphasise that courts can only discharge their function when insulated from direct or indirect influence—whether political, institutional, or societal. Judicial rulings must be issued autonomously, free from external pressure, coercion, or manipulation, thereby ensuring that justice is administered in accordance with legal standards and ethical integrity.²⁷

²⁶ United Nations General Assembly, Basic Principles on the Independence of the Judiciary, Res. 40/32 (November 29, 1985) and Res. 40/146 (December 13, 1985), accessed September 12, 2025, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

²⁷La Ode Husen and Said Sampara, "Independence and Accountability, Supreme Court in the Implementation: The Power of Judgment in Indonesia," *Imperial Journal of Interdisciplinary Research* 3, no. 5 (2017): 1976.

Although this modern conception of judicial independence has emerged within an international legal framework, its foundational values resonate deeply with the normative ethos of Islamic Sharī‘ah.²⁸ Since its formative period, Islamic jurisprudence has framed the judiciary as a sacred trust and a pillar of justice. Muslim jurists historically viewed adjudication as a divine mandate rooted in moral responsibility, requiring immunity from personal bias or external interference. Within this framework, judicial independence is understood as the judge’s autonomy in rendering decisions—free from political commands or administrative subordination—while remaining bound by the divine law (Sharī‘ah) and the discipline of *ijtihad*. No authority, including the ruler, may impose a ruling upon a judge, nor may a sound verdict be invalidated unless it contradicts the revealed sources or established juristic reasoning.²⁹ This conception is exemplified in the precedent of Caliph ‘Umar ibn al-Khaṭṭāb (may God be pleased with him), who firmly upheld the separation of judicial and executive powers, thereby institutionalising the principle of functional independence for judges.³⁰

From a jurisprudential perspective, judicial independence is not a procedural privilege but a substantive requirement rooted in the Sharī‘ah’s overarching aim of upholding justice (*maqāṣid al-sharī‘ah*). The practice of *ijtihad* must proceed solely based on compelling evidence, untainted by political interests or societal pressure. The Qur’anic mandate underscores this principle, as in the verse: “And judge between them by what Allah has revealed”³¹ And similarly:

²⁸Abdel Karim, “Judicial Independence,” 666; Rehman, Ibrahim and Abu Bakar, “Independence of Judiciary in Islam,” 69.

²⁹Rehman, Ibrahim and Abu Bakar, “Independence of Judiciary in Islam,” 68; Abdel-Baqi, “Palestinian Judicial System,” 1614; Al-Mustafa Al-Samahī, “استقلالية السلطة القضائية في الفقه الإسلامي: دراسة تأصيلية تحليلية” [“The Independence of the Judiciary in Islamic Jurisprudence: A Foundational and Analytical Study,”] *Majallat al-Mudawwanah*, no. 17-18 (2018): 409.

³⁰Abdel Karim, “Judicial Independence,” 666-668; Rehman, Ibrahim and Abu Bakar, “Independence of Judiciary in Islam,” 69; al-Sousi, *al-Qaḍā’ fī al-Islām*, 45-46; Sabah Faraj Madi, “استقلال القضاء ووسائل حمايته: دراسة في ضوء الشريعة الإسلامية والدستور الليبي” [“The Independence of the Judiciary and the Means of Its Protection: A Study in Light of Islamic Sharī‘ah and the Libyan Constitution,”] (PhD diss, University of Malaya, 2017), 92-93.

³¹Qur’ān, 5:49.

“That you may judge between the people by what Allah has shown you”³²

These verses affirm both the primacy of divine law and the autonomy of judicial reasoning, insulating the judicial function from external manipulation or coercive influence. In this view, fidelity to revelation and methodological integrity constitute the foundation of legitimate adjudication in Islamic legal theory.³³

This Shari'ah-based conception is legally enshrined in the Amended Palestinian Basic Law of 2003. Article 97 affirms that “the judicial authority shall be independent,” while Article 98 expressly prohibits interference in judicial affairs. These provisions embody a direct continuation of the Islamic juristic tradition, wherein the judge is accountable solely to God and remains beyond subordination to worldly authority.

Guarantees of Judicial Independence in Islamic Shari'ah and Palestinian Legislation

The autonomy and credibility of the Shari'ah judiciary hinge on appointing individuals who demonstrate both scholarly expertise and ethical integrity. Classical jurists (*fuqahā'*) have unanimously maintained that judges must possess specific attributes—chiefly juristic competence (*ijtihād*), moral integrity (*'adālah*), unimpaired faculties, and exemplary behaviour. Islamic legal scholarship provides detailed criteria for such qualifications, affirming that judicial office cannot be entrusted to anyone lacking both profound legal knowledge and sincere piety (*wara'*), which safeguard the impartial and principled

³²Qur'ān, 4:105.

³³Muhammad Isa Al-Muhannadi and Nahla Abdulaziz Al-Sayyid, "استقلال"

"The Independence of the Judiciary in Islamic Jurisprudence and Positive Law," *Majallat al-Buḥūth al-Qānūniyyah wa al-Iqtiṣādiyyah (al-Manṣūrah)* 13, no. 83 (2023): 32-33, <https://doi.org/10.21608/mjle.2023.300587>; Zaidan, *Niẓām al-Qaḍā' al-Islāmī*, 71-74; Ghazi Al-Hakami, "مبادئ النظام القضائي في الإسلام وأثرها في بعض أنظمة القضاء المعاصرة" ["The Principles of the Judicial System in Islam and Their Impact on Some Contemporary Judicial Systems,"] *Majallat al-Rāsikhūn* 9, no. 4 (2023): 151-158.

exercise of judicial authority.³⁴ This foundation ensures that merit rooted in Sharī‘ah, not political loyalty or personal bias, constitutes the judge’s core guarantee of independence.³⁵

Modern Palestinian legislation on the Sharia judiciary codifies this classical understanding. *Article 15 of Decree-Law No. (8) of 2021 concerning the Sharia Judiciary* stipulates that a candidate for judicial office must be: a Palestinian Muslim of full legal capacity, at least twenty-eight years of age, holder of at least a bachelor’s degree in Islamic law, Islamic studies, law, or Sharia and law from a recognized university, of good conduct and reputation, not previously convicted of a dishonorable act, unaffiliated with any political party at the time of appointment, and proficient in Arabic. This provision represents a contemporary legal articulation of a foundational Sharī‘ah principle—one that prioritises integrity and competence over all other considerations.

In further alignment with these values, Islamic jurisprudence pays close attention to the source of judicial appointment, ensuring that it is free from arbitrary influence and insulated from authoritarian control.³⁶ While the predominant historical model involved appointment by the Imam or Caliph—as exemplified by the Prophet’s (peace be upon him) appointment of ‘Alī to judge in Yemen, and by the practice of the Rightly Guided Caliphs—jurists also acknowledged

³⁴Hamad and Anuar, “The Judiciary in Islamic Law,” 11; Zaidan, *Niẓām al-Qaḍā’ al-Islāmī*, 25-32; Shams Al Din Al Hajjaji, “The Islamic Theory of Judicial Power and Malpractice of Some Muslim Judiciaries (Iran, Egypt, and Jordan),” *Journal of International and Islamic Law* 14, no. 2 (2018): 25–27; Mona Al Muaiter, “ولاية القضاء في الفقه الإسلامي والنظام السعودي,” [“The Mandate of the Judiciary in Islamic Jurisprudence and the Saudi System,”] *Majallat Kullīyat Al-Sharī‘a Wa al-Qānūn Bi-Tafahna al-Ashraf* 27, no. 2 (2023): 1438–1441, <https://doi.org/10.21608/jfslt.2023.331009>; Najib Al-Assaf, “شروط تولية” [“Conditions for Judicial Appointment in Islamic Jurisprudence and Law,”] *Majallat al-Funūn wa al-Adab wa ‘Ulūm al-Insāniyyāt wa al-Ijtīmā’*, no. 51 (2020): 273-284, <https://doi.org/10.33193/JALHSS.51.2020.61>.

³⁵Abdel Karim, “Judicial Independence,” 671; al-Saḥīm, *Istiqlāl al-Qaḍā’ al-Islāmī*, 215.

³⁶Zaidan, *Niẓām al-Qaḍā’ al-Islāmī*, 22; Abdel Karim, “Judicial Independence,” 671-674.

alternative methods.³⁷ In addition to the classical model, modern Palestinian legislation has introduced alternative mechanisms for judicial appointment. *Article 18 of Decree-Law No. (8) of 2021* requires new judges to undergo a competitive examination administered by a special committee of the Judicial Council, followed by a one-year probationary period and mandatory training programs before and during their service. Likewise, *Article 19* stipulates that appointments may be made from diverse professional categories—including former judges, licensed Sharia lawyers, university faculty in Sharia or law, graduates of the Judicial Institute, and even qualified administrative staff—while also setting experience requirements for appointments to appellate courts and for presiding judges. These provisions illustrate how the Palestinian framework incorporates multiple pathways and safeguards in judicial selection, thereby enhancing both competence and independence.

In contexts lacking a central Islamic authority, judicial selection could occur through communal consensus among qualified persons, provided it preserves the legitimacy and impartiality of the judiciary. This juristic flexibility helps shield the judiciary from excessive executive domination.³⁸

Although in classical Islamic governance, the Caliph held the authority to appoint and dismiss judges, this did not compromise the judge's independence. Judges' deep piety and consciousness of divine accountability ensured that their verdicts were guided by Sharī'ah, not by the will of the appointing authority.³⁹ For instance, Qāḍī Shurayḥ—appointed by Caliph 'Umar—famously ruled in favour of a Christian

³⁷Zaidan, *Nizām al-Qadā' al-Islāmī*, 33, 41-42; Ahmad Bloudnine, "طريقة تعيين"

"القاضي بين الشريعة والقانون إحدى ضمانات استقلالية القضاء" ["The Method of Judicial Appointment between Sharī'ah and Law: A Guarantee of Judicial Independence,"] *Majallat al-Fikr al-Qānūnī wa al-Siyāsī* 7, no. 1 (2023): 1657-1658.

³⁸Hamad and Anuar, "Judiciary in Islamic Law," 12-13; Wael Hallaq, *Nash'at al-Fiqh al-Islāmī wa Taṭawwuruḥu* (Beirut: Al-Madar Al-Islami, 2007), 125-128.

³⁹Agustian and Salimm, "Judicial Power in Indonesia," 176; Tomi Agustian, Habiburrahman, and Rama Aryanda, "The Issues of Judicial Independence in Indonesia in Contemplation of Islamic Law," *Academic Journal of Law and Governance* 1, no. 2 (2021): 170, <http://doi.org/10.29240/negrei.v1i2.3531>.

claimant against Caliph ‘Alī in a dispute over a shield. When ‘Alī failed to provide the required evidence, Shurayḥ ruled against him despite his position as the head of state. Deeply impressed by such impartiality, the Christian eventually embraced Islam. This case illustrates how judges’ piety and sense of divine accountability safeguarded their independence from political authority.⁴⁰

In contrast, contemporary political structures may not offer such moral safeguards. This is exemplified by Algeria, where judges are appointed by presidential decree, upon the recommendation of the Minister of Justice and the deliberation of the Supreme Judicial Council. The President also serves as head of the Council, with the Minister of Justice acting as deputy, thereby maintaining a strong executive presence within the body that oversees judicial appointments and promotions. Such arrangements highlight the importance of continuing to examine how institutional safeguards can further support the effective realisation of independence.⁴¹

Hence, entrusting sole appointing power to the head of state—without procedural checks to ensure transparency and merit—may compromise judicial independence, consciously or unconsciously. This concern has been substantiated in comparative case law. In *Baka v. Hungary* (ECtHR, Judgment of 23 June 2016), the European Court of Human Rights held that premature termination of the Supreme Court President’s mandate, following his public criticism of legislative reforms, constituted a violation of judicial independence, as political amendments had effectively enabled the government to influence judicial leadership.⁴²

This underscores the need to re-evaluate current frameworks of judicial appointment and promotion in order to strike a balance between state prerogative and judicial impartiality, thereby reinforcing both institutional and personal autonomy. Comparative indices, such as the World Justice Project’s Rule of Law Index, consistently show that countries with transparent, merit-based judicial appointment

⁴⁰Aḥmad bin al-Ḥusayn al-Bayhaqī, *al-Sunan al-Kubrā*, ed. Muḥammad ‘Abd al-Qādir ‘Aṭā (Beirut: Dār al-Kutub al-‘Ilmiyya, 2003), 10:230.

⁴¹Baltaib, “Judicial Neutrality and Independence,” 294-291.

⁴²European Court of Human Rights, *Baka v. Hungary*, Application no. 20261/12, Judgment of June 23, 2016, para. 145, accessed September 13, 2025, <https://hudoc.echr.coe.int/eng?i=001-144139>.

mechanisms perform higher in judicial independence scores, whereas systems heavily controlled by the executive rank lower. Such evidence reinforces the call for stronger institutional and personal autonomy in judicial systems.⁴³

Among the core guarantees of judicial independence is protection against arbitrary dismissal or forced retirement. Classical jurists (*fuqahā'*) held that if a judge falls under a legitimate Sharī'ah-based cause for removal—such as loss of legal capacity, evident immorality (*fisq*), breach of judicial conduct, or inability to fulfil judicial duties—dismissal becomes obligatory.⁴⁴ Historical precedents from the era of the Rightly Guided Caliphs further illustrate how these juristic principles were applied in practice. 'Umar ibn al-Khaṭṭāb is reported to have dismissed Abū Maryam from the judiciary of Baṣra, appointing Ka'b ibn Suwār in his place, explaining: "*I will dismiss Abū Maryam and appoint a man whom the wicked fear when they see him.*" Likewise, 'Alī ibn Abī Ṭālib appointed Abū al-Aswad as judge but later removed him. When Abū al-Aswad protested, saying he had neither betrayed nor committed an offence, 'Alī replied: "*I saw that your voice was raised above that of the litigants,*" indicating that judicial decorum and impartiality were compromised.⁴⁵

Contemporary legal thought, however, stresses that such a decision should be issued by a judicial body entirely independent of the executive authority, in line with the principle of separation of powers. This ensures that judges are shielded from political pressure or interference and remain assured of the stability of their office and the integrity of their function⁴⁶, in accordance with the United Nations

⁴³World Justice Project, Rule of Law Index 2023 (Washington, DC: World Justice Project, 2023), accessed September 14, 2025, <https://worldjusticeproject.org/rule-of-law-index>.

⁴⁴'Abd Allāh ibn Aḥmad ibn Qudāma, *al-Mughnī*, 3rd ed. (Riyadh: Dār 'Ālam al-Kutub li-l-Ṭibā'a wa-l-Nashr wa-l-Tawzī', 1997), 14:88; 'Alī ibn Khalīl al-Ṭarābulusī, *Ma'īn al-Hukkām fīmā Yatarraddad Bayna al-Khaṣmayn min al-Aḥkām* (Beirut: Dār al-Fikr, n.d.), 32; Muḥammad Ra'fat 'Uthmān, al-Niẓām al-Qaḍā'ī fī al-Fiqh al-Islāmī, 2nd ed. (Beirut: Dār al-Bayān, 1994), 209.

⁴⁵Al-Bayhaqī, *al-Sunan al-Kubrā*, 10:186; Ibn Qudāma, *al-Mughnī*, 14:88.

⁴⁶Hamad and Anuar, "Judiciary in Islamic Law," 13.

Basic Principles on the Independence of the Judiciary (1985).⁴⁷

Islamic jurisprudence also articulated the concept of judicial immunity from an early period. It maintained that a judge is not to be held liable for their rulings unless it is proven—on the basis of Shari‘ah evidence—that they deliberately issued an unjust or wrongful judgment. Still, if the judge exercised independent reasoning (*ijtihad*) and erred, they are not to be blamed, rather they are rewarded for their sincere effort, provided they meet the required conditions of eligibility.⁴⁸ An illustration of this principle can be found in the famous report of Mu‘adh ibn Jabal, who, when appointed by the Prophet ﷺ as judge in Yemen, was asked how he would decide cases. He replied: “By the Book of Allah; if not found therein, then by the Sunnah of the Messenger of Allah; if not found therein, then I will exert my own *ijtihad*.” The Prophet approved and said: “Praise be to Allah who has guided the Messenger of Allah to that which pleases Him.”⁴⁹

Such a doctrine constitutes one of the most foundational safeguards for judicial independence, ensuring that juristic reasoning is protected from criminalisation and undue influence.⁵⁰

⁴⁷ United Nations, Basic Principles on the Independence of the Judiciary, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, August 26–September 6, 1985, endorsed by General Assembly Resolutions 40/32 (November 29, 1985) and 40/146 (December 13, 1985), accessed September 15, 2025, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

⁴⁸ Ali ibn Muhammad al-Mawardi, *Al-Ahkam al-Sultaniyyah* (Cairo: Dar al-Hadith, 2006), 118; Muhammad Abd al-Qadir Abu Faris, *al-Qadā’ fī al-Islām* (Amman: Dar Al-Furqan, 2009), 215; Zaidan, *Nizām al-Qadā’ al-Islāmī*, 94; Abdel Karim, “The Principle of Judicial Independence,” 666-669; Madi, “Independence of the Judiciary,” 129-131; Al Muaiter, “Mandate of the Judiciary,” 1447.

⁴⁹ Abū Dāwūd Sulaymān al-Sijistānī, *Sunan Abī Dāwūd*, ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd (Beirut–Ṣaydā: al-Maktaba al-‘Aṣriyya, n.d.), 3: 303.

⁵⁰ Al-Mawardi, *Al-Ahkam al-Sultaniyyah*, 118; Abu Faris, *al-Qadā’ fī al-Islām*, 215; Zaidan, *Nizām al-Qadā’ al-Islāmī*, 94; Abdullah al-Khath’ami, “القضاء في الفقه الإسلامي” [“The Judiciary in Islamic Jurisprudence,”] *Majallat al-Buḥūth al-Fiqhiyyah wa al-Qānūniyyah*, no. 42 (2023): 2201, <https://doi.org/10.21608/jlr.2023.214292.1216>; Hamad

The Palestinian legislator has established a precise system of disciplinary safeguards to guarantee the immunity and independence of judges. Articles (40–44) of Decree-Law No. (8) of 2021 provides a comprehensive framework for judicial accountability. Article (41) stipulates that no judge may be referred to the Disciplinary Council unless a preliminary investigation is first conducted by the Judicial Inspection Department, whose findings are submitted to the Chief Justice, who may either close the file or recommend referral; proceedings may be initiated solely upon such a recommendation. Article (42) sets forth guarantees of defence, including the requirement of a detailed bill of indictment, the right of the judge to access case files at least ten days prior to the hearing, and the right to attend hearings in person or through legal counsel. Article (43) then prescribes a graduated system of disciplinary sanctions, ranging from warning and reprimand to suspension of promotion or compulsory retirement, culminating in dismissal, which cannot take effect without a presidential decree upon recommendation of the Council, while preserving the judge's entitlement to pension and severance benefits.

Article (44) further reinforces judicial immunity by prohibiting the arrest or detention of a judge without prior authorisation from the Chief Justice, except in cases of *flagrante delicto*. Collectively, these provisions ensure that dismissal follows a multi-stage process—initial investigation, formal referral, disciplinary hearing before an independent council, and final executive ratification—rendering it an exceptional measure invoked only in the narrowest circumstances, thereby safeguarding judicial independence and insulating the Shari'ah judiciary from arbitrary removal or external political pressure. In addition, Articles (45–47) entrust the Judicial Inspection Department with ongoing performance evaluations and authorise it to recommend referral to the Disciplinary Council in cases of repeated violations or persistent inefficiency, thus reinforcing accountability without undermining independence.

This clear demarcation between lawful oversight and political interference is vital to preserving judicial integrity and institutional

and Anuar, "Judiciary in Islamic Law," 13; Karima Silini, "The Impact of Judicial Immunity on Judges' Liability in Islamic Jurisprudence and Positive Law," *Journal of Scientific Research and Islamic Studies* 10, no. 2 (2017): 68–71; Madi, "Independence of the Judiciary," 129–131; Al Muaither, "Mandate of the Judiciary," 1447.

autonomy. Consistent with the principle of immunity, Decree-Law No. (8) of 2021 on the Sharī'ah Judiciary explicitly enshrines judicial independence. Article (2) provides that:

“the Sharī'ah judiciary is independent; interference in its affairs is prohibited, and the Sharī'ah courts of all levels shall adjudicate disputes brought before them in accordance with the provisions of this Decree-Law.” Article (3) further states that “Sharī'ah judges are independent and, in their adjudication, are subject to no authority other than the Sharī'ah and the law.”

Collectively, these provisions reinforce the doctrine of judicial immunity, ensuring that judges are protected from external interference and shielded from liability unless deliberate misconduct or abuse of authority is definitively proven.

Building on this, judicial independence is not merely a formal safeguard but a substantive prerequisite for enabling judges to discharge their duty of adjudicating disputes with impartiality and confidence. Such independence requires that individual judges, as well as the judiciary as an institution, remain insulated from any form of external or internal pressure, whether emanating from the executive, the media, influential individuals or entities, or even from fellow members of the bench. Justice can only be achieved when a judge bases their decision exclusively on the evidence presented in court and on a sound understanding of the law, free from threats, inducements, or interference. Where independence is compromised, judicial determinations become tainted by external influences and thereby lose the objectivity that constitutes the very foundation of justice.⁵¹

Among the most prominent guarantees of judicial independence is the judge's unwavering commitment to impartiality—eschewing favouritism and bias—and applying the provisions of Sharī'ah or statutory law equally to all individuals, regardless of status or relationship.⁵² This ethical and legal standard is firmly established in

⁵¹Tun Tengku Maimun Tuan Mat, “Judicial Integrity in Strengthening the Nation,” *IIUM Law Journal* 31, no. 2 (2023): 6-7, <https://doi.org/10.31436/iiumlj.v31i2.881>

⁵²Hamad and Anuar, “Judiciary in Islamic Law,” 13; Al-Samahi, “Independence of the Judiciary,” 413; Tarad Al-Sharif, “Istiqlāl al-Qadā' fī al-Sharī'ah al-Islāmiyyah wa Taṭbīqātuhu fī al-Mamlakah al-'Arabiyyah al-Sa'ūdiyyah” (Master's thesis, Naif Arab University for Security Sciences, 2004), 84-85; Al Hajjaji, “Judicial Power,” 33.

the Qur'anic verse: "O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives"⁵³

The Sharī'ah judiciary has long upheld the necessity of disqualifying any judge from hearing cases involving relatives or parties with whom they have a potential conflict of interest, thereby preventing perceptions of bias and protecting the integrity of the judiciary. This principle has been explicitly codified in Palestinian law. Article 37 of Decree-Law No. (8) of 2021 obliges Sharia judges to adhere to judicial conduct and refrain from any behavior that undermines their position (Art. 37(1)), prohibits them from hearing cases in which they have a personal interest or where close relatives up to the fourth degree are involved, or where they have previously expressed an opinion, pleaded, or represented any party (Art. 37(2)), and further forbids them from exploiting their judicial office for personal or familial benefit (Art. 37(6)).

Moreover, Article 38 categorically bars judges related by kinship or affinity up to the third degree from sitting on the same bench (Art. 38(1)) and prevents a judge from presiding over a dispute where such a relationship exists with one of the parties or their representatives (Art. 38(2)), while also subjecting judges to the general provisions on recusal and disqualification under the applicable Code of Sharia Procedure (Art. 38(3)). Although only recently codified, Palestinian legislation has preserved key juristic safeguards of judicial independence, balancing modern legal demands with Islamic legal tradition. However, effective enforcement of these guarantees still requires stronger institutional mechanisms, especially in judicial monitoring and performance assessment, to ensure they are fully realised in practice.

In light of the foregoing, it becomes clear that the principle of judicial independence is in full alignment with the objectives of *maqāṣid al-sharī'ah*, which seek to uphold justice, safeguard rights, and promote the collective welfare (*maslahah*) of the Ummah.⁵⁴

⁵³Qur'ān, 3:135.

⁵⁴Hend Mohamed Almagassiby, "مبدأ استقلال القضاء" ["The Principle of Judicial Independence,"] *Majallat al-'Ulūm al-Qānūniyyah* 10, no. 2 (2022): 129.

This maqāsid-oriented perspective is not merely theoretical but finds concrete expression both in Palestinian legislation—which affirms in Articles 2 and 3 of Decree-Law No. (8) of 2021 that the Sharia judiciary is independent and that judges are subject to no authority in their rulings other than Sharī‘ah and the law—and in the juristic insight of Ibn ‘Āshūr, who stressed that the Sharī‘ah instituted judicial authority to uphold justice, safeguard rights, and prevent their usurpation.⁵⁵

Building on this foundation, Muslim jurists more broadly have emphasised that judicial independence is not a personal privilege but a Sharī‘ah-based necessity, indispensable for the realisation of justice, the prevention of injustice, the protection of public order, and the avoidance of authoritarian overreach or personal bias.⁵⁶

Consequently, the convergence between Decree-Law No. (8) of 2021 on the Sharia Judiciary and Islamic Sharī‘ah in affirming the principle of judicial independence offers a strategic opportunity to construct judicial systems rooted in merit and justice, insulated from political partisanship and executive interference. In light of the preceding results and analyses, the current centralised organisation of key judicial functions, in the absence of fully articulated institutional governance mechanisms, continues to present an important area for scholarly examination regarding the consolidation of de facto independence within the Sharī‘ah judiciary. This calls for further research into the relationship between administrative authority and judicial independence, as well as the exploration of institutional oversight mechanisms that can strengthen the balance between jurisprudence (fiqh), law, and the requirements of modern judicial governance.

⁵⁵ Muḥammad al-Ṭāhir ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, ed. Muḥammad al-Ḥabīb ibn al-Khūjah (Doha: Ministry of Awqāf and Islamic Affairs, 2004), 3:518.

⁵⁶ al-Saḥīm, *Istiqlāl al-Qadā’ al-Islāmī*, 143-145.

CONCLUSION

Findings

This study confirms that the principle of judicial independence in the Shari'ah judiciary, though constitutionally affirmed and legislatively recognised in Decree-Law No. (8) of 2021, remains subject to structural limitations. The research demonstrates that:

1. **Persistent Centralisation:** Despite the formal guarantees of independence, administrative, supervisory, and disciplinary functions remain largely organised through the Office of the Chief Justice, which may lead to an apparent tension between the autonomy affirmed in principle and the practical realities of implementation.
2. **Islamic Juristic Alignment:** Classical Islamic legal tradition regards judicial independence as a religious duty (*wajib shar'i*), rooted in the maqāsid of justice and protection of rights, which aligns with constitutional and international principles.
3. **Reforms with Scope for Further Development:** While merit-based appointments, disciplinary safeguards, and specialised judicial departments were introduced, these reforms—though important—may still benefit from a clearer separation between administrative oversight and adjudicative autonomy.
4. **Institutional Tension:** The relationship between the Chief Justice and the Judicial Council illustrates a model of “coordinative hierarchy” rather than genuine collegial governance, limiting the Council’s role to advisory recommendations.

Recommendations

In light of these findings, the study proposes:

1. **Recalibrating Legislative Safeguards:** Redistribute powers between the Chief Justice and the Judicial Council, ensuring collective decision-making and transparent procedures in appointments, transfers, and court establishment.

2. **Strengthening Oversight Mechanisms:** Separate inspection and disciplinary processes from centralised administrative authority to eliminate conflicts of interest and reinforce neutrality.
3. **Constitutional Recognition:** Elevate the Sharī'ah judiciary to equal constitutional status with the ordinary judiciary, thereby consolidating its institutional independence and safeguarding its doctrinal identity.
4. **Integrating Jurisprudential and Constitutional Norms:** Harmonise classical juristic principles with modern governance standards to ensure that judicial independence is realised not only in statutory language but also in institutional practice.

By grounding judicial independence in both Islamic legal tradition and constitutional principles, the study underscores that achieving effective autonomy requires translating statutory affirmations into practical institutional arrangements. Such an approach supports the impartiality of the Sharī'ah judiciary, preserves its maqāṣid-based mission, and strengthens public confidence in its integrity.

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