



## Evaluation of the Jordanian Experience in Mediation and Arbitration Between Spouses

### Ürdün'de Eşler Arasında Arabuluculuk ve Tahkim Uygulamalarının Değerlendirilmesi

Mohammad Thalgi<sup>1</sup>

#### Abstract

This study examines mediation and arbitration (al-wasāṭah wa-al-tahkīm) within Jordan's legal framework. It highlights the strengths and limitations outlined and regulated by the Regulation of Family Reconciliation and Mediation Offices and the Jordanian Personal Status Law (Qānūn al-aḥwāl al-shakhṣīyah). It provides an agreed structure for solving marital disputes, recognitions, and arbitration as the primary forms of redress. It has a historical basis and is derived from Shariah. Articles 126 and 127 of the Jordanian Personal Status Law state arbitration and mediation procedures for finding a solution before divorce and mix conventional thought processes with modern law methods. Another critical step toward institutionalising the resolution of family disputes was made in 2013 with the establishment of the Family Reconciliation and Mediation Offices. These offices are growing ever more complex and, therefore, successful and are integral in providing counselling, community education, and conflict resolution. The current spike in cases means there is a need for constant monitoring and adjustment of their working model. The study also adds more light to the direction that qualified and impartial mediators are crucial. Addressing interactions with children, family relationships, and issues like domestic violence requires more than basic skills; therefore, professional practice training and learning continuity are necessary, whereas, in the current scheme, there are benchmarks of a mediator's skill. To ensure the purity of that process, one has to discharge or mitigate conflicts of interest of a mediator and enhance the neutral stance of a mediator to strengthen the institution of family dispute resolution.

**Keywords:** Jordan, Mediation, Arbitration, Family Reconciliation, Mediator Qualifications

#### Öz

Bu çalışma, Ürdün'ün yasal çerçevesinde arabuluculuk ve tahkim uygulamalarını (el-vesāṭa ve t-tahkīm), Aile Uzlaştırma ve Arabuluculuk Büroları Yönetmeliği ve Ürdün Aile Hukuku Kanunu (Kānūnu'l-aḥwālī'l-şahṣīyye) tarafından özetlenen ve düzenlenen güçlü yönlerini ve sınırlamalarını incelemektedir. Evlilikteki anlaşmazlıkların çözümü için uzlaştırma ve tahkime dayalı bir mekanizma sağlamaktadır. Tarihsel bir temele sahiptir ve Şeriat'tan türetilmiştir. Ürdün Aile Hukuku Kanunu'nun 126. ve 127. maddeleri, boşanmadan önce çözüm bulmaya yönelik tahkim ve arabuluculuk prosedürlerini belirlemede ve geleneksel düşünce süreçlerini modern hukuk yöntemleriyle harmanlamaktadır. Aile içi uyumsuzlukların çözümünün kurumsallaştırılması sürecindeki önemli gelişmelerden biri, 2013 yılında Aile Uzlaştırma ve Arabuluculuk Bürolarının kurulmasıdır. Bu ofisler giderek daha karmaşık bir yapıya bürünmekte ve buna paralel olarak daha etkili hale gelmektedir. Ayrıca, danışmanlık, toplum eğitimi ve çatışma çözümü sağlamada kritik bir rol üstlenmektedir. Vaka sayılarındaki mevcut artış, çalışma modellerinin sürekli olarak izlenip güncellenmesini zorunlu kılmaktadır. Çocuklarla etkileşim, aile ilişkileri ve aile içi şiddet gibi konuların ele alınması yalnızca temel becerilerle sınırlı kalmamalı; aynı zamanda mesleki uygulama eğitimi ve sürekli öğrenmeyi gerektirir. Mevcut sistemde, arabulucuların sahip olması gereken becerilere yönelik belirli kriterler bulunmaktadır. Bu sürecin güvenilirliğini sağlamak adına, arabulucunun çıkar çatışmalarını ortadan kaldırması veya en aza indirmesi gereklidir. Aile içi anlaşmazlıkların etkili bir şekilde çözülebilmesi için tarafsız ve profesyonel bir yaklaşım gereklidir.

**Anahtar Kelimeler:** Ürdün, Arabuluculuk, Tahkim, Aile Uzlaştırması, Arabulucu Nitelikleri

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**To cite this article:** Thalgi, Mohammad. "Evaluation of the Jordanian Experience in Mediation and Arbitration Between Spouses." *darulfunun ilahiyat* 35, Special Issue on 'Family Mediation' (2024): 55–75. <https://doi.org/10.26650/di.2024.35.1541965>



## Introduction

After the decolonisation of the Ottoman Empire, colonial dominance brought its legal and cultural structures into the Islamic world. After gaining independence from colonialism, most Muslim countries adopted new legal frameworks. These frameworks often displaced Sharia in governance matters by incorporating Western legal systems.<sup>1</sup> However, many Islamic states continued to use Islamic law in all matters of personal status, according to the Islamic rules established by the Ottomans.<sup>2</sup> According to most legal system articles, Jordan's personal status legislation is mainly derived from the Hanafi school of thought. It has benefited from the Majalla of Rulings, especially in litigation procedures. Jordan is one of the few countries that have preserved the application of Sharia in this aspect. The newly codified laws started during the late Ottoman Empire period (with the Tanzimat, 1839–1255 AH). During this period, the Hanafi school produced the code of transactions called Majalla (1876 CE–1292 AH), which influenced Jordan's personal status law (Qānūn al-aḥwāl al-shakhṣīyah), particularly in litigation procedures.<sup>3</sup>

Article 99 of the Jordanian constitution divides courts into three categories: Special Courts, Religious Courts, and Civil Courts. This is how the legal system is set up in Jordan. The stated mandate in Article 106 is for Sharia courts to apply Islamic Sharia in their rulings.<sup>4</sup> The legal system consists of two primary codified laws: the Jordanian Civil Code (al-Qānūn al-madanī al-Urdunī), which replaced the Majalla and is mainly based on the Hanafi school but also incorporates parts from the Maliki, Shafi'i, and Hanbali schools when it is considered to be more appropriate. The Personal Status law (Qānūn al-aḥwāl al-shakhṣīyah) is the second, codifying different Sharia rules so that judges must follow them.<sup>5</sup> While much of this law is rooted in the Hanafi school, it also draws from other Islamic schools. It is, however, essential to note that while a good deal of this law is Hanafi in origin, a fair amount is also drawn from the other schools of Islamic jurisprudence. There

- 1 Ian Edge, "Comparative commercial law of Egypt and the Arabian Gulf," *Clev. St. L. Rev.* 34, no.1 (July 12, 1985): 130-143.
- 2 Sri Wahyuni, "Legal Transplant: Influence of The Western Legal System in The Muslim Countries," *Justicia Islamica* 19, no. 1 (June 20, 2022): 21-37.
- 3 Safrudin H. Kamaluddin, "Remnants of Ottoman Law and Its Application In Contemporary Times In Lebanon And The Arab World," *Jurnal AL-AHKAM* 12, no. 2 (2021): 45–60.
- 4 S. A. Alshdaifat, "Review of Human Rights under the Jordanian Constitution," *JL Pol'y & Globalisation* 29 (2014): 30-41.
- 5 Emad Mohammad Al-Maren, Che Thalbi Md Ismail, and Mohd Zakhiri Md Nor, "The Fraud Rules in the Letter of Credit under Jordanian Legal System," *Sriwijaya Law Review* 5, no. 2 (August 29, 2021): 218-235.

are a few unresolved issues, as illustrated below, left unnoticed or unresolved, as illustrated below. Article 325 of the 2019 law states that all other matters not here shall be decided concerning the Hanafī school of law or, in its lack, the Islamic law principles nearest to the law in question.<sup>6</sup>

Two dimensions remain central to understanding the Jordanian experience with spouse arbitration and mediation. First, the process and conditions under which a spouse has the right to file a separation resulting from disagreement and strife are regulated in the provisions of the Jordanian Personal Status law (Qānūn al-aḥwāl al-shakhṣīyah) Articles 126 and 127. As a set of legal regulations based on Sharia, these articles provide the marital couple with tools to address conflicts that arise from the marriage.<sup>7</sup> Second, some formalisation of family dispute resolution is in progress in Jordan due to the legal enactment of the Family Reconciliation and Mediation Offices Regulation of 2013 (Nizām Makātib al-iṣlāḥ wa-al-tawfiq al-usarī). The Sharia Judiciary (Dā'irat Qāḍī al-Quḍāh) set this regulation to recruit a specialised directorate for implementing and regulating the Family Reconciliation and Mediation Offices throughout the Kingdom in any of its Sharia courts. The attempt made here reflects Jordan's dedication to adopting more structured, other-centred Third-Party Dispute Resolution procedures for family law disputes.<sup>8</sup>

This work assesses mediation and arbitration (al-wasāṭah wa-al-taḥkīm) in Jordanian legislation and practice in the context of marital conflict solutions, focusing on the Jordanian Personal Status Law (Qānūn al-aḥwāl al-shakhṣīyah) in addition to the Regulation of Family Reconciliation and Mediation Offices. The study seeks to:

1. Assess the effectiveness of the current mediation and arbitration (al-wasāṭah wa-al-taḥkīm) frameworks: To what extent does Jordan's current legislation support fair and efficient conciliation and arbitration between spouses while being compatible with Sharia and contemporary legislation?

2. Analyse the role and impact of Family Reconciliation and Mediation Offices: Examine how these offices operate, how they work, and their effectiveness in representing the state's reconciliation or dispute resolution objectives as envisaged by the 2013 Regulation.

3. Examine the qualifications and impartiality of mediators and arbitrators: Analyse the learning and teaching qualifications of mediators and arbitrators in

6 Qānūn al-aḥwāl al-shakhṣīyah No. (15) for 2019. Official Gazette 5587 (June 2, 2019).

7 Qānūn al-aḥwāl al-shakhṣīyah No. (15) for 2019.

8 Nizām Makātib al-iṣlāḥ wa-al-tawfiq al-usarī No. (17) for 2013. *Official Gazette*, (March 2, 2013): 912–915.

Jordan and the adequacy, objectivity, and fairness that Jordanian mediators and arbitrators demonstrate when dealing with delicate, intricate family matters.

4. Assess how vulnerable parties, especially children, are protected: Analyse the measures by which arbitration and mediation procedures defend the interests of vulnerable persons such as children and uphold their welfare.

5. Determine any gaps and make suggestions: Examine the relationship between the current legal provisions and mediation and arbitration; identify any shortcomings within the existing legal systems, and give recommendations to improve the provisions to make mediation arbitration affordable, efficient, fair, and easily accessible to parties experiencing family troubles in Jordan.

### **1. Mediation and Arbitration in the Jordanian Personal Status Law**

Disabilities that develop marital relationships, disputes, and conflicts can occasionally reach a stage where the parties cannot continue the marriage. For this reason, the legal system in Jordan provides methods for handling such issues, giving equal chances to both parties to claim justice. This paper will analyse a section of the Jordanian Personal Status Law, which contains Articles 126 and 127 that outline the procedures and conditions for a spouse seeking a separation based on dispute and quarrel. These articles emphasize the role of mediation and arbitration (*al-wasāṭah wa-al-taḥkīm*). They aim to reunify spouses, but if reconciliation is impossible, clear separation rules are established. This section provides a detailed analysis of these articles, including the functions of the court and arbitrators, the means of proving prejudice, and the effects of these provisions on family law in Jordan.<sup>9</sup>

While mediation and arbitration share the characteristic that both use a third party, it is essential to note that they are pretty distinct in their roles and the extent of their power. Only the mediator makes recommendations that the parties may accept or refuse. This absence of a binding aspect promotes the free flow of discussion with the mediator, who often introduces a little “noise” to keep the escalations down. However, arbitration produces a final decision by the arbitrator, which the awarding parties must accept because they agreed on arbitration. This makes arbitration a more forceful and concrete solution-making process than mediation, an advisory process. Mediation is advantageous for situations where the conflict is not severe, and arbitration is valuable if an irreproachable decision is required.<sup>10</sup>

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9 Qānūn al-aḥwāl al-shakhṣīyah No. (15) for 2019.

10 Juan Pablo, “Effectiveness of Mediation and Arbitration as Alternative Dispute Resolution Methods in Mexico,” *Journal of Conflict Management* 4, no. 1 (March 3, 2024): 38-50.

### **1.1. The Role of Arbitrators in the Jordanian Personal Status Law**

According to Article 126, either spouse can seek resolution at any convenient time if the other party causes harm to them, likely to no longer provide a supportive and harmonious marital environment. This harm can be physical in the form of abuse or verbal mistreatment or moral in the form of disgraceful behaviour or failure to perform marital rites.<sup>11</sup>

When the wife demands the husband pay for the expenses, the court will try to reunite the couple. However, if an agreement cannot be reached, the judge will admonish the husband to change his behaviour, and the case will be rescinded for over a month. If compensation is not provided and the wife sticks to her demand despite the urging, the judge will pass the matter to the arbitrators. Similarly, when the husband is the claimant and establishes discord and conflict, the Court shall endeavour to reconcile the parties. If such efforts are unsuccessful, the judge shall stand down the matter for at least one month to facilitate the parties to get back together. After this period, if the two have not settled their point and the husband wants his rights, the judge will refer the case to arbitrators.<sup>12</sup>

The arbitrators must be impartial individuals capable of facilitating reconciliation, preferably from each spouse's side. If this is not feasible, the judge will appoint two knowledgeable and just individuals. The arbitrators will investigate the causes of discord and conflict directly with the spouses or anyone who might provide helpful information. They must record their findings in a signed report, which they will draft and submit to the court if they believe reconciliation is possible.<sup>13</sup>

### **1.2. Arbitration and Mediation Processes in the Jordanian Personal Status Law**

The arbitrators will decide on separation with compensation, which must not exceed the value of the dowry and its associated items if they find the wife solely responsible for the harm. Suppose the husband is exclusively to blame for any damage. In that case, they will elect to separate through an irreversible divorce, in which case the woman will be entitled to support during the waiting period as

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11 A. I. Al-Oqaili, "The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari'a Court of Appeal and the Decisions of the Supreme Shari'a Court in Jordan)," *Information Sciences Letters* 12, no. 4 (2023): 1093-1116.

12 Adamu Abubakar Muhammad et al., "A Literature Review of Islamic Mediation (As-Sulh) As Mechanism for Settling Marital Dispute among Muslim Couples in Northeastern Nigeria," *Jurnal Al-Irsyad: Jurnal Bimbingan Konseling Islam* 5, no. 2 (April 1, 2023).

13 Nour Adel Abu Jameh, "A Critical Study of the Case of Discord and Conflict In Light Of Article 126 of the Jordanian Personal Status Law for the Year 2019," *Dirasat: Shari'a and Law Sciences* 49, no. 2 (2022): 125-138.

well as the unpaid share of her dowry. If both spouses are causing the harm, they will elect to separate and pay a sum equal to the harm each has caused to the other. They will decide on compensation from either spouse if they cannot determine the extent of damage, as long as it does not exceed reasonable limits.<sup>14</sup> If the arbitrators disagree, the judge will appoint another or add a third preferential arbitrator. In this case, the majority decision will be followed. The arbitrators must submit their report with their findings to the judge, and the judge must rule based on the report if it aligns with the provisions of Article 126.<sup>15</sup>

The law permits either of the two spouses to sue for separation because of cruelty that makes it impossible for them to live with each other. This includes both financial and moral losses. It begins with the court-initiated mediation attempts. If all these efforts are unresponsive, the case is taken to the arbitrators. The arbitrators intervene when the mediation findings are not satisfactory. They must be independent and informed, preferably for both sides. The function of its members is to study the nature of the conflict and what can be done to resolve it, although they might also recommend grounds for divorce. Arbitrators are empowered to make recommendations about the conditions of the parties' separation, including payment remuneration. If the harm was committed by one of the spouses, the harmed spouse can choose either compensation or divorce.<sup>16</sup>

Proof, supported by the testimonies of at least one other witness shows that the harm claims are valid, giving a relatively fair variation of the stories between the two parties. It shows how sharia rules interconnect with legal regulations and how they try to find a compromise but, if needed, a secession. Therefore, the concentration on mediation and arbitration is well-placed within the compass of family law in Jordan because the general mantle of family law is to solve such problems with an eye on reconciliation and justice.<sup>17</sup>

14 Sanaa Al-Hunaiti, "Judicial Oversight of Arbitration in the case of discord and dispute in Jordanian personal Law No. 15 of 2019," *Jordan Journal of Islamic Studies* 18, no. 1 (2022): 39-68.

15 Qānūn al-aḥwāl al-shakhṣīyah No. (15) for 2019.

16 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for the Year 2013, 912-915; Al-Oqaili, "The Testimony as Evidence in the Light of Islamic Sharia Provisions (Applied Study of the Decisions of the Shari'a Court of Appeal and the Decisions of the Supreme Shari'a Court in Jordan)," 6-19.

17 Al-Hunaiti, "Judicial Oversight of Arbitration in the case of discord and dispute in Jordanian personal Law No. 15 of 2019", 39-68.

## **2. Regulation of Family Reconciliation and Mediation Offices in Jordan's Sharia Law**

The Family Reconciliation and Mediation Offices Regulation of 2013 marks a genuine attempt by Jordan's Sharia Judiciary to mainstream family dispute resolution throughout the Kingdom. Throughout this initiative, this Centre required the establishment of a special directorate within the Sharia Judiciary Department to create and manage these offices in all Sharia courts. The regulation captures these offices' functions as being among them'; resolution of family matters without court intervention, sensitisation of the community on the rights and responsibilities of marriage, and offering family counselling services. Moreover, it outlines the requirements for personnel who manage those offices and insists on the necessary experience in sharia, law, sociology, or psychology to provide efficient and informed mediation.<sup>18</sup>

### **2.1. Objectives of the Family Reconciliation, Mediation, and Conciliation Offices**

By Jordan's Sharia Procedure Law, Family Reconciliation, Mediation, and Conciliation Offices were established under Article (11). This article requires the creation of various positions in Sharia courts that judges deem necessary. These agencies' main goals are to mediate and bolster the idea of reconciliation and to mediate family conflicts via conciliation or mediation. These agencies formalise agreements with legal authority, equivalent to court rulings, to provide alternate dispute resolution techniques instead of traditional litigation. They also reduce litigation's financial and emotional expenses by combining family case files into a single, comprehensive file. Additionally, they provide preventive and remedial family guidance to reunify and sustain families, resolve conflicts, and help parties reach amicable and binding agreements, safeguarding each party's rights.<sup>19</sup>

### **2.2. Methods Used by Family Reconciliation, Mediation, and Conciliation Offices to Address Referred Cases**

Family reconciliation offices affiliated with Sharia courts all over Jordan handle cases referred to them through various procedures. First, they may reconcile by negotiating with both parties to withdraw their claims, resulting in the case being dismissed and the couple reconciling. Second, they can help the parties reach a

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18 A. I. Al-Oqaili, "The Role of Family Reconciliation and Mediation Offices in Jordan in Reducing Family Disputes from the Viewpoint of Their Workers," *Dirasat: Shari'a and Law Sciences* 48, no. 2 (June 1, 2021): 41–56; Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.

19 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.

mutual decision on cash issues, for example, spousal or child support, schooling, homemaking, residence, or custody, or otherwise custody and support. If no agreement is reached, the representative returns the case to court, allowing the judge to make an appropriate ruling. When a spouse asks for a separation because of conflicts, the reconciliation officer shall try to solve the problem through counselling. Suppose the parties cannot settle the case after the settlement conference is conducted. In that case, the case is presented to the judge to enter the final judgement dissolving the marriage in return for a dismissal of any outstanding legal claims, thus minimising delay and cost of a further protracted trial.<sup>20</sup>

### **2.3. Operational Mechanisms of the Family Reconciliation Office Members**

The following are the procedures for handling cases referred to from Sharia courts by the Family Reconciliation, Mediation, and Conciliation Office members. Article (7) of the Regulation also indicates that they consider cases recommended to them by Sharia courts or cases that the parties have filed without any existing case in the Sharia court. The head of the office connects one or more members to the case and chooses the most adequate member according to the Regulation noted in Article (6/b). This article also requires members to have the proper education, psychology, sociology, Law, and Sharia competencies. The Regulation also allows members to organise sessions effectively and for additional help if necessary per Article (9/a). It also provides flexibility considering social, educational, and cultural facilities. The office must engage in conciliation if there is no settlement in the reconciliation process, as provided in Article 9/b above. If the parties agree and ask for an agreement, it is reduced to writing, signed by the parties and the head of the office, and presented to the court to get sanction and enforcement as provided under Article (11/a). If reconciliation fails, the head of the office must inform the referring court or advise the parties to approach the competent court, as specified in Article (11/b). Finally, all reconciliation procedures must be completed within 30 days from the date the dispute is received, and all deliberations are to be kept confidential by Articles (10) and (9/c) of the Regulation.<sup>21</sup>

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20 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.

21 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.



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Additionally, the statistical report noted that 39,820 agreements were registered with the Family Reconciliation Offices, which have the power of an enforceable bond under the Sharia Execution Law. These numbers reflect the disputing parties' desire to resolve family disputes through mutual consent, which is considered an alternative to traditional litigation. The Department of the Chief Justice has adopted this approach to facilitate and ease citizens' process and reduce the number of cases heard by the Sharia courts.<sup>23</sup>

Most of those brought about successful settlements (57.38%), which is an affirmative indication of how successful such cases are in offering a remedy of disputes without the aid of the courts. However, out of these, 30.17% were reported not to have retrieved through mediation, an indicator that mediation was still problematic in finding a resolution to the cases. However, out of the analysed cases, 10.55% were connected with divorce, and their success rate was significantly lower. A minuscule 0.84% of these cases ended in settlement agreements, while as high as 8.95% could not get a resolution at all, showing how contentious divorce issues can be. Of the total contested marriages, 4.33% were represented by special exemption requests where marriages involving parties aged 15-18 years, and the approval rate was 4.10%, which implies that most exemption requests were granted under standard procedure. On the other hand, family counselling emerged to be almost negligible in only 0.4 per cent of the cases, indicating that the service might be underutilised compared to mediation and reconciliation. Concisely, while the directorate has been successful in most cases of conflict, the majority of which were not involving divorce, there is room for improvement, especially in divorce cases and with effort and exploration of the use of family counselling services.<sup>24</sup>

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22 al-Taqrīr al-iḥṣā'ī al-Sanawī (Dā'irat Qādī al-Qudāh, 2024), 201-202.

23 Al-Taqrīr al-iḥṣā'ī al-Sanawī. 201-202.

24 Al-Taqrīr al-iḥṣā'ī al-Sanawī. 201-202.

**Table 1.**

*Family Mediation and Reconciliation Cases Handled by the Directorate in All Governorates and Their Outcomes for 2023*

Cases	N		N	%
Disputes without a desire for divorce	69,385	Settlement agreements	39,820	0.57
		Settlement without an agreement	8,477	0.12
		Failure to reach a settlement	21,088	0.30
Divorce request	8,640	Settlement agreements	693	0.08
		Settlement without an agreement	625	0.07
		Failure to reach a settlement	7,322	0.85
Special exemption requests for marriage between ages 15 and 18	3,543	Approval	3,356	0.95
		Not Approval	187	0.05
Family counselling.	294			
<b>Total</b>	<b>81,862</b>			

al-Taqrīr al-iḥṣā'ī al-Sanawī (Dā'irat Qāḍī al-Quḍāh, 2024), 201-202.

### 3. Evaluation of the Legislative and Practical Reality of Mediation and Arbitration in the Light of General Principles

When assessing the legislative and practical enactment of the general principles of mediation and arbitration (al-wasāṭah wa-al-taḥkīm), it may be helpful to review the legal frameworks and associated procedures. This assessment is centred around exploring the efficiency of the existing regulation perspective and its capacity to endorse the principles of the parties' freedom, arbitration neutrality, confidentiality, and the position of the weaker party or parties and potentially endangered persons, including children. Studying how these principles are enacted gives an understanding of their limitations, issues, and opportunities. It fulfils all the legal regulation requirements for mediation and arbitration procedures under fair and efficient conditions to resolve controversies between spouses.

Regarding mediation and arbitration (al-wasāṭah wa-al-taḥkīm) under the Jordanian Personal Status Law, the following must be underlined: Mediation and arbitration (al-wasāṭah wa-al-taḥkīm) are governmental institutions within Jordanian Sharia courts, but there is also the possibility of family initiatives. There are no offices of private arbitrators and mediators dealing with family cases in Jordan. In this respect, the examples of other states can be considered to identify the advantages and disadvantages and the outlook for further application.<sup>25</sup>

25 B. Harges, "Alternative Dispute Resolution in Divorce and Family Cases in France and the United States: What the Two Countries Can Learn from Each Other," *Loy. L. Rev.* 70 (2023):115.

### 3.1. Mediation's Goal and Parties' Autonomy in Decision-Making

It is recognised that family mediation proceedings provide the best opportunity for both parties to reach an agreement without external regulation. This may entail asserting to them any other consultation that may be necessary or offering the option of mediation. These two points are considered in Article 4: Article A of the regulation, which follows the goal of mediation. Additionally, Article 11: A talks about how the parties can agree on whether or not they wish to reconcile.<sup>26</sup>

As family mediation seeks an acceptable and fair solution to the conflict, the parties understand that they can freely make their decisions at each step. This means ensuring that they are informed of any additional consultations, such as legal or psychiatric, and should patrons feel free to leave the mediation process, they have that opportunity.<sup>27</sup> The objective of mediation is emphasised in Article 4: The suitability and fairness of the agreements are also due to the regulation's A. Article 11: A of the regulation focuses on the parties' decision on whether to reconcile, thus emphasising the non-judicial nature of the procedure.

### 3.2. Ensuring Participant Understanding and Readiness for Mediation

This discussion considers the meditative suitability of the disputants and mediators to prevent them from unquestioningly consenting to mediation. A mediator must inform participants that mediation is voluntary and they may withdraw at any time; the mediator does not take sides; contestants agree on which sort of mediation they will undergo, which can vary depending on circumstances; and implementation of an agreement reached through mediation can only occur with the court's permission. People should be advised of their freedom to consult other professionals and the clergy or community leaders where necessary. The mediators also need to speak to the parties regarding when separate meetings might be conducted, the nature of confidentiality, and when or the circumstances under which the mediation process may be stopped or paused. The participants must execute a written agreement to mediate. At the same time, the mediators must gauge the participant's ability and desire to intercede, a capacity that precludes disputes if they cannot meet the participants' time expectations.<sup>28</sup>

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26 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.

27 Marian Roberts, *Mediation in Family Disputes: Principles of Practise* (Routledge, 2016): 5-13.

28 Hasmawati Hasmawati and Muhammad Akbar Fhad Syahril, "The Effectiveness of Mediation Process to Press Divorce Rates," *Amsir Law Journal* 1, no. 2 (2020): 78–84.

### 3.3. Impartiality and Conflict of Interest in Family Mediation

Family mediators must neutrally control the mediation process and report any actual or potential conflicts of interest. These mediators must disclose some of these issues before the mediation process starts. In this case, the affected party must provide a written waiver for the mediation process to proceed. Even with the consent of the participants, a mediator who loses neutrality needs to step down. There is favouritism and preconception in impartiality, while a conflict of interest entails any connection that may create partiality. In their communication, mediators should not favour any service for financial gain and give any conflicts of interest and disagreement as soon as the conflict of interests is identified, suspended from mediation, and if challenged for bias and unable to reconcile their stance, step aside. The Regulation does not contemplate this ethical condition in its provisions. It would be desirable to do so in system amendments and even more so during mediation procedures. The particular models showing the absence of the mediator's affiliation and lack of conflicts of interest are imperative.<sup>29</sup>

### 3.4. Confidentiality Obligations in Family Mediation

Family mediators should refrain from disclosing any matter disclosed to them by the mediation participants in compliance with the rule of confidentiality, but if provisions of the law require so or the participants have agreed on such disclosure.<sup>30</sup> It is recommended that before proceeding to the mediation, mediators explain to participants the policy concerning confidentiality and clearly state the confidentiality provisions in the agreement reached.<sup>31</sup> They must let them know the conditions under which confidentiality will not be observed when compelled by the courts. If they deem them genuine, the mediators must notify the concerned parties and authorities about violent threats. It was argued that the privilege of confidentiality in private sessions should be discussed beforehand. If subpoenaed, the mediators must promptly notify the participants immediately and should not disclose any information without a court order if such disclosure breaches confidentiality commitments.<sup>32</sup>

29 Nizām Makātib al-islāh wa-al-tawfīq al-usarī No. (17) for 2013, 912–915.

30 S. Kiesewetter and C. C. Paul, "Family mediation in an international context," *Cross-border family mediation: International parental child abduction, custody and access cases* (2023): 41-62.

31 Jaime Lindsey, Margaret Doyle, and Katarzyna Wazynska-Finck, "Navigating conflict: The role of mediation in healthcare disputes," *Clinical Ethics* 19, no. 1 (2024): 26-34.

32 Judge Joe Harman, "The Protection of Confidentiality in Australian Family Law," *Family Court Review* 58, no. 1 (2020): 126–41.

### 3.5. Supporting Children's Interests in Family Mediation

Equal attention has not been paid to their legal and practical considerations about children's best interests in mediation and arbitration. These procedures lack explicit provisions to address general child welfare principles. Family mediators should assist the parties in thinking about how the children must be supported. It is helpful to mention that mediators should guide the couple to different ways of separation and parenting possibilities with the help of communities and specialists. Issues may include the effects of conflict on children and discussing and negotiating parenting plans and changes in the future. The mediators concerned should examine the cultural and religious aspects and ensure any appointed court. Unit child advocates are made aware of the mediation. Such persons should not participate in a proceeding without consent from parents and their appointed lawyer for children. Intermediaries should also describe children's involvement opportunities and their effects.<sup>33</sup>

### 3.6. Addressing Child Abuse or Neglect in Family Mediation

Family mediators must consider the question of child abuse or neglect in family circumstances. Legal briefs for the intended mediation should not be used to address such cases unless the mediator is trained to handle them and must report signs of abuse or neglect to child protection laws. They should assist families in obtaining suitable services and recommend their suspension or cessation of mediation. However, this issue is unknown to the law and its provisions. It must be addressed during the mediation process to ensure decisions benefit the child, excluding factors that could harm their physical or psychological health. The regulations do not cover this aspect, and proper focus should be paid to it when deciding on the mediation framework to make the right decision to protect the child and exclude the factors that might affect their physical and psychological state.<sup>34</sup>

### 3.7. Handling Domestic Abuse in Family Mediation

Family mediators must acknowledge and respond adequately to identified issues concerning domestic abuse. A mediator is required to assess for Domestic abuse and must be trained at the same time before and during mediation. They must provide safety, have separate sessions, and guide the participants to services if abuse occurs.<sup>35</sup>

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33 Sarah Bekaert et al., "Family Members' Perspectives of Child Protection Services, a Metasynthesis of the Literature," *Children and Youth Services Review* 128 (2021): 106094.

34 E. Behounek and M. Hughes Miller, "Negotiating Violence in Family Law Mediation," *Journal of Aggression, Conflict and Peace Research* 14, no. 1 (2022): 73–95.

35 Tiantian Liu et al., "Family Socioeconomic Status and Chinese Young Children's social Competence: Parenting Processes as Mediators and Contextualising Factors as Moderators," *Children and Youth Services Review* 118 (2020): 105356.

One of the foremost issues in family mediation is domestic violence, the Personal Law of 2019, as well as the regulations regarding the Family Reconciliation, Mediation, and Conciliation Offices, seem to have no prohibitions. Regarding domestic abuse issues, family mediators themselves should understand what they are and how to deal with them appropriately. Instances of abuse should be included in initial and ongoing mediator assessments, and training when handling such cases must be handled professionally. At any rate, security issues precede everything. This can be achieved by ensuring secure meeting facilities, conducting separate sessions when necessary, and offering participants appropriate counselling services. Such positions will create a tremendous gap in the proceedings of family mediation if such steps are not incorporated into the law.

### **3.8. Conditions for Suspending or Terminating Mediation**

Family mediators must be aware of working with clients who have potential issues related to domestic abuse. Mediators also need to have the training to screen for domestic abuse before dispute mediation. To ensure safety, they need to establish security, have their sessions, and signal the participants to resources to get help, if necessary, if abuse is suspected.<sup>36</sup>

Family mediators in the Jordanian Family Reconciliation and Mediation Offices should undertake numerous essential practices to address issues concerning domestic abuse. First, the issue of domestic abuse should be considered a necessary element as regards the practice of screening by mediators at the stage of their work, as well as during the process of mediation. This involves using screening questionnaires and tools to effectively identify and address potential abuse cases. Ideally, mediators should also be trained on aspects of domestic abuse. They should be in a position to recognise other forms of abuse and power relations and the rights of the victims, among other things. It will enable mediators to better manage delicate cases with the necessary competence and respect.<sup>37</sup>

In addition, mediation requires security protection from the parties since some might result in physical confrontations. This can include ensuring the physical safety of the mediation facilities, conducting consecutive sessions when necessary, and employing secure means of communication to keep participants safe. Whenever there is a suspicion of abuse, the mediators must facilitate the correct path regarding

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36 R. Birnbaum, "Private-based Mediation in Family Disputes: Mediator and Client Experiences in Ontario," *Canadian Family Law Quarterly* 42, no. 2 (2023): 131-161.

37 S. Bano and L. Webley, "Family Mediators and Family Mediation: When Norms Collide," *Oxford Journal of Law and Religion* 12, no. 2 (2023): 162-177.

support services, including legal, psychological, and social. Local organisations specialising in working with victims of domestic violence shall be involved to ensure that such victims receive the support needed. Moreover, mediation offices should have guidelines for maintaining the particular parties who report cases of domestic abuse. This may require a change of mediation procedures to minimise confrontation, a shift in communication style, and, above all, the victim's safety. Thus, mediators can better deal with the requirements of domestic abuse cases and build an overall safer and more efficient mediation.<sup>38</sup>

### **3.9. Truthfulness in Mediation Advertising and Solicitation**

Family mediators must be truthful in advertising and solicitation and avoid promising results.<sup>39</sup> This clears the distinction between state-affiliated offices and private for-profit organisations regarding their mediation function. Large private offices may set goals that may be hard and unforeseeable to achieve to attract clients and make profits. Unlike in Jordan, this does not help offices linked to state courts. Jordan's legislators and planners should consider this distinction when adopting laws to create private mediation and arbitration institutions.

### **3.10. Maintaining and Enhancing the Professional Competence of Mediators**

The family mediator must be recognised through education and training in mediation. Article 6: A provides for competency, experience, and academic backgrounds in Sharia, Law, Psychology, or Sociology. Competence in one or several of these areas may not be reached sufficiently by gaining professional expertise in a field. Hence, this can be solved with the help of partnerships with academic and training institutions to produce graduates who would effectively fit this niche. It should prepare them for identifying them, the effects that conflict has on parents and children, developmental milestones, domestic violence and child abuse, mediation skills, and assessment of the impact of culture and diversity.<sup>40</sup>

Family mediators need to maintain and improve their professional practice. It includes training, colleagues' recommendations, working as a tutor and guide for younger mediators, and understanding how Diversity and Culture influence personal practice. Family mediation in Jordan is regulated under the existing laws and regulations about a dispute that is supposed to be settled by the freely made

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38 Roberts and Moscati, *Family Mediation: Contemporary Issues*, 5-13.

39 A. J. Schmitz and L. Wing, "Beneficial and Ethical ODR for Family Issues," *Family Court Review* 59, no. 2 (2021): 250–67.

40 A. M. C. Silva and Patrícia Guiomar Sousa Fernandes, "Mediators in Portugal: Training, Status and Professional Recognition," *Journal of Social and Political Sciences* 6, no.2 (2023): 32-44.

decisions of the two parties involved in the question and the rights and the justice of each party as well as the time factor are supposed to be served appropriately.<sup>41</sup> According to Article 4: B of the regulation, the role of mediation is to help a case get to an agreed solution that will satisfy all the parties involved, and each party has the discretion of whether or not to participate in the process. As highlighted in Article 11: A, this comprises re-establishing participants about their autonomy to choose to reconcile and their options to have additional talks or to cease mediation.

In Jordan, mediators must fulfil specific educational and training requirements to ensure the effectiveness of the mediation process.<sup>42</sup> Article 6: A requires mediators to be qualified and have suitable academic credentials in disciplines such as law, psychology, sociology, or Sharia.<sup>43</sup> Experience in mediation, though, is not a result of formal education. Mediators must undergo appropriate training by linking with educational institutions. This training should teach effective mediation strategies, family process and development, and issues like spousal abuse or multiculturalism.

The regulations also state that personal bias and the participants' ability to comprehend mediation should be evaluated before the process begins. Intermediaries must provide an overview of mediation proceedings, emphasising their voluntary agreed nature and neutrality and distinguishing them from the other methods. Educational material should be developed to alert the participants in their ability to get independent advice and consult with professionals or community leaders. Interpreters must also specify when they are barred from disclosing information about the parties, when clients can meet separately with mediators, and when the process might be stopped or interrupted. Although these requirements are essential for achieving transparency, practical expediency can be different and must be controlled in the work process.<sup>44</sup>

The regulations also state that personal bias and the participants' ability to

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- 41 Alysse M Loomis, "Pathways from Family Violence Exposure to Disruptive Behaviour and Suspension in Elementary School," *Journal of Family Trauma, Child Custody & Child Development* 17, no. 1 (2020): 21–36; Costa Silva and Fernandes, "Mediators in Portugal: Training, Status and Professional Recognition," 32-44; Loomis, "Pathways from Family Violence Exposure to Disruptive Behaviour and Suspension in Elementary School.," 21-36.
- 42 S. M. Maberah, "Level of Mindfulness among staff of Family Reform and Reconciliation Offices and Its Relationship to Their Quality of Life," *Turkish Online Journal of Qualitative Inquiry* 12, no. 5 (2021): 4353- 4370.
- 43 Nizām Makātib al-iṣlāḥ wa-al-tawfīq al-usarī No. (17) for 2013. Official Gazette, 912–915.
- 44 A. G. Applegate et al., "Preparing Mediators to Mediate Cases Reporting High IPV in a Randomised Controlled Trial: The Importance of a Mediation Manual, Training, and Consultation," *Family Court Review* 59, no. 4 (2021): 725–40.



comprehend mediation should be evaluated before it begins. Intermediaries must provide an overview of the mediation proceedings, emphasising their voluntarily agreed nature and neutrality and distinguishing them from the other methods. Educational material should be developed to alert the participants in their ability to get independent advice and consult with professionals or community leaders. Interpreters must also specify when they are barred from disclosing information about the parties, when clients can meet separately with mediators, and when the process might be stopped or interrupted. Although these requirements are essential for achieving transparency, practical expediency can be different and must be controlled in the work process. Confidentiality is another categorical component of mediation. As for legal requirements, state mediators are to keep all the information provided during mediation and the mediation process confidential unless the parties in conflict legally request or agree. Mediators have to explain some of the boundaries of confidentiality, such as the duty to report threats of violence or abuse. The regulations could be more effective if the DOJ provided specific rules for protecting private sessions and subpoenas.

The regulations refer to the mandate to promote children's interests and deal with matters such as child abuse or domestic violence, for example. Accordingly, mediators must help members discuss and evaluate the available parenting choices and community services regarding culture and religion. However, the regulations do not have elaborate procedures for handling cases of child abuse or neglect or special procedures for domestic abuse. Filling these gaps with more precise criteria that would demonstrate how to prevent vulnerable persons from coming to harm and maintain the efficacy of mediation would improve the general safety of such clients. Generally, the principles and regulations for family mediation in Jordan are still reasonable but require upgrades. Jordan can improve the mediated system that will benefit all parties, especially children, by elaborating on the rules of conflict of interest and confidentiality and developing the procedure of addressing sensitive topics during mediational procedures.

### **Conclusion**

Research on mediation and arbitration (*al-wasāṭah wa-al-taḥkīm*) within Jordanian legislation has advantages and disadvantages in the present practises under the JPSL and the Regulation of FRCMOs. Employing Sharia laws and Jordan's historical legal system, married couples are provided with particular guidelines for mediating and arbitrating marital conflicts.

The legislation and practice of mediation and arbitration are mainly successful in bridging Sharia and contemporary legal regimes. It is worth mentioning here that

according to the Jordanian Personal Status Law (Qānūn al-aḥwāl al-shakhṣīyah), the methods of settlement sought in the first instance are mediation/conciliation. Articles 126 and 127 explain the clear procedures of asking for a divorce based on disputes and describe the court's function as the mediator and the functions of arbitrators. It also stipulates that attempts at reconciliation precede ultimate separation and does so with an eye towards both conventional morality and sound pragmatic legal requirements. The Family Reconciliation and Mediation Offices opened in 2013 represent perhaps one of the most significant steps towards institutionalising family conflict resolution. These offices play roles in counselling services, teaching the community, and hearing cases. The increasing number of cases and agreements registered by these offices evidences this progress. Only those offices that perform ongoing assessments of operational procedures can efficiently handle new issues, as demonstrated by the caseload growth.

The study acknowledges the importance of the mediators' qualifications and impartiality. The legislation establishes a requirement for mediators' professional expertise in Sharia, law, psychology, or sociology. However, there is a clear need for recurrent training and comprehensive education. This includes understanding factors such as family functioning, child development, and domestic violence, among others. The mediator's neutrality and treatment of conflicts of interest is another major determinant of the mediator's quality.

Regulations regarding the role of judges are in place but could be enhanced with more details in areas such as conflict of interest and bias prevention. It should be remembered that the most endangered people in safe houses are still individuals, particularly minors. The regulations put much concern on the interests of the child and support, yet there are missing links regarding child abuse and domestic violence. Safeguarding involves increasing the efficiency of mediation and arbitration mechanisms and protocols concerning such delicate issues to ensure that the best priorities of children and other vulnerable persons are always considered.

Several significant actions are proposed to enhance mediation and arbitration. First, Updating conflict-of-interest guidelines and ensuring mediator neutrality will improve the process and its outcomes. Second, strengthening the confidentiality measures and offering a straightforward procedure for dealing with subpoenas and private hearings will enhance participant trust in mediation. Third, elaborating the protocols for dealing with the gaps connected to child abuse, neglect, and domestic violence will provide stronger protections. Updating professional knowledge and cooperating with academic institutions will help sustain mediator competence. Here, the following critical measures are recommended to improve the framework for

arbitration and mediation. First, the legal framework for the activity of the mediators and the business procedure itself will be enhanced by the amendments that will contribute to the greater clarity and fairness of the system for the management and the mediator's impartiality. A second significant change is that the participants' perceived confidence in mediation will be higher if the confidentiality clause is made more explicit or improvements in the policies regarding subpoenas and private sessions are provided. Third, a strong, effective, and protective system will be provided through the gaps in legislation related to domestic violence, child abuse, and neglect by regular and professional protocols. Similarly, higher standards of mediation competence can be maintained through training and cooperation with universities.

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**Peer-review:** Externally peer-reviewed.

**Conflict of Interest:** The author has no conflict of interest to declare.

**Grant Support:** The author declared that this study has received no financial support.

**Hakem Değerlendirmesi:** Dış bağımsız.

**Çıkar Çatışması:** Yazar çıkar çatışması bildirmemiştir.

**Finansal Destek:** Yazar bu çalışma için finansal destek almadığını beyan etmiştir.

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