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RESEARCH

The tensions between parenthood rights and child's interests: Israeli court analysis of parents with disabilities

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Abstract

Background: The Convention on the Rights of Persons With Disabilities establishes the fundamental right to parenthood, yet these rights are frequently violated. Parents with disabilities face disproportionate involvement with child protective services and higher rates of custody loss.

Methods: This qualitative study employed systematic case law analysis. Court decisions were located through Israel's legal database. After applying inclusion criteria, 78 judgments involving parents with disabilities were analyzed using thematic analysis.

Results: Two themes emerged: (a) the right to parenthood as a guiding principle, emphasizing approaching custody with sensitivity and presuming children belong with biological parents; and (b) the best interests of the child as the leading doctrine, prioritizing stability, time considerations, and the child's age. Despite incorporating rights discourse, courts consistently prioritized child welfare over parental rights.

Conclusion: Although courts demonstrate awareness of rights principles, significant gaps exist between discourse and outcomes. The study reveals institutional-level discrimination where formal recognition fails to translate into substantive protection.

Implications: Comprehensive legal reforms, enhanced support systems, and therapeutic jurisprudence approaches are needed to ensure meaningful implementation of parental rights for persons with disabilities.

KEYWORDS

child welfare, disability rights, judicial decision-making, parental rights

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Abbreviation: CRPD, convention on the rights of persons with disabilities.

Aunos et al. (2020) provided a historical overview of how people with disabilities have been perceived in relation to their ability to make decisions about parenthood in the United States. During the early stages of industrialization, many people with disabilities were institutionalized and deprived of autonomy, including the ability to decide whether to form families or with whom, thereby severely restricting their opportunities for parenthood. In the early 20th century, the rise of the eugenics movement led to widespread policies of involuntary sterilization, primarily targeting women with disabilities. By the latter part of that century, societal views began to shift toward a "normalization" approach, which allowed greater opportunities for individuals with disabilities to become parents, provided they were not under surveillance by authorities for issues such as homelessness, poverty, or residence in unsafe neighborhoods.

Entering the 21st century, the recognition of the right to parenthood for people with disabilities was further reinforced by the Convention on the Rights of Persons With Disabilities (CRPD; United Nations, 2007). The CRPD, adopted by the United Nations in 2006, obligates States Parties to promote, protect, and ensure the full and equal human rights and fundamental freedoms for people with disabilities. It also requires states to eliminate barriers and guarantee accessibility, provide reasonable accommodations, and ensure the equal participation of people with disabilities in all areas of life (United Nations, 2007).

Article 23 of the UN CRPD explicitly requires States Parties to eliminate discrimination against persons with disabilities in all matters related to marriage, family, parenthood, and personal relationships, ensuring they enjoy these rights on an equal basis with others. Importantly, the article includes a strong safeguard against family separation, stating: "In no case shall a child be separated from parents on the basis of a disability of either the child or one or both of the parents" (United Nations, 2007, p. 16). This affirms the fundamental right of persons with disabilities to raise their own children.

Although the right of people with disabilities to parenthood is established in the CRPD, this right is still challenged. One factor that may hinder parents with disabilities from exercising their right to parenthood is the persistence of ableist societal attitudes toward their capacity to fulfill parental roles. Ableism has an influence on people with disabilities' access to reproductive health services and decision-making autonomy (Powell et al., 2024). For example, in the United States, many service providers for people with disabilities hold negative attitudes toward the parenthood of people with disabilities, including social workers and parental instructors (Albert et al., 2021; Friedman, 2023). Consistent with these findings, research conducted in Australia revealed that some service providers held the belief that women with disabilities should terminate their pregnancies, reflecting pervasive ableist assumptions about their capacity for parenthood (Strnadová et al., 2017). Similarly, in Israel, social workers reported negative attitudes toward parents with disabilities (Gur & Stein, 2020).

Beyond ableism alone, disability does not exist in isolation. An intersectional model of disability emphasizes that ableism operates in conjunction with other systems of oppression, including racism, sexism, and classism, creating layered and compounded experiences of marginalization (Brinkman et al., 2023). Parents with disabilities from historically marginalized groups may face unique forms of discrimination that stem from the interaction of multiple forms of bias rather than ableism alone.

RIGHTS OF PARENTS WITH DISABILITIES: FROM INTERNATIONAL EXPERIENCES TO THE ISRAELI LEGAL CONTEXT

Powell and Stein (2016) noted that although the parental rights of people with disabilities are recognized as basic human rights, these rights are often violated in practice when it comes to the implementation of laws. Parents with disabilities are more likely to lose custody of their children than parents without disabilities. When cases involving the termination of parental rights reach the courts, they overwhelmingly result in the loss of these rights, thereby denying parents the opportunity to exercise their right to parenthood (Powell et al., 2020). There are many barriers to the implementation of the right to parenthood for people with disabilities, including prejudiced attitudes among legislators and difficulties in passing bills aimed at protecting their parental rights (Albert et al., 2021). One barrier to the protection of the right of people with disabilities to parenthood may be ableist attitudes toward their capacity to parent. As demonstrated in an analysis of court decisions in Canada, judges have at times reflected ableist perspectives, portraying mothers with disabilities as less fit compared with the idealized mother without disabilities (Pacheco et al., 2024).

Research indicates that parents with disabilities experience disproportionate involvement with child protective services compared with parents without disabilities (LaLiberte et al., 2024; Lightfoot et al., 2021). This pattern extends to various forms of child maltreatment, with parents facing mental or physical health challenges showing higher rates of involvement in neglect cases (Mulder et al., 2018). However, the relationship varies by disability type and abuse category: While parents with intellectual disabilities demonstrate lower involvement in sexual abuse cases, they show higher rates of involvement in emotional abuse cases compared with parents without disabilities (Slayter & Jensen, 2019). Likewise, parents with emotional and behavioral disabilities are represented at higher rates in custody cases compared with parents with other disabilities, including learning disabilities and intellectual and developmental disabilities (LaLiberte et al., 2024).

Although Israel signed the CRPD in 2007 (Ministry of Justice, 2018), Rothler and Efrati (2021) noted that the country has yet to develop a comprehensive policy specifically addressing the parenting of persons with disabilities. Furthermore, the principles of the CRPD have not been fully implemented in this context. Rothler (2019) also argued that the Israeli legal system continues to deny and restrict the rights of persons with disabilities to parent mainly due to the procedures and approaches of government agencies. Parents with disabilities continue to face inequality in family life in Israel (Rothler, 2019).

These empirical findings carry significant legal implications, as they may influence judicial decision-making in custody proceedings, thereby creating inherent tension between protecting the parental rights of individuals with disabilities and safeguarding children's welfare. In the Israeli legal context, this complex balancing act is governed by the Legal Training and Guardianship Law (1962), which provides the statutory framework for courts to weigh these competing interests when determining custody arrangements.

PARENTS' LEGAL CAPACITY: BETWEEN NATURAL RIGHTS AND THE CHILD'S BEST INTERESTS

According to the Israeli Legal Capacity and Guardianship Law (1962), biological parents have a fundamental and natural right to serve as guardians of their children. The right of the biological parent to guardianship is established in Article 14 of the Legal Capacity and Guardianship Law, where it is stated that "the parents are the natural guardians of their children." Article 17 of the Legal Capacity and Guardianship Law states that "in their guardianship of a minor, parents must act for the benefit of the minor in the way that devoted parents would act in the circumstances." Although safeguarding the rights of parents with disabilities remains paramount, such rights must be meticulously balanced against a comprehensive evaluation of the child's welfare. The guardianship obligation mandates that parents act in furtherance of the minor's best interests. This legal framework reflects Israel's ongoing effort to balance the natural right of parents to raise their children with the paramount consideration of the best interests of the child. However, when assessing parental capacity, the Israeli courts depend on expert opinions from professionals such as psychologists, psychiatrists, and social workers.

Importantly, the courts do not consider the type of disability itself (e.g., intellectual, physical, or psychiatric disability) as a determinative factor. Rather, the assessment focuses on the individual parent's actual capacity to fulfill parental responsibilities, as evaluated by these professionals. When disagreements arise among these assessments toward parents with disabilities, the court determines which expert opinion to favor. Judicial discretion may be influenced by subjective perceptions or sociocultural gender norms regarding "appropriate" parenting (Gur & Stein, 2020).

The same legal issue covers numerous states signatory to the CRPD. For example, in Iceland, where legislation is progressive and congruent with the CRPD, reports have emerged that despite its good intentions, child protection services are using more covert methods to violate parents' rights (Stefánsdóttir et al., 2023).

In Australia, court-ordered parenting capacity assessments often reveal underlying beliefs about capacity and binary evaluations of parents with intellectual disabilities (Kong et al., 2025). A recent international examination of family courts also demonstrates that parents with mental illness typically face structural obstacles when judged on their parenting ability (Holford & Reupert, 2026). These cases demonstrate that the Israeli experience is part of a larger global struggle to harmonize the rights of persons with disabilities and child protection regimes, which highlights the fact that the challenge lies not only in legal reform but equally in translating principles enshrined in the CRPD into practice in judicial as well as welfare contexts.

As stated previously, the CRPD globally established people with disabilities' right to parenthood (United Nations, 2007), while the Legal Capacity and Guardianship (1962) established the right to guardianship of biological parents. These documents also emphasize that the best interest of the child may trump these rights. The CRPD states: "In all cases, the best interests of the child shall be paramount" (United Nations, 2007, p. 16). In the Israeli context, Article 17 of the Legal Capacity and Guardianship Law (1962) states that parents "must act in the best interests of their children, in the way devoted parents would act in the circumstances." This law emphasizes that biological parents have both natural rights and obligations toward their children.

Putting the best interest of the children as the primary consideration in all matters is established in the Convention on the Rights of the Child (United Nations, 1989). As stated in Article 3, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration" (United Nations, 1989, p. 2).

The best interests of the child serve as a primary consideration in custody cases across many judicial systems (Fuster, 2021; Noori & Torabi, 2019; Skelton, 2019). In Israel as well, this principle guides custody decisions, where the child's welfare is regarded as the foremost priority (Rothler & Efrati, 2021). This approach is consistently reflected in various legal contexts, including divorce proceedings (Cohen, 2011).

Rothler and Efrati (2021) explain that the emphasis on the best interests of the child stems from the understanding that children require protection and security to ensure the fulfillment of their rights. They add that, in evaluating a child's best interests, the starting premise is that it is generally in the child's best interest to remain within their natural family unit. This principle aligns with the parents' natural right to custody of their biological children, a right that is preserved unless the parents are found to be unable or unwilling to fulfill their obligations to care for the child (Rothler & Efrati, 2021).

An understanding of the interconnected relationship among the rights of parents and children, disability, and state involvement must be informed by theoretical explanations regarding the determinants of parenting and systemic societal inequality. Belsky's (1984) conceptual model demonstrates that parenting ability is not merely an individual characteristic but the result of the interaction between psychological resources, child attributes, and—importantly—

the social systems that provide support. Furthermore, Powell et al. (2024) presented a model for understanding child welfare inequities, emphasizing how discrimination operates at the contextual, institutional, and individual levels. There are additional reasons for integrating these perspectives into a cohesive theoretical framework, which can then be used to examine how legal regimes balance the parenting abilities of parents with disabilities against the best interests of children.

This literature presented in the introduction reveals a complex tension between established parental rights and child welfare considerations. Against this backdrop, the current study aims to conduct a qualitative analysis of Israeli court decisions involving parents with disabilities. The research seeks to identify and analyze the themes, considerations, and patterns of reasoning that emerge in judicial discourse when parental rights intersect with disability status, without making assumptions about how courts balance competing interests.

METHODS

The research employed a qualitative document analysis methodology, specifically analyzing court decisions selected for this study (Bhat, 2019; Dobinson & Johns, 2017; Webley, 2010). The analysis of legal texts, particularly judicial rulings, constitutes a potent methodology for investigating sociolegal phenomena manifested within the legal system and the law (Casaleiro et al., 2023).

The chosen method for text analysis was thematic analysis (Braun & Clarke, 2012). Text analysis enables examination of reality construction as reflected in judges' statements while maintaining sensitivity to the social and cultural context in which the judicial decisions were made (Mitchell, 2023). This approach allows for understanding how courts construct and interpret parental capacity, disability, and children's welfare within the Israeli legal framework.

The current study examines how Israeli court decisions construct and interpret the relationship between parents with disabilities' right to parenthood and children's best interests. Judgments were located through Nevo, Israel's comprehensive legal database containing all judgments published by Israeli courts at all levels (Supreme Court, District Courts, Magistrates' Courts, Family Courts, and Special Courts), including civil and criminal cases. The Nevo database is one of the most comprehensive and up-to-date online databases used by the Israeli legal community,[1] with a search cutoff date of June 18, 2023, until July 20, 2023.[2] Relevant search terms were entered into the online database (Table 1). Institutional review board ethical approval was not required because all judgments were obtained through accessible public databases.

Selection of Court Decisions

The judgments were selected according to three criteria: (a) The judgments took place in a court that hears cases involving parents with disabilities (the Rabbinical Court, the Magistrate Court, the Family Court, the District Court, or the Supreme Court); (b) judgments were specifically addressed to parents with disabilities; and (c) considered a case in which the court directly addresses the efficacy of parents with disabilities to take care of their children. For example, a case of a mother diagnosed with schizophrenia and cognitive disabilities where the mother appealed to the Supreme Court the decision to take her children out of her custody. The study's

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[1] It is important to note that all judicial decisions included in the database have received court approval for publication. The database provides full access to legal judicial rulings approved for publication by the court, making it the primary resource for legal research in Israel.

[2] For quantitative analysis of temporal patterns and trends across these three decades, see (Segal & Gur, 2025a).

TABLE 1 Results of the judgments search and initial filtering.

Search of judgments with the combination of the following words	Search yielded	No. of judgments remaining after initial filtering based on the defined criteria
A person with a disability, parents and guardian	1,000 judgments	30 judgments
Disability, parents and incapacity	900 judgments	49 judgments
Parents, disability and a needy minor	422 judgments	14 judgments
The Youth Law (Care and Supervision), 5720–1960, and a person with a disability	136 judgments	28 judgments
The Youth Law (Care and Supervision), 5720–1960, Disability and handicapped	422 judgments	14 judgments
The Adoption of Children Law, 5741–1981, Disability and handicapped	150 judgments	41 judgments

database contained all the judgments identified according to the three criteria. Based on these criteria, the perceptions of Israeli courts over an extended period were assessed.

In the intel search, 148 judgments were identified. After a thorough reading of all the judgments, 70 were excluded for not fitting the inclusion criteria. Ultimately, 78 judgments met the inclusion criteria.

Data analysis

Thematic analysis was employed as the method of content analysis (Braun & Clarke, 2012). Thematic analysis was carried out in six phases:

1. Familiarization with the data: All judgments were read in full by three researchers to gain an in-depth understanding of the material.
2. Generating codes: The judgments were independently coded by both researchers. Discrepancies in coding were discussed until a consensus was reached.
3. Searching for themes: The researchers organized the codes into patterns that captured broader ideas and recurring concepts.
4. Reviewing potential themes: The potential themes were reviewed and refined to ensure they accurately represented the data.
5. Defining and naming themes: Each theme was clearly defined and given a name that best captured the essence of the data it encompassed.
6. Producing the report: The researchers wrote and integrated the themes into a clear, interpretive, and engaging manner to effectively present the findings to the reader.

Trustworthiness

To examine the trustworthiness of the analysis, we applied the four components of trustworthiness as proposed by Denzin and Lincoln (2017). This tool applies four components:

1. Reliability: The study team included three researchers (two female and one male); a researcher who is a lawyer with experience in representing at-risk populations, specializing in the analysis of court decisions related to social welfare; a researcher specialized in disability

studies with previous research on the parenthood of people with disabilities; and a PhD student with experience working with individuals with disabilities. All researchers have a background in disability research.
2. Generalization in the study: The researchers were careful not to remove the texts from their original context while providing "thick descriptions" of the textual examples.
3. The researchers described with transparency the way the data was analyzed.
4. The stage of theme formulation included a detailed and separate examination of each ruling and a continual comparison between its findings and the findings that emerged from the other rulings.

FINDINGS

The thematic analysis of court rulings revealed two central themes: (a) the right to parenthood as a guiding principle and (b) the best interests of the child as a leading legal doctrine.

Theme 1: The right to parenthood as a guiding principle

This theme addresses how courts approach custody cases of parents with disabilities with high sensitivity, emphasizing the right to parenthood as a foundational principle. This theme includes three subthemes: (a) recognition of the natural right of biological parents, (b) judicial responsibility and sensitivity, and (c) caution against premature state intervention. Each theme is further divided into distinct subthemes that capture the nuanced ways courts navigate these fundamental principles in practice.

Subtheme 1.1: Recognition of the natural right of biological parents

Courts consistently recognize and emphasize the fundamental natural right of biological parents to maintain custody of their children, viewing this relationship as sacred and deserving of special protection This principle is reflected in *John Doe v. The Attorney General* (Civil Appeal No. 2759/18, 2018), concerning parents with intellectual disabilities. The couple had three children, and both hospital staff and social services raised concerns about the mother's parental capacity. The children were placed in foster families. The biological parents requested open adoption, but professionals recommended closed adoption. The Supreme Court stated: "The adoption process, by its very nature, changes the lives of all involved the minors, the biological parents, and the adoptive parents in the most significant and profound way" (p. 5). The Court emphasized that every custody case must begin with the presumption that children naturally belong with their biological family:

> The Biological parents are the natural guardians of their children, as the law states and as human experience teaches across space and time. The arms of the state will not easily interfere in the delicate, fundamental, and meaningful relationship of the small family unit. (p. 5)

Subtheme 1.2: Judicial responsibility and sensitivity

Beyond recognizing parental rights, courts demonstrate a profound awareness of the weight of their decisions and express deep sensitivity to the human costs involved in custody determinations.

Many court rulings reinforce this principle. In *John Doe v. The Attorney General* (Civil Appeal No. 1179/13, 2013), involving a mother with schizophrenia and cognitive disabilities, social services received reports about child well-being concerns. Home visits revealed inadequate conditions, and subsequent children were hospitalized due to neglect or removed after psychotic episodes. Although the Supreme Court rejected the mother's appeal, the ruling demonstrates the depth of consideration involved:

> We as judges therefore express time and again our feeling that decisions in adoption cases are by far the most difficult decisions we face, and no one case is like another. Each case is a world full of expectations, dreams, difficulties, disappointments, and also of unfulfilled physical and emotional needs, which is devastating to all concerned, especially to the child whose adoption is at stake. (p. 16)

The judges expressed profound responsibility:

> Indeed, the authority given to the court in the adoption law, the Adoption Law 5741-1981, to intervene in the natural family unit of the child created by his biological parents and to reshape it for him in cases stipulated by the law is an authority whose weight cannot be overstated. It entails great responsibility and is accompanied by a constant fear that, as human beings, we are not immune to mistakes, and a mistake in this type of case may—more than in other branches of law—be grave. (p. 16)

Subtheme 1.3: Caution against premature state intervention

Courts express particular concern about the potential for state intervention to become too routine or expansive, viewing such trends as threatening the fundamental principles underlying parental rights protection.

In *John Doe v. The Attorney General* (Civil Appeal No. 9/78, 1978), involving a minor born out of wedlock with an unknown father, the child was placed in an institution for 3 years, then transferred to foster families. The mother had an intellectual disability and difficulties with planning and organization, plus mental health challenges. The legal question was whether the child could be adopted without parental consent under Section 11 of the Adoption of Children Law 5741–1981 (Ministry of Justice, 1981). The judges expressed concern:

> Recently, we have witnessed an unusual increase in requests for adoption without parental consent, on the grounds that the natural parents have consistently failed to fulfill their obligations towards their child. … But the fear is in my heart: has the leash been loosened somewhat, and Section 11 [of the Adoption Law 5741-1981], which from the outset was intended only to allow adoption in exceptional and exceptional cases, even without parental consent, is slowly becoming, or may become, one of the main gateways through which children are given up for adoption? (p. 663)

The court emphasized the natural right of biological parents:

> This is not what the legislator intended, requiring in Section 8 of the Adoption Law the consent of the natural parents as a fundamental condition. I fear that the frequent use of Section 11, as a result of such an expansive interpretation as the case before us, entails a considerable danger of the existence of natural parents who will

> walk among us with the feeling that society has violated a natural right that is most precious to them, a reality that may, God forbid, be detrimental to the institution of adoption itself. (p. 664)

The Court accepted the mother's appeal and overturned the decision, emphasizing that the biological mother should maintain contact with her child despite her disability.

Theme 2: The best interests of the child as a leading legal doctrine

This theme explores how courts prioritize the child's best interests as the decisive factor in custody cases involving parents with disabilities. While parents' rights are acknowledged, the central concern is what best serves the child's well-being. This theme includes three subthemes: (a) stability and time as key parameters, (b) the child's age as a relevant factor, and (c) open adoption as a potential solution.

Subtheme 2.1: Stability and time as key parameters

Courts consider the need to provide children with stable environments, as demonstrated in *John Doe v. The Attorney General* (Civil Appeal No. 711/88, 1988). This case involved parents with visual disabilities: the father blind from birth, the mother with progressive eye disease. They had six children. Due to care difficulties, three older children were removed with consent, the fourth later removed due to exposure to violence. Experts concluded the parents' relationship was unstable, with significant neglect and lack of basic parenting efficacy. The District Court declared all children as candidates for adoption. The parents appealed, requesting that the children remain in care while maintaining communication. The Supreme Court denied the appeal:

> Children need a permanent home and parents who will provide for their material, emotional, and spiritual needs. Every child needs this; these endangered children even more so. In the absence of biological parents who can take care of the needs of these children, they deserve to be adopted by people who will be their psychological parents … Their best interests require their growth and nurturing in a stable, devoted, and orderly family nest. (p. 4)

Similarly, in *John Doe v. The Attorney General* (Civil Appeal No. 3554/91, 1991), involving a mother with polio whose son was declared a candidate for adoption, the court addressed whether the mother had the required parental efficacy to provide stability:

> He [the minor] suffers from an enormous lack of a sense of belonging, without any emotional effect of love or hatred towards anyone, not even towards his mother. Yet, he has a tremendous longing for a stable and permanent home and for the ideal of a routine life, and he is under great stress in anticipation of the possibility that his fate will soon be decided. The minor has developmental disabilities characteristic of the conditions of emotional neglect in which he grew up. Paving his path to mental rehabilitation depends, in no small part, on the ability of the family, which you will accept with the intention of adopting, to adhere to its mission with patience and resourcefulness. (p. 6)

Time is crucial from the child's perspective. In *John Doe v. The Department of Social Services* (Civil Appeal No. 469–09-21, 2021), involving parents with disabilities and their 4-year-old daughter, the mother had a mild intellectual disability and cerebral palsy, and the father was on the autism spectrum. The family had a history of domestic violence. Despite receiving support over significant time, no meaningful improvement was observed. The court emphasized:

> This state of affairs, on the one hand, indicates the existence of immediate and necessary demands to remove the minor from the custody of her parents, and on the other hand, not to let time pass in an attempt to give the parents another opportunity by way of private treatments that they will take for themselves and the minor. The passage of time for a minor is not the same as the passage of time for an adult. From the perspective of a child of the minor's age, this is a long and prolonged period. (p. 13)

Subtheme 2.2*:* The child's age as a relevant factor

Courts consider the child's age to be significant, although it is not always clear whether a specific age supports keeping the child with parents or placing them elsewhere. In *John Doe v. The Attorney General* (Civil Appeal No. 833/88, 1988), involving a mother with borderline personality disorder, the child was born when the mother was 15. During the first 3 years, the mother frequently left him alone. Medical staff discovered multiple broken bones and blood clots. The court emphasized the child's critical age:

> The child has reached a critical age, and if his case does not receive a complete and final decision now, he may find himself in an unhappy situation in the future. Therefore, any temporary solution or postponement of the final decision may harm the minor child's welfare and cause him irreparable harm in the future. (p. 9)

Conversely, young age can strengthen arguments for maintaining parental connection. In *John Doe v. John Doe* (Civil Appeal No. 5919-04-20, 2020), involving a mother with schizophrenia and a 2-month-old child, the court emphasized preserving the maternal relationship:

> The starting point is that the minor's place is in the custody of his mother. Beyond the legal aspect (since the mother is the only one who has an established legal status with respect to the minor), this is a two-month-old baby, whose natural place is in his mother's arms. As a general rule, newborns should not be separated from their mothers, certainly not in the first months of their life, since it is in their best interest to be as close to their mother as possible. In the first months of a baby's life, physical closeness to the mother, including breastfeeding and close contact, is of great importance. Therefore, absent extreme circumstances, newborns should not be separated from their mothers. (p. 14)

In *Minor John Doe v. John Doe* (Civil Appeal No. 104/01, 2001), involving a mother with a personality disorder, the court stated: "This information, in addition to her being so young, only pushes us to recommend, as much as possible, the opening of an adoption case" (p. 12). Here, young age justified expediting adoption.

Subtheme 2.3: Open adoption as a potential solution

Court rulings illustrate consideration of open adoption as a potential option, although judges generally favored closed adoption when parents had severe disabilities. In *John Doe v. The*

Attorney General (Civil Appeal No. 10791/05, 2005), both parents had schizophrenia. The child lived with the paternal grandmother and father, but after the grandmother's death, the child was removed at 4 months old based on a psychiatric evaluation concluding the father lacked necessary parental capacity. The court accepted a request for closed adoption:

> I considered the possibility of examining an "open" adoption in this case, and as much as I could, I sought to pin hope on preserving the bond between the father and the minor. My friends and I discussed, and I fear that I have no good news in my mouth for the father; as much as I have looked into the matter, I fear that this is not possible, with all the heartbreak involved, for the father, since the overriding interest that we must weigh before our eyes is the good of the minor. (p. 15)

In *John Doe v. The Attorney General* (Civil Appeal No. 9192/12, 2012), involving a mother with emotional challenges and a psychiatric condition and a violent father, the Supreme Court stated:

> The position adopted by this court is that closed adoption is the rule, while open adoption is the exception. In order to order the reduction of the results of the adoption, it is required that there be weighty exceptional circumstances that justify the order. When the axis around which the matter revolves is the best interests of the child in question. In this context, Shuz states in her article: "If it is proven that the continued relationship with the biological parents will harm the stability of the child's life with the adoptive family, thereby effectively harming his right to normal development, open adoption should not be ordered." (p. 10)

In *John Doe v. The Attorney General* (Civil Appeal No. 59736–01-20, 2020), the court addressed an appeal by parents contesting the decision to designate their children as candidates for adoption. The father was diagnosed with cerebral palsy, and the mother with paranoid schizophrenia. Initially, the mother had biweekly supervised visits with the children, which were later reduced to once a month. The father appealed to the District Court regarding the reduction in visitation, while the mother appealed the decision to declare the children eligible for adoption. The District Court denied both appeals. The court based its decision on professional assessments indicating that the visits caused the children emotional distress. Relying on this evaluation, the court also rejected the possibility of open adoption, concluding that continued contact with the biological parents would not serve the best interests of the children.

DISCUSSION

The right to parenthood for people with disabilities is established in the CRPD (United Nations, 2007), yet this right is frequently undermined in practice. Parents with disabilities are significantly more likely to lose custody of their children, often with disability itself cited as grounds for denial (DeZelar & Lightfoot, 2018; Lanci, 2019). In Israel, despite commitment to the CRPD (Ministry of Justice, 2018), no meaningful reforms have been implemented to protect this right (Civil Society Forum for the promotion and implementation of the CRPD in Israel, 2023; Rothler & Efrati, 2021).

The first theme highlights the courts' emphasis that custody cases involving parents with disabilities must be approached with a high degree of sensitivity and a deep sense of responsibility. This finding aligns with international scholarship on judicial attitudes toward disability rights, where courts increasingly acknowledge the human rights framework while still struggling with its practical implementation (Powell et al., 2020; Tahir & Cobigo, 2023). The judges expressed concern that such cases may be handled too lightly reflects a growing awareness of the historical discrimination faced by parents with disabilities in judicial proceedings (Albert et al., 2021; Lanci, 2019). However, the tension between acknowledging rights discourse and actual decisional outcomes reveals what Powell et al. (2024) describes as institutional-level discrimination, where despite formal recognition of rights, structural barriers continue to limit their realization.

In the Israeli context, such gaps are evident in the legal framework. Israeli law has yet to explicitly address comprehensive support for parents with disabilities (Rothler & Efrati, 2021). Although the Welfare Services for Persons with Disabilities Law (2022, Article 5) addresses support for parents with disabilities, it does not explicitly address parental rights and responsibilities in the context of custody proceedings. Moreover, this legislation has yet to be fully implemented (Ministry of Social Affairs and Social Services, 2024). This pattern is consistent with findings from other jurisdictions showing that while courts may express support for the parental rights of individuals with disabilities, the ultimate decisions often prioritize child welfare considerations over disability rights principles (McConnell et al., 2021).

The second theme addressed the courts' consideration of several key factors when determining the best interests of the child, including the need for stability, time invested in attempts at intervention, and the child's age. In the cases reviewed, the courts consistently declined requests for open adoption made by parents with disabilities—even when those parents expressed a strong desire to maintain contact with their children. These decisions were largely based on professional assessments indicating that continued contact with the biological parents would not support the child's development and well-being. Notably, despite the significant incorporation of rights discourse into judicial reasoning, the ultimate decisional outcomes demonstrate that courts continue to prioritize the best interests of the child principle as the primary determining factor in custody determinations involving parents with disabilities.

The best interest of the child is a fundamental right protected by the United Nations (1989) Convention on the Rights of the Child. Nations committed that "In all actions concerning children … the best interests of the child shall be a primary consideration" (Article 3). This principle is upheld in numerous court rulings, ensuring the child's best interests as a leading consideration (Lonardo, 2022; Tubolceva, 2018), including in Canadian court cases involving parents with disabilities, where the best interests of the child serve as the primary consideration in determining custody arrangements (Pacheco et al., 2024) In Israel, the best interests of the child are the primary consideration under the law, as evident in the Youth (Care and Supervision) Law (1960), which focuses exclusively on the child's welfare, including custody and does not address the rights of the family or parents.

The principle of the child's best interest is often positioned in opposition to the right of persons with disabilities to parent (Lanci, 2019). Parents with disabilities are overrepresented in child protection services (Bakkum & Schuengel, 2025). In many cases, parental disability itself is used as a justification for custody removal (DeZelar & Lightfoot, 2018; Kay, 2018; Powell et al., 2024). Moreover, when maltreatment cases involving parents with disabilities reach the courts, they are more likely to result in loss of custody compared with similar cases involving parents without disabilities (McConnell et al., 2021).

When addressing the best interests of the children, especially in the context of parents with disabilities, referring to parents' capacity to best care for their children cannot be disconnected from the support they have a right to receive (United Nations, 2007). Belsky's (1984) determinants of parenting theoretical model offers a framework for understanding the factors that shape parenting practices. According to this model, three central components influence parenting:

1. The parent's psychological resources—these factors are considered the most significant because they help parents cope with general life stressors and the challenges involved in raising children.

2. Sources of support and stress, which include family, community, professional environment, and public policy. These factors can serve as sources of support for the parent but may also act as stressors that hinder their parenting capacity.
3. Child characteristics—these include age, temperament, and behavioral patterns, which influence how parenting is formed and expressed in practice.

These three factors do not operate independently; rather, they are in constant interaction, influencing one another and requiring a multidimensional perspective on parental functioning (Taraban & Shaw, 2018).

The determinants of parenting theoretical model emphasize the importance of assessing parenting capacity not in isolation but within a broad framework that considers all influencing factors, including sources of support (Belsky, 1984). When it comes to parents with disabilities, this highlights the need to consider available support systems when evaluating both their parenting capacity and the best interests of the child.

Welfare services' support for parents with disabilities has the potential to help them retain custody of their children (Kay, 2018; Tahir & Cobigo, 2025). In Israel, one study found that parents with disabilities who cooperate with welfare services are more likely to maintain custody of their children (Ben-David, 2016). Despite the significant potential of welfare support in protecting the right of parents with disabilities to parenthood, many of these parents still face considerable challenges in accessing such support (DeZelar & Lightfoot, 2019; Dunne & Ryan, 2025; Pituch et al., 2022; Rothler & Sapir, 2019).

To better understand the discrepancy regarding supports provided to parents with disabilities, Powell et al. (2024) developed a theoretical framework for identifying inequality in the interactions between parents with disabilities and child welfare systems. The model is based on three levels of factors that influence discrimination against parents with disabilities: (a) the contextual level includes policies, legislation, and the availability of services and supports; (b) the institutional level refers to discriminatory attitudes within institutions, lack of appropriate training for professionals, and insufficient accessibility and service accommodations to meet the needs of parents with disabilities; and (c) the individual level includes characteristics such as the parent's type of disability, socioeconomic status, and the level of social support available to them. These three levels influence the nature of the parent's interaction with the welfare system and, when combined, may lead to the overrepresentation of parents with disabilities in intervention and out-of-home placement procedures, termination of parental rights, and the failure to provide appropriate support to these parents to care for the best interests of their children.

An intersectional perspective further illuminates how discrimination operates across these three levels. Brinkman et al. (2023) emphasized that systems of oppression, including ableism, racism, sexism, and classism, are interconnected and mutually reinforcing rather than additive. This means that parents with disabilities from historically marginalized groups may experience compounded discrimination that cannot be understood by examining disability alone. Notably, the socioeconomic status mentioned at the individual level is itself shaped by systemic barriers: People with disabilities face significant wage discrimination and barriers to fair employment (Friedman & Rizzolo, 2020), reflecting structural inequality rather than individual characteristics. In the context of judicial decision-making, this presents a significant analytical challenge: It becomes difficult to disentangle whether adverse court rulings are driven primarily by ableism, classism, racism, or the interaction of these systems. The current study's analysis of Israeli court decisions could not parse these intersecting factors because court records typically do not document the race, ethnicity, or detailed socioeconomic backgrounds of parents. This limitation underscores the need for future research that explicitly examines how intersecting identities shape judicial outcomes for parents with disabilities.

Recommendation for practice and policy

First and foremost, we emphasize that judges must adopt attitudes and approaches grounded in the human rights model of disability, alongside the International Classification of Functioning, Disability and Health (ICF) framework. The ICF promotes a comprehensive understanding of disability that moves beyond purely medical definitions to encompass the dynamic interaction between individual characteristics and contextual factors (World Health Organization, 2002). This framework is particularly relevant to parental capacity assessments because it emphasizes that parenting with a disability is not a static condition but rather a dynamic capability that can be significantly enhanced through appropriate supports and environmental modifications (DeZelar & Lightfoot, 2019; Dunne & Ryan, 2025; Pituch et al., 2022; Rothler & Sapir, 2019). When judges operate within this framework, while maintaining knowledge of and commitment to human rights principles based on state obligations under the Convention on the Rights of Persons with Disabilities (United Nations, 2007), they establish the foundation for judicial decisions that uphold, rather than deny, the rights of parents with disabilities.

We recommend that policymakers in Israel and other countries adopt a similar, innovative approach to that taken in Iceland by establishing and funding dedicated protection officers for disabled persons. These officers would be specifically tasked with safeguarding the parental rights of parents with disabilities. This recommendation is based on the successful Icelandic model, where the government proactively developed and implemented this role to ensure the robust protection of parental rights for individuals with disabilities (Stefánsdóttir et al., 2024).

This model aligns with therapeutic jurisprudence principles, which emphasize integrating social work expertise into legal proceedings to better address the unique needs of persons with disabilities. As proposed by Segal and Gur (2025b), the ICCAP model (identification, communication, courtroom, attorney, and preparation) provides a structured framework for implementing such coordinated support, suggesting the integration of social workers to act as coordinators for advising judges and preparing litigants with disabilities for civil legal proceedings.

We recommend comprehensive support services focused not only on parenting aspects but also on the personal psychological resources of parents with disabilities. This recommendation is based on Ptacek et al.'s (2025) study that pointed to parents with disabilities sharing that one of the main factors helping them overcome the perceived threats to their parenthood was their self-belief. This is also true regarding the mental health of parents with disabilities (Granqvist et al., 2014; Wade et al., 2015). These studies highlight the crucial role that personal resources play in enabling parents with disabilities to retain custody of their children.

Therefore, we recommend that the values of the CRPD and the human rights of people with disabilities are further implemented in the training of people who work with parents with disabilities. As stated by Shakespeare and Kleine (2013), one of the main changes that need to occur in the field of disabilities is the training of health professionals in issues of human rights and the needs of people with disabilities. As mentioned, many have pointed to professionals working with people with disabilities having negative attitudes toward the parenting of people with disabilities and attitudes that do not align with the CRPD (Albert et al., 2021; Holler & Werner, 2022).

In addition, the Social Work Procedures Manual, which serves as a comprehensive framework for interpreting and implementing welfare laws in Israel (Ministry of Welfare and Social Affairs, n.d.), does not include a dedicated section on parents with disabilities. This is a significant gap because clear guidelines are essential for enabling social workers to navigate these cases effectively and provide appropriate support. Additionally, as suggested by Gur and Klein (2025), social workers should receive supervision from professionals with specific expertise in disability services to ensure the most effective support for parents with disabilities.

Furthermore, we suggest the development of a dedicated support package similar to that available to individuals with mental health disabilities under the Law for the Rehabilitation of Persons with Mental Disabilities in the Community (2000), which includes assistance in areas such as leisure, employment, and education. We also recommend prioritizing parents with disabilities who experience financial instability as a key target group for intervention. Research indicates that financial hardship is a significant predictor of child welfare system involvement among parents with disabilities (Lightfoot et al., 2021; Zeitlin & Augsberger, 2024). Thus, we propose that parents with disabilities be provided with a tailored financial support package that addresses their specific parenting needs.

We also suggest applying the principles of therapeutic jurisprudence, which view the law as a potential therapeutic agent. From this perspective, courts would move beyond merely resolving custody disputes and take an active role in facilitating support for parents with disabilities, helping them maintain custody of their children. This aligns with Segal and Gur. (2025b), who advocated for a shift in the legal system's approach to embrace therapeutic jurisprudence in cases involving parents with disabilities. Building on this recommendation, we suggest that judges presiding over cases involving parents with disabilities should receive education and training on the unique factors associated with parenting with a disability. For example, they should become familiar with the characteristics and implications of various types of disabilities. This knowledge would enable judges to critically evaluate reports submitted by service providers, recognize potential biases or negative attitudes toward parents with disabilities, and ultimately make decisions that thoughtfully balance the parents' right to parenthood with the best interests of the child.

Study limitations and recommendations for future research

The findings of this study should be interpreted with several limitations in mind. First, due to the nature of the screening process, there is a possibility of human error, which may have resulted in the omission of relevant court cases.

Future research should explore these rulings from the perspectives of the key stakeholders involved, including parents with disabilities, their children, and the judges who preside over such cases to gain a more comprehensive understanding of the processes and experiences underlying the legal outcomes. For example, defense lawyers' perceptions of court proceedings involving parents with disabilities may offer an additional perspective on the judicial decision-making process. Likewise, parents with disabilities themselves, as well as their family members, could provide valuable insights into their experiences and perceptions of judicial proceedings and rulings.

Recognizing that people with disabilities may experience intersectional marginalization, where their disability interacts with other aspects of identity such as race, class, or gender, future research should further explore how these intersecting identities shape the experiences of parents with disabilities. Examining how combinations of identities, such as gender or race, affect judicial perceptions and custody rulings could deepen our understanding of the complex factors influencing legal outcomes for parents with disabilities.

In addition, while the current study has significant merits, particularly in responding to Dorfman's (2024) call for more empirical research on how laws affect people with disabilities and promote inclusive, accessible legal practices, there remains an important avenue for further exploration. Future research that examines shifts in court rulings or in judges' attitudes could provide a deeper understanding of the factors shaping judicial decisions concerning the parenthood of people with disabilities. Addressing this gap would complement and extend the valuable contributions of the present study. Such research could, for instance, analyze the terminology used by judges in custody rulings to identify how ableism and outdated conceptions of disability may influence legal outcomes and whether these have changed since Israel's ratification of the CRPD. This direction resonates with the work of Mor (2019), who traced linguistic changes in Israeli civil law judgments. Additionally, future quantitative research could examine whether judicial discourse patterns predict case outcomes.

DATA AVAILABILITY STATEMENT

Research data are not shared.

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