



# The Mother's Right in Imam Sajjād's Thought and the International Law

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## Abstract

Today, international law has paid special attention to the "Mother's Right" through the non-binding resolutions of the United Nations General Assembly. The concept and manifestations of this right in Islam have also been examined more precisely and in more detail in the form of women's and mothers' rights, as it has found a special manifestation in the thoughts of Imam Sajjād ('a.s). The present study has examined the mentioned concept through the analysis of Islam and international legal concepts. According to Hohfeld's division, the greatest mother's right from the point of view of international law is in the form of a liberty right, but in Islam, this right is considered a claim right, and this right is much higher in Islam. In terms of period, international law considers the mother's right to be limited to the period of pregnancy and the complications arising from it, and the right to child education by the parents is recognized with certain limitations. But in the Islamic approach, which in the thought of Imam Sajjād ('a.s) has found a special crystallization, the scope of rights of motherhood is not only limited to the period of pregnancy; rather, it exists even at the time of her death, and it is up to the government, her spouse, international law, the resolutions of the United Nations General

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Assembly, and her children to fulfill this right. Therefore, the right of mother in Islam is far more perfect and progressive than what is stated in international law, and it is necessary for international law to benefit from Islamic propositions in this regard.

**Keywords:** Mother' right, Islamic approach, Şahīfah Sajjādiyyah, Imam Sajjād, International law

## Introduction

The institution of family is the main cycle of human growth and education in the social system. With the educational management of the mother, the family prepares the child to acquire social roles and present them in society. If the mother's position in society is honored, the behavioral motivation to play the role of mother will be more prepared. If the position of the mother, who is the most important pillar of the family, is guaranteed in the legal system and given attention by the legislator, the family will become a suitable place for human development. Today, this attitude has attracted the attention of the global legal systems, and by honoring the status of the mother, the legislators are trying to magnify the position of the mother in society. International documents try to impose laws to protect the mother. The Islamic legal system has also recognized this right and has taken steps to honor it.

In this research, the question, "the scope of guaranteeing a mother's right in international law and Islamic decrees" has been studied. In addition, the issue of which of the Islamic and international legal systems have taken a more comprehensive look at the compilation of the mother's rights and what aspects of it have been given attention by the Islamic legal system and human rights documents.

The necessity of research in such issues, apart from indicating the comprehensiveness of the organized system of Islam, also indicates the revision of the dignity of the mother in the Islamic legal systems and the West and explains that the international law is not yet mature enough to guarantee the mother's right. So far, no comprehensive research has been done on the current topic, and there is no independent section on the explanation of mother's rights in the books of Islamic jurisprudence but mentioned scatteredly in the section on child custody and marriage. On the other hand, the comparative study between the Islamic rulings and the international documents is unprecedented and no comparative research has been done on this field.

In the present study, the researcher, using Islamic sources and human rights documents, tries to prove his claim, that is, the hypothesis that the Islamic legal system has comprehensively defined and guaranteed the mother's right, but the international

documents, with a particularistic view, only guarantee to establish a part of the mother's rights –i.e., pregnancy and its complications- in the society.

In various Islamic sciences, including jurisprudence, ethics, Islamic sociology, etc., attention has been paid to the mother's right, and in each of them, aspects of this right have been examined. The Islamic sources used in this research are not limited to jurisprudence but the Islamic ethical commitments and narrations of the Infallibles have also been used.

The Persian term "*Ḥaqq Mādarī*" is translated to English as "Mother's Right", which is specified in international documents. Some have translated the above phrases literally as "The right to the mother" and some have found the term "Mother's Right" to be more appropriate due to the difference in grammar.

What is certain regarding the concept of "motherhood" is getting pregnant through legitimate sexual intercourse as a result of marriage, but the status of motherhood can also be attained outside this framework; through artificial pregnancy in a surrogate, pregnancy due an ambiguous intercourse, and pregnancy through an illegitimate sexual relationship. (Rizvani & Zarnishān, 1395 SH)

While explaining the mother's right, Imam Sajjād ('a.s) also said: "Then the right of your mother is that you should know that she carried you in her womb, the way that no one carries anyone, and she fed you with the fruit of her heart - that which no one feeds anyone. She protected you from heat and cold, all in order that you may belong to her. So, thank her for all this [efforts]. You will never be able to show her gratitude unless through Allah's help and His giving success." (Harrānī, 1382 SH)

It should be said that between the "right" and "duty" in logical terms, there is a reciprocal relationship; that is when someone has a "right", others have a "duty" to respect that right. (Miṣbāḥ Yazdī, 1381 SH) For example, when a mother's right is mentioned, it means that some people have a duty concerning this right. In fact, "right" and "duty" are like two sides of the same coin, which cannot be separated from each other.

In light of this, positional reversion between the "right" and "duty" cannot be imagined from the logical point of view and according to rational propositions. Therefore, to establish the

mother's rights, the government, children, and husbands are considered duty-bound in this regard. In this research, due to the briefness of the issue in Islamic sources, instead of assigning duty to the mother, it argues to determine the right for her.

It is worth noting that women's rights have always been discussed separately in international documents and treaties. (Sepulveda, Banning, Gudmindsdottir et al., 2004) The reason for grouping these rights under the title of women and separating them from more general rights such as human rights is that, according to a theory, these rights are recognized at birth for all human beings, but the advocate of women's rights shows that due to historical and cultural reasons, women and girls are excluded from these rights more than men (Hosken, 1981).

Protection of mother's rights and related provisions in international documents has a special place in the minds of international jurists. For example, paragraph two of Article 25 of the Universal Declaration of Human Rights, states: "Mothers have the right to special assistance and care."

In fact, the human rights documents try to smooth the unevenness of women's path to accepting and desiring to become mothers. International thinkers have also expressed many opinions on the universalization of mother's rights and have tried to realize this importance through their views. For example, Knudsen (2006) writes about reproductive rights, which is one of the mother's rights: "Cases related to reproductive rights are controversial legal cases all over the world, regardless of the socio-economic level, religion and culture of the population of that region."

### **Islamic Legal System and Protection of Mother's Rights**

In Islam, a very precious place is given to the mother's rights, to the extent that the Holy Quran, after the commandment on monotheism, immediately expresses kindness and respect for the rights of parents. Imam Qurṭūbī has stated under verse 23 of Quran 17 [Surah Isra]: *"In this verse, Almighty God has linked kindness and respect to parents and good behavior towards them to His worship and made it obligatory. This verse proves that after worshiping God, obeying and appreciating the parents is the most important and it is obligatory just like*

*appreciating God."* (Qurṭūbī, 1363 AH, 11/237)

Imam Sajjād (‘a.s) also states the mother’s rights in detail and in the form of a supplication in his rights charter, Ṣaḥīfah Sajjādiyyah. The fact that right may either be created based on physical or spiritual responsibilities, or based on the fact that the right is worthy of respect due to its behavioral impact in the society, or that it is not worthy of respect and it is a liberty right. In the analysis of the mother’s rights, there are three chapters under the titles of "claim right" that must be examined, while the fourth chapter will not be examined in this research because it is a liberty right and does not create an obligation. Therefore, in the present study, the mother's right is discussed under three main headings, i.e., the right to child upbringing, right to child education, and the right to social respect, and other more detailed rights such as the right to child custody, right to child training, right to employment, reproductive right, right to support at home and in the society, right of forgiveness, and the related topics have been examined.

### **The Right to Child Upbringing**

The right to child upbringing means the rights that a mother enjoys due to the physical upbringing of a child, the most important of which are: the right to child custody, right to child training, right to employment, reproductive right, right to support at home and in the society, and the right to forgiveness. Imam Sajjād (‘a.s) says: *"O God, for the support of my parents during my childhood, be their protector Yourself."* (Ali ibn Ḥusain, 1384 SH). Therefore, he considered his upbringing by his parents as a right through which the parents deserve the merit of God's support. In another phrase, he says: *"O God, whatever harm that has touched them from me, a detested thing that has reached from me, or right of theirs which has been neglected by me, allow it to alleviate their sins, raise them in their degrees, and add to their good deeds. O He Who changes evil deeds into manifold good deeds."* (Ibid)

In this portion of the supplication, the Imam (‘a.s) refers to the right to child upbringing and the hardships that parents have endured in the course of fulfilling this role, and he considers them

worthy of forgiveness and spiritual promotion. Due to the structure of the creation of the women, they are responsible for the creation of children and have always tried to improve their physical development.

In addition to considering this natural desire sacred, Islam also considers it an inalienable right. In the explanation of this form of right, it could be said that the reason behind the mother's right is due to her pregnancy: *"You should know that she carried you for nine months where no one carries anyone, and she fed you with the fruit of her heart - that which no one feeds anyone ..."* (Ibid, 1390 SH)

In Islamic jurisprudence, in addition to the right to pregnancy (Ḥurr 'Āmili, 1983, 14/32), the right to child breastfeeding and the priority of the right to child custody for the mother is mentioned. ('Āmīdī Ḥusaynī, 1416 AH, 592) In the context of the right to pregnancy, Islamic jurists have considered the marriage of a woman to an infertile man to be detestable (Najafī, 1981, 29/37), which indicates the right to choose a fertile person in the religious verdict. From the point of view of Muslim jurists, the reproductive right for women has been considered so important that several Shia and Sunni jurists have considered it forbidden for a man to withhold his semen from conceiving without the woman's consent, and likewise, he is obliged to pay a penalty due to the nullification of the woman's sperm and causing harm to her. (Ibid, 29/111) Contemporary Islamic jurists have argued that a woman can even use temporary contraception without her husband's permission if it does not harm her marital rights and does not cause harm to her, and the man should not force her to bear children. (Khū'ī, 1397 AH, 2/309)

At some points in history, the role of women was weak, insignificant, or merely in the form of domestic work, and the working of women with men on the farms and at home was always considered normal. In Islam, in addition to recognizing women's property rights, measures have also been taken to protect women in society. (Nūrī, 1390 SH)

Imam Sajjād ('a.s) while explaining the rights of the wife stated that the husband must respect his wife as she is a blessing from God to behave well in his interactions with her and to make it his priority to be tolerant in matters [while dealing with her. (Ali ibn Ḥusain, 1390 SH)

Consequently, it is more necessary to provide more services to mothers to facilitate the combination of motherhood, housekeeping, and employment duties. Obviously, one of the essentials of tolerance is good cooperation at home and making provisions to ease the accomplishment of motherhood's role, which should be taken into consideration by the head of the family or the Islamic legislator. Therefore, it can be said that active mothers due to a combination of two activities - i.e., motherhood and job- are entitled to more attention from the Islamic legislator.

It is mentioned in a narration that one day someone asked the Prophet (peace be upon him and his household):

*"What is the right of the mother?" The Prophet (PBUH) answered: "You will never be able to accomplish it even if a child tries to pay the mother's due with as much as the number of desert sands and raindrops in the world, [all this] is not equivalent to a day the mother carries the fetus in her womb." (Qapānchī, 1374 SH, 1/585)*

This narration and other similar ones indicate that one of the most basic rights that has been recognized and strongly emphasized in Islam is the right of the mother over the child, which is legislated due to the upbringing of the child. Islam pays special attention to the mother due to the hardships of childbearing. The legislators, spouses, and children therefore have to facilitate and compensate for these mothers' hardships, which proves that the mother's right is a claim right (based on Hohfeld's decisions).

### The Right to Child Education

Imam Sajjād ('a.s) thank God for the right that his parents have in his education and have fulfilled it in the most perfect manner: *"O Allah, reward them well for my upbringing and give them a great reward because they love me."* (Ali ibn Husain, 1384 SH)

His Eminence believes that his upbringing is due to the parents' efforts, it is the right of the parents to educate their children according to their own attitude. Although both parents play a role in a child's education, but the special position of the mother in this regard could not be neglected. A woman is a nurturer of respectable women and men. From a woman's lap, a man ascends, and a woman's lap is the place where great women and great men



are raised (Mousavi Khomeini, 1378 SH, 7/361) and a child is born based on the mother's love. (Āmadī, 1376 SH)

Based on this, the right to child education by the mother has a unique dignity in Islam. Due to the sanctity of the mother's educational position, the Prophet of Islam (PBUHH) considers Heaven to lie under the feet of mothers. (Muḥammadi Rayshahrī, 1386 SH) For the fact that the mother suffers different hardships in the process of child education, and on the other hand, the duty of training righteous children is on her shoulders, she has the right to fulfill these duties (the right of child education) in compensation for these duties.

In several verses and narrations, Islam places the responsibility of child education on parents and instructs the heads of the family to pay attention to the training of the children. For example, we can refer to verse 6 of Quran 66 (Surah Taḥrīm), where God encourages believers to educate their children and families so that they do not become inmates of Hellfire. This verse is the most important verse from which the right of parents to raise a child can be deduced, because the term "*Ahl*" [family] in the verse refers to the closest people to humans, and without any doubt, children are included in its scope. (Ibn Manẓūr, 1369)

The Islamic jurists have not opened an independent discussion about the ruling on the right to child education by the mother, but it can be inferred that what they mean by child custody is that, in addition to meeting the child's physical needs, the child's spiritual needs are also fulfilled (PūrAbdullah Hosseini and Siyār, 1392 SH) or that the right to child education by the parents was so spontaneous in the minds of people that they did not see any need to assign an independent chapter to it in jurisprudence. (Anṣārī, 1395 SH, 3/333)

Islam has demanded that parents direct their children towards a pure and good nature (Adnān, 2000). Therefore, due to the activities and duties that parents perform in the process of child education, they become the rightful owners of the right, which the legislator and the children must fulfill through means such as honoring them, and that right is a claimed right.

### The Right to Social Respect

Respect means strength, courage, and dignity. It means that a

person should be respected and honored in his own society, possess authority and others should pay attention to him. (Miṣbāḥī, 1381 SH) Undoubtedly, the most important factor in elevating a society to the peak of social respect is the attention and appreciation of the educators of that society. In Islamic culture, the family environment is the most important university where every person learns cultural and educational teachings, and the most important teacher is the mother, who by playing an active role, leads the children and the family environment towards a virtuous society.

Islamic culture has paid special attention to creating self-esteem for mothers and considers it a right for mothers because the result of mothers' self-esteem and fulfilling their motherly rights in society will lead to the Islamization of society. Imam Sajjād ('a.s) mentions the right of social respect by mothers in many cases and considers himself unable to pay off the mother's duty, and this heavy right cannot be fulfilled except by divine support. (Ali ibn Ḥusain, 1390 SH)

In some sections of the supplication of *Ṣaḥīfah Sajjādiyyah*, the Imam expresses commands to create respect for the mothers considering the mother's rights. He mentions the politeness of being with the parents and expresses the right to respect a mother to the extent of an autocratic king, while the child puts himself under the complete authority of his parents and considers their orders more valid than anything else. (Ibid, 1384 SH)

The kind of humility and the expression of situations such as facing the awe of the autocratic king or the kind and good look at the mother, the sense of desire to obey even sweeter than the dormant eye of all express the values of the task that the Islamic society should institutionalize on the status of the mother. For example, the Islamic legislator should refrain from approving any law that conflicts with the spirit of such interpretations and make every effort to pass laws to guide society to these moral requirements. What is found in this section of the supplication of *Ṣaḥīfah Sajjādiyyah* is honoring the mother because of her hidden sacrifice in society.

By analyzing the final parts of this narration, the moral requirements in the Islamic society are obtained, which requires the duty of governmental institutions to institutionalize it. In the

legal system of society, the mother is considered one of its main pillars, her attention and consent must be given priority over the consent of other members of the family so that all requests in Islamic society are prioritized after the mother's wishes. Consequently, in compensation for these tasks, the right to social respect is created for the mothers, and those having an obligation in this regard must try to fulfill this right.

In the value system of Islamic law, the mother's right - according to the above details - can also be analyzed using Hohfeld's division, so that the mother's right in Islamic thought is a claim right and has the four characteristics that Hohfeld expresses for this type of right, because the other party, including the government, the husband and child, are duty-bound to perform the above tasks, and the mother has the right to demand actions from other parties and can claim her right whenever she wants and by her confirmation, the right becomes real, and the mother can also use the negative claim right and oblige others to observe the limitation.

With a detailed analysis of the above rights, it can be said that the right to child upbringing based on Hohfeld's divisions is, in general, a claim right, but some of its subordinate rights, such as the reproductive right (based on the religious verdicts of some Islamic jurists), can be considered a liberty right, and the mother's right to employment if it does not conflict with her obligatory duties, (according to the religious verdicts of some Islamic jurists) can be included in the category of protected right.

The right to the form of child educational method by parents is considered a liberty right. However, since the realization of Islamic education requires certain conditions, it is therefore a claim right for the government, as it is obliged to provide the prerequisites for Islamic education. The right to respect the mother in Islamic society is also a positive claimed right and likewise negative; because it is the duty of the government in addition to creating a conducive atmosphere for honoring mothers to also avoid any law that limits the dignity of mothers.

### **Protection of Mother's Rights in International Law**

In various Western schools of thought, irreconcilable and sometimes conflicting differences of opinion have been stated in the field of mother's rights. Many feminists consider motherhood and

maternal consequences in general as limiting factors for women. (Boulton 1983) Some of them believe in "Planned Parenthood" (Folbre, 2001) and another group focuses on the ability of a woman to give birth to a child and refers to the fact that the mother-child relationship has a biological aspect and that women have a more natural and closer bond with the child than men, they concluded that the revival of the family and the role of the mother should be at the forefront of all activities. (Hattery, 2001)

The second paragraph of the Universal Declaration of Human Rights states that everyone can enjoy all the rights and freedoms mentioned in this declaration without any discrimination, especially in terms of race, color, sex, language, religion, political opinion, etc. (Peyvandī, 1390 SH) Therefore, it can be concluded that motherhood is a part of the rights of every woman, and every woman has the liberty to be a mother regardless of her characteristics. Among the rights of motherhood covered in the international documents are reproductive rights, the right to work leave during and after childbirth, the right to maternity care, and the right to education.

### The Reproductive Right

Reproductive rights were first introduced as a subsection of human rights in 1968 during the United Nations International Conference on Human Rights. This type of right is called the legal rights and legal freedom related to reproductive and reproductive health (Cook, Mahmoud & Fathallah, 1996), which is defined by the World Health Organization as: *"Reproductive rights are defined based on the recognition of the fundamental right of all couples and individuals to make free and responsible decisions about the number and age difference of their children and to have sufficient information and means to realize this issue and to have the right to achieve the highest standards of sexual and reproductive health. These rights also include the right of all individuals to make reproductive decisions free from any discrimination, coercion, or violence."* (World Health Organization, 1396 SH, Gender and Reproductive Health Section)

The United Nations General Assembly recognized reproductive rights in the Declaration of Social Growth and Development in 1984 Universal Declaration of Human Rights by saying: *"The*

*family, as the basic foundation of society and the natural environment for the growth and well-being of all its members, especially children, and youth, must be helped and cared for to fulfill all its responsibilities towards society. Parents have the exclusive right to freely and responsibly choose the number and age spacing of their children."*

The Human Rights Council resolution in June 2009 also emphasizes the right of motherhood and calls for more support for mothers in fulfilling the right of motherhood: *"Most of the diseases that lead to maternal mortality are preventable, and this requires an effective improvement and support of the human rights of women and girls, whose rights to lives, dignity, education, freedom to seek, receive and transmit information, enjoy the benefits of scientific progress, freedom from discrimination, and enjoy the highest acceptable levels of physical and mental health, including their sexual and reproductive health, should be given adequate attention."*

In a resolution pursuing the Millennium Development Goals adopted at the 2000 United Nations Summit, their goal was to reduce poverty, hunger, morbidity, and maternal and child mortality by 2015. Since most international human rights treaties do not explicitly address reproductive and sexual rights, an assembly of NGOs, civil society activists, and experts from International Organizations are trying to reinterpret these treaties with an internationally accepted representation of human rights and incorporate reproductive rights into these documents. An example of the connection between the two concepts is presented in Cairo's 1994 action plan: *"Reproductive rights include specific human rights, which are now recognized in national laws, international human rights documents, and other documents related to the United Nations Assembly. These rights are based on recognizing the fundamental right of all couples and individuals to freely and responsibly choose the number and age gap of their children and the time of pregnancy, having information and methods of making these decisions, and the right to achieve the highest standard of sexual and reproductive health. These rights also include everyone's right to make decisions about reproduction without any discrimination, coercion, or violence, as set out in human rights documents. To implement these rights,*

*parents must take into account the needs of their current and future children and responsibility towards society."*

Likewise, Amnesty International believes that the realization of reproductive rights is recognized by the realization of a series of human rights, such as the right to health, the right to freedom from discrimination, the right to privacy, and the right not to be subjected to torture or ill-treatment (2007). Nevertheless, some countries have not accepted the inclusion of reproductive rights in the content of internationally recognized human rights.

At the Cairo conference, many countries made reservations about the concept of reproductive rights or its specific content. For example, Ecuador stated at the conference that according to the action plan of the Cairo International Conference on population and development, and by the provisions of the Ecuadorian Constitution, the laws of Ecuador, and the norms of international law, the Ecuadorian delegation emphasizes these principles contained in the Ecuadorian Constitution; immunity of life, protection of children from conception, freedom of conscience and religion, protection of the family as the fundamental unit of society, paternal and responsible behavior, the right of parents to raise their children and the drafting of population and development programs by the State based on the principles of respect for the right to sovereignty are among them. Thus, the Ecuadorian delegation makes conditions for accepting all terms such as reproductive legalization, contraception, reproductive health, reproductive rights, and the rights of unwanted children, which in any way include abortion within the framework of the action plan. (2000)

Accordingly, the right to intensive care for pregnancy is also mentioned in international documents, so paragraph two of Article 25 of the Universal Declaration of Human Rights states: *"Mothers have the right to special assistance and care" (1948). In addition, it also provides in paragraph two of Article 10 of the International Covenant on Economic Social and Cultural Rights: "Mothers should receive special support during a reasonable period before and after childbirth. In that case, working mothers should enjoy paid leave or leave with adequate social security benefits."* (2000)

Section eight of Convention No. 102, Articles 46-52, which was

approved by the International Labor Organization in 1952 to determine the scope and standardization of social security, is dedicated to maternity benefits. Article 46 of the above-mentioned agreement states: *"Each member state that implements this part of the agreement must offer maternity benefits to the concerned persons as described in Articles 47 to 52"*.

Convention No. 183 of the International Labor Organization, approved on June 15, 2000, is also devoted to the protection of maternity rights. According to paragraph one of Article 2 of the aforementioned agreement, this agreement applies to all working women, including those who work independently. According to Article 4 of the aforementioned contract, women subject to the contract will enjoy a period of maternity leave of at least 14 weeks. According to Article 4 of this document, benefits and cash assistance are considered for women who are not present at the workplace due to maternity leave. The truth of the matter is that the international law system, along with some fundamental human rights documents, has tried to provide a proper understanding of the conditions of women who have the desire and intention to work in the social arena, and in addition to their social presence, they are not being deprived of the revival of their maternal rights. (Rizvani & Zarnishān, 1395 SH)

### **The Right to Employment and job Security during and after Childbirth**

Every human being has the right to own or acquire a suitable job, and according to Article 23 of the Universal Declaration of Human Rights: *"Everyone has the right to work and choose his work freely"* (1948). Since one of the most important principles in the field of employment is the principle of prohibition of discrimination, and according to paragraph two of the same declaration, which considers all types of discrimination illegal, mothers should also be provided with the conditions for obtaining their desired jobs so that they can freely play a role in society. Article 25 of the declaration states: *"Mothers and children need special care and assistance."*

The Convention on the Protection of Pregnant Women in 2000 also prohibits breastfeeding mothers from working, stating that this action is necessary for the health of the mother and the child,

and prescribes a fourteen-week leave period for women to give birth. It further states: *"A woman has the right to return to the same job position or a similar position with payment at the end of the leave period"*. In addition, concerning breastfeeding time for children, this resolution states: *"A woman should have the right to one or more periods during the day with a daily reduction in working hours to breastfeed her child, and these gaps or reduced daily work are calculated as working time, whereby a work fee is paid."*

The Convention on the Elimination of All Forms of Discrimination against Women, adopted on December 18, 1979, obliges the Member States in Article 11 of the convention to take appropriate measures to prevent discrimination against women in the field of employment and prohibit dismissal due to pregnancy and granting maternity leave with pay and include appropriate social benefits without job loss in employment policies. In Article 12 of the same Convention, the Member States are asked to provide the necessary services for women during pregnancy, childbirth, and the postpartum period and, if necessary, to provide them with free services and to provide the necessary encouragement and support to provide social services in set agendas, in a way that enables parents to coordinate family obligations with work responsibilities and participate in public life.

The 1990 UNICEF Declaration on the Protection, promotion, and Support of Breastfeeding states that breastfeeding is necessary to achieve an ideal child and the necessity of feeding with breast milk and its strong defense against the invasion of bottle-feeding culture, warns that the realization of this requires the commitment and support of social mobilization and sees its responsibility in this: *"We must try to increase women's self-confidence in their ability to breastfeed. In addition, barriers to breastfeeding in the health system of the workplace and society should be removed."*

### **The right to raise children**

Although the right of parents or the mother to educate and upbringing a child is not mentioned in a single or separate document, the documents that mention the child's education consider the role of the parents as significant and they are



responsible for the education of the child. Paragraph 1 of Article 18 of the Convention on the Rights of the Child approved in November 1989 states that, the countries that are parties to the convention will do their best to ensure the recognition of the principle that the child's parents have joint responsibilities for the child's growth and development. Parents or legal guardians bear the main responsibility for the child's growth and development. By examining the above treaty, it can be seen that parents have priority in choosing the type of education for children. (Peyvandī, 1390 SH)

The 1996 International Covenant on Civil and Political Rights, after emphasizing the freedom of opinion and choice of opinion, states: *"The freedom of parents and legal guardians of children to ensure the religious and moral education of their children, based on their beliefs, must be respected."* This covenant considers the family as a natural and fundamental unit group of society that supports the society and the government in advancing the goals and obliges the member countries of the covenant to take the necessary measures for equal rights and responsibilities of the spouses.

The International Covenant on Economic, Social and Cultural Rights of 1996 recognizes the utmost protection and possible support for families and places special support in the formation of a family, and at the same time considers the family responsible for the care and education of children, and this international covenant considers parents and guardians to be freed to choose schools for their children.

A review of international laws shows that the details of parental rights have not been explained and mentioned in these documents. For example, the legal limits of this right, the types of conflicts in its implementation, or the guarantees in enforcing this right have not been mentioned. It should be noted that in the structure of international law, the mother's right can be regarded as the liberty right based on Hohfeld's division; because the mother will not have any obligation to refrain from performing acts such as reproduction, but the right to employment is regarded as a claim right for women in modern societies today; because the government must protect the jobs of pregnant mothers. The right to education is also the liberty right or protected right; because everyone is free to choose the

type of schools for their children and has social protection.

## A Comparative Outcome of Mother's Rights and the Role of Islam in the International Law

According to the issues discussed on the mother's right in the two legal systems of Islam and International law, it can be said that even though in Islamic sources (the books of Jurisprudence, ethics, or the general Islamic sources), no separate chapter on this issue can be found independently, however, this unavailability (of an independent chapter) does not imply inattention (of Islam) to this issue.

In Islam, the mother's right is considered and emphasized next to the right of Almighty God. In addition, Islamic scholars have emphasized the divine right of the mother. (Mousavi Khomeini, 1378 SH) Imam Sajjād ('a.s) while explaining the pregnancy of a mother for nine months, says: *"Since no one could do such for you, then you also cannot be able to fulfill the rights of the mother"* (Harrānī, 1382 SH). Universal Declaration of Human Rights (1948) emphasizes the mother's right, and today, it is considered one of the inalienable rights of every woman, all the governments of the world are obliged to respect this basic human right and provide the basis for this right in their domestic laws.

In addition to strongly encouraging childbearing, Islam has strictly prohibited factors that disrupt the process of this gift and encourages parents to continue childbearing to the extent that it considers the best women to be those who give birth to the most children. (cf. Ṣadūq, 1405 AH, 3/389)

Contrary to the view of Islam, the Western viewpoint, which is based on the foundations of humanism is, apart from the fact that there is no compulsion or encouragement in international documents for motherhood, it also considers a woman to have absolute authority in the matter of having children, in which, she can suppress or satisfy this desire in her existence like her other desires. In reality, the international documents do not give comprehensive attention to the mother as the essence of existence. Islam on the contrary places the mother as the pillar of the family and tries to create and maintain this essence of the family, but the West has threatened the existence of the family by leaving women absolutely free to decide to bear children.

Based on the division of the above legal systems, it can be said that Islam extends the mother's right to her entire lifetime, and this right is also seen even after she died in the form of honoring and seeking forgiveness for her, but in international documents, this right is limited only to the period of pregnancy and its complications, which is much more limited than what is presented in the Islamic viewpoint.

The rights of a mother in Islam are very diverse and have a wide range of implementation, which includes rights such as the right to custody, right to child upbringing, right to employment, reproductive right, right to support at home and in the community, right to forgiveness, and the right to education, etc. In this study, these rights were examined in three general categories: the right to child upbringing, the right to education, and the right to social respect. International documents have a very limited consideration of the types of mother's rights which are limited to the complications due to pregnancy, such as the right to work leave, the right to keep a job during pregnancy, the right to maternity leave, and the right to education etc. In addition, in international documents, the right to education, contrary to the opinion of Islam, is expressed only to the extent of applying taste to the education of the child. Based on this, it is understood that the type of mother's rights in the legal culture of Islam has more scope and depth than the international documents.

As stated, according to the definition and divisions of rights from Hohfeld's point of view, the mother's right in Islam is a claim right. In as much as a mother has a duty to become a mother, the right, which must be fulfilled by the government, her husband, and the child is also created for her in compensation for this duty.

However, the view of international documents implies that this right is a liberty right because women have absolute freedom to become mothers and no one can be forced to bear children. Although in a state of pregnancy, they are entitled to rights such as the right to employment, the right to maternity leave, and so on. According to Hohfeld, a claim right has a stronger and more valuable place in legal systems than a liberty right. (Hohfeld, 1919). The claim right indicates greater cohesion of the legal system and has greater power in collateral. Therefore, according to Hohfeld's division, the cohesion and power of the mother's

right in Islam as a claim right is more than the power of the mother's right in international documents as a liberty right.

A Table: Comparison of mother's presence in Islam and International Law

		Mother's rights in Islam	Mother's rights in international law
1	Right to child upbringing	Right to child custody	
		Right to child breastfeeding	
		Right to child physical development	
		Right to Employment	Right to Employment
		Reproductive rights as a type of claim right	Reproductive rights as a type of liberty right
		Right to support at home and in society.	
		Right to forgiveness	
		Right to working leave at the time of childbirth	Right to working leave at the time of childbirth
		Right to child's spiritual education	
2	Right to education	Right to raise children	Right to raise children
3	Right to social respect	Right to social respect	

Discussion and Conclusion

The study of the concept of mothers' rights has found a special expression in Imam Sajjād's thought. Even though the term "mother's right" is not explicitly mentioned in Islamic reports, Islam encompasses the mother's rights in more detail. In this regard, it is worth noting that international law has mostly dealt with this concept through non-binding resolutions of the United Nations General Assembly.

The Holy Quran mentions the observance of the mother's right immediately after the observance of the right of God. In the hadiths, the mother's right is the most important in the creation system after the right of God. In Imam Sajjād's thought, motherhood is a sacred and God-given responsibility and he considers it impossible for humans to fulfill the mother's right. The gravity of a mother's right could be fulfilled except by divine support. On the contrary, international law has enumerated the

mother's rights just like many other human rights and has limited them within the framework of the mother's wishes and desires. The view of the international law system towards the mother, which is mostly manifested in the non-binding documents of the United Nations General Assembly, is like a person who has the desire to have children, and governments are obliged to provide the necessary arrangements to satisfy this desire. This view is corrupt and does not pay enough attention to the dignity of the mother as the essence of existence and the factor of family strength; this has put the foundation of the family in the West not only under threat but on the verge of collapse.

Islam expands the scope of the mother's right to the right of upbringing, right to education, and the right to social respect. In terms of the scope of actions in the Islamic approach, fulfilling the mother's right is considered throughout the lifetime and the mother is considered the main pillar of the family. In line with this position, kindness to the mother is considered obligatory in Islam, and the ruler of the Islamic society is obliged to prepare all the necessary arrangements that ensure the fulfillment of the role of a mother and pave the way for it. Rights such as the right to child custody, the right to child upbringing, the right to employment, reproductive rights, the right to support at home and in the community, the right to forgiveness, the right to education, etc. are among the axioms of the value-legal system of Islam. While the international documents consider the scope of exercising the right of motherhood and the role of governments to be limited to the period of pregnancy and the complications due to pregnancy, such as the threats related to the right to employment that results from having children, and it also considers the right to education as the right of the child, which the parents to a certain extent can exercise some discretion over their child's spiritual education. In view of this, according to Hohfeld's division, the mother's right is generally considered a claim right in Islam, and the government, the spouses, and the child are required to fulfill the related duties, but in international law, the mother's right is not more than a liberty right. It is only in cases such as the right to employment during pregnancy, that it is included under the claim right.

Based on this, the value of the concept and examples of a mother's right in the Islamic approach is far more than what has

been addressed under the title of mother's right in international law, because, according to Hohfeld's argument, a claim right has a stronger and more valuable position in legal systems than the liberty right.

According to Hoffeld's division, the coherence and power of the mother's right in Islam as a claim right is greater than that of the international law, which is placed under the liberty right. It is therefore desirable that the international law in the process of formulation of the proposition of a mother's right to investigate the Islamic approach, especially the thoughts of Imam Zain al-Abidin ('a.s), and take advantage of this rich source to achieve a precise and deep understanding of motherhood.

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