

## A comparative study of children's rights from the perspective of Quran and the CRC

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**Abstract:** Children rights are one of the most important debates in the field of family law. In this context, various schools of law have presented different views. This paper aims to compare views of two legal important systems, i.e. Quran's legal system that is the most comprehensive source of guidance for mankind and CRC that is the foundation of the last human efforts in the international arena the twenty-first century. In this paper, after reviewing the status of children's rights and the introduction of two legal systems, the differences in the three areas of fundamental, content and method have been reminded. After a comparative analysis of two legal systems and considering their differences, it is clear that the rights of the child in Quran has a higher and more valuable level than the CRC, for though the Convention has a good positive points, but some of the basic rights of children are neglected.

**Key words:** *Quran; CRC; Child; Rights*

### 1. Introduction

Today, subjects of family and its branches are of considerable importance. Although there has long been debate in this area, due to modern developments and the challenges facing the twenty-first century man (Beeshti, raising children in today's world, 166), this field has been more explored and investigated and its more importance out of the theoretical and practical efforts to find solutions and answers to problems ahead have been created. Among the discussions in the field of family, is the rights and tasks of each family members [1], and due to the fact that child is the weakest and maybe important member of a family, his/her rights is of utmost importance. His right is the most important human rights, because if children have not special rights and care, they cannot have physical and mental health under the shadow of these rights and have a useful and effective presence in their community. Because, issues of children's rights is one of the important and fundamental issues that is very important amidst other issues of human sciences. Quran, the most comprehensive guiding source of humanity, have many issues to discuss about children's rights (Beheshti, Islam and the Rights of the Child, 42) and defines a unique legal system. Regarding children's rights exists in other schools and thoughts, particularly their rights. But this question arises that which legal system is more comprehensive and superior amidst of ideas and schools and which one presents pathology solutions and methods in practice in addition to excellent theorizing. And generally, which school should be

followed and its legal system is accepted in the present society.

### 2. Position of the rights of the child

Defining and explaining social problems and issues with children and solving their problems and implementing their rights depends first on the issue of child definition, ideal childhood and current values in the field and children's rights and status in society.

In a legal term, child and nonage is someone who has not reached physical and mental development necessary for social life in terms of age (Ebadi, children's rights, 1/5). In the contemporary world, respect for the rights of the child, basic idea in their upbringing, and comprehensive support and assistance in intellectual growth and mental and physical health is very important (Beheshti, raising children in today's world, 6). Studying the status of adolescents or young delinquents have shown that in most cases, their rights are violated in childhood or based on one condition, they have observed a psychological or mental tortures (Rashidpur, raising children of Islam, 105). In the present age, education and reform from the judiciary and other support institutions is important as a right for children. Before the judicial bodies have the task to deal with deviant and delinquent children take care of the personality of a child and their education role (Saidnia, children and adolescents laws, 88).

The revolutionist view to the rules and regulations of the international community and interpreting their orientation in favor of the rights of the child promise that the goal is to coordinate with the international opinion to prevent injury and damages that prevent children to achieve their

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actual and legal rights. Children have fundamental needs in the process of growth and maturation, and then to enter the society, that if they are not paid attention to in the childhood, irreparable damage may be inflicted on society. In this regard, not only children's rights is bound to parents as a duty (Bakhtiar Nasrabadi, reviewing the principles and strategies for raising children reflecting the verses and hadiths, 13), but the society (public power) should defend their rights with developing supportive and supervision systems to implement the rights of children as the most vulnerable segments of society and consider purposeful planning to achieve higher goals.

Slavery, exploitation in various forms, rape, physical and psychological trauma and deprivation of education are part of the violation of children's rights. With the advent of global schools and increasing progress of individual and social rights as well as promoting public awareness and development of the states and the inherent tasks of government as the defense of interests and public benefits, more efforts should be made to provide appropriate context to implement the rights of children or preventing its outrages in the community.

### 3. Rights of children in Quran

In a general classification, laws are divided into divine and human laws. Human laws are not comprehensive because of the lack of complete understanding of man and could not take into account all psychological and mental aspects of human. Therefore, these rights are frequently changing and evolving; so, changing the opinions in determining human rights and commitment to human laws is very doubtful. Since every planning for human requires a comprehensive understanding of its size and complexity and this issue is not possible but the help of inspiration, all forms and formulations regardless of revelation world is partial and inexpressive. Almighty Allah says in this regard that: "Is He Who creates like he who does not create? If (unaware) and not be noticed? ". In another verse, He says: "And the one who reveals the truth is more worthy to be followed, or one that will not be involved unless it is guided? So what happened to you, how do you judge?" Therefore, it is essential that regulators and enforcement of human rights hold fast to the divine law that is the most comprehensive in Islam and Quran for justice and human rights. From early childhood, difficult tasks have been burdened on the parents and the government by Quran in order that a healthy, efficient and useful human is delivered to the community, while in the twentieth century, no statute was not written for children at the international level. [2] Many divisions have been presented on the Rights of the Child in the Qur'an and various types such as biological, emotional, educational, moral, psychological, social, spiritual, financial, etc. rights have been mentioned (Labaf,

Rights of children in terms of Quran and Sunna, 8-10). But in a general term, it can be divided into two categories: material and spiritual. Right to life, infancy right, naming rights and good name, financial rights and providing their future are material rights. Spiritual rights also include the three following parts: 1. Directional right, (prayer, repentance, forgiveness and attention to religion and correct intellectual line); 2. Educational Rights (preach, accountability, training experiences) and 3. Psychiatric Rights (love, respect, trust and consultation, concern and compassion).

History of children rights in the international arena made many changes on children, place and one's tasks in the society historically, economic and social developments in the nineteenth and twentieth centuries and the industrial revolution in the nineteenth century and the development of capitalism and the growth of industrialization and urbanization. Inclusion of women and children into the labor market, according to the basic necessities of industrialization, capitalism and radical changes in the structure and function of family relationship intensified exploitation of women and children. On the other hand, the negative aspects of social changes in the second half of the nineteenth century and the first half of the twentieth century and the advent of colonialism and the First World War and second, massive displacement and migration and the spread of global poverty, has led to exploitation and inequality that the adverse situation of children, particularly in developing countries.

With the rapid growth of population, the feminine and child-oriented process of poverty, deprivation and social damage, the need to pay attention to children through international and humanitarian efforts were proposed. The first Declaration on the Rights of the Child in response to the consequences of World War I and its resulted injury for children was set in 1924 in Geneva. After the establishment of the International Children's Fund (UNICEF) in 1946 in continuing international efforts, second Bill of Rights of the Child was adopted in 1959 by the UN General Assembly (Assadi, family and its rights, 408).

By designating 1979 as the "International Year of the Child" by the United Nations, an international movement was formed regarding children issues and led to a change in current attitudes in children's issues. This action is created by public awareness about the extent of the threat put children's global prosperity at risk and questioned the old notion regarding material deprivation is a major problem for children and proposed this idea that social violence against children are more serious threats.

These actions and given the necessity of government intervention in support of children, caused that in 1989, the UN Convention on the Rights of the Child that was developed which countries have adopted it. Around 80 documents and conventions and other international documents are related with the issues of children's rights with various methods. But CRC has examined all aspects

of the children's rights and involve various dimensions of children's rights, there are enforcement guarantee to control its contents. CRC United Nations General Assembly adopted Universal Declaration on the Rights of the Child in a preamble and ten articles in the twentieth assembly of November 1959. In a part of the preamble of this Declaration, it is stated:

"This Declaration officially brings child declaration to the public awareness with the aim that childhood will be coupled with happiness and the child will benefit from the rights and freedoms that will be sought (Ebadi, children's rights, 177.1) and then after thirty years (1989), this convention passed "CRC" to complete and the consideration of more rights and privileges for children (ibid, 183.1).

In the preamble of this Convention, the objectives, history and reasons for its adoption has been noted: "With the adoption of the Universal Declaration of Human Rights by the United Nations and ensuring the enjoyment of human rights of the individuals in it, away from the racial, sexual, religious, cultural, political, economic, ethnic dependencies or any other discrimination and given that children's rights and their protection has been emphasized by the United Nations in the Declaration of Human Rights and following what are mentioned the child rights documents stating that: child requires special legal protection, before and after birth because of his physical and mental immaturity, and based on the legislation and agreements relating to the protection of children, and based on the fact that in many countries, children live in bad situations and uncertainty and require immediate and special attention; and with the understanding the importance and value of international cooperation for improving the lives of children all over the world, particularly in developing countries, a treaty to protect the rights of children around the world was adopted "(Ebadi, children's rights, 190.1); Saeednya, juvenile law, 208; Mansour, rules and regulations relating to the family, 165).

The Convention consists of preamble, three sections and four articles. The first part that is forty-two is referred to the following issues: The definition of a child, equal enjoyment of all children of the rights set forth in the Convention, supporting families without children, adoption, homeless and maimed children. Also the rights that should be recognized by the membered states on behalf of children, such as the right to survival and development, the right to a name and nationality, the right to freedom of expression and to use it in every case that comes to life, freedom of speech, freedom of religion, the right of assembly, the right to non-interference in privacy, family, home or correspondence, the right to access to information from various sources, the right to the highest standard of health, the right to education, the right to lack of execution penalty and life imprisonment for children under eighteen years of age, the right for fun and playing, etc. has been stated. Twelve of the second and third part is concerned with the

implementation of the Convention. Articles 46 and 47 explain how to put the accession to the Convention (Ebadi, Rights of the Child, 189218/1; Saeednia juvenile law, 242-208; Mansour, rules and regulations relating to the family, 165-199). In 1372, the Government of the Islamic Republic of Iran acceded to the Convention provided that: "The provisions of the Convention in any case and in any time are in conflict with local laws and Islamic regulations and is not binding by the Islamic Republic" (Ebadi, children's rights, 187.1, Ziaie Bigdeli, Public International Law, 83-85, Saeednia, juvenile law, 207; Assadi, family rights, 409; Mansour, rules and regulations relating to the family, 165). A comparative study of the Qur'an and the Convention with the review and analysis of Qur'an and CRC, fundamental differences between the two can be easily observed. The differences are in several categories. A fundamental difference: underpinning the debate of Quran about human, including the child, this issues has been emphasized. For example, when discussing about the adoption, it says, you must read them in the name of their fathers and if you do not know the name of their fathers, know them as your religious brothers. According to this verse, both the respect and rights of their fathers is considered and the adoption's dignity is respected. "Name that adoptions as the name of their fathers and this is better in the just God, and if you do not know their fathers, so they are their religious and released brothers", and about what you have made error (calling them), there is no sin for you, but on what your hearts deliberately (intentionally) do (are responsible), and Allah is Forgiving and Merciful". By a glance at the Convention, it can be found that its approvers think that they have mercy the children and considered their rights only because it is small and defenseless and is a sympathetic creature. For example, the preamble of the Convention states that: "child requires special legal protection, before and after birth because of his physical and mental immaturity" (Saiednia, laws of children and adolescents, 208), while Quran regards the child as a human with dignity and considers his/her rights not only because of pity or because the numerous injustice he/she has been afflicted, but because children is a human as the status of other humans and is seen as a future man. Another interesting point is that the law of the Koran suggests that it is the violations of law without the assumption in many cases; meaning that Quran has mentioned it before any violation has occurred and it is this feature of the divine being. But the Convention on the Rights of the Child is stated when many cases of violations of children's rights are observed in the world. This shows the absolute supremacy of the Qur'an to human law, including the Convention on the Rights of the Child. B) When the base of a ritual and doctrine is divine law, it also accepts all its topics and issues. A believed man is more committed to law and morality; because ethics is institutionalized in him. In fact, the Qur'an considers human as task-

oriented and responsible; thus such a man is also accountable (Amini, Islam and education, 63).

Verses related to human responsibility is in several categories: 1. the responsibility of man against God and the Prophet (Mohammad ﷺ), 2. The responsibility of man against himself and his family, (Tahrim, 6). Responsibility to the community and to the believers (Toubeh, 71). In contrast, because the fundamentals of the Convention is on secularism and liberalism, humans are not accountable. As a result of this lack of commitment of such human, it is inevitably bound to other executive legislatures, of its human kinds, including governments, courts and international assemblies. But since ethics is not much involved on the basis of these guarantees, it has weakness and failure to the executive legislative of Quran. This issue is manifested in parts of the Convention that are mentioned below:

Preamble of the Conventions: "According to the founding principles of the United Nations that have been accepted by all members of the human community members, inviolable respect for the inherent dignity and inviolable equality of human rights account for freedom, justice and peace in the world. Based on the belief in human dignity, nations of the world seek the welfare of the public in the form of human social progress, better living conditions associated with greater freedom. With the adoption of the Universal Declaration of Human Rights by the United Nations and ensuring the enjoyment of individual human beings from the rights contained in it, away from the racial, sexual, religious, cultural, political, economic, ethnic dependencies or any other discrimination and given Children's rights and their protection has been emphasized by the UN in the Universal Declaration of Human Rights, ... this Convention is adopted" (Saidnia, juvenile law, 208).

Article 43: Children's Rights Commission, it has been formed to control the progress of the issues that states membered in treaty accepted its guarantee.

Article 45: For the promotion and enforcement of the Convention and promoting international cooperation in this regard; workshops to help children and other UN organizations on issues related to their field of work are the UN envoy for the implementation of international treaties.

Article 46: This Convention is at the disposal of the government for signature.

Article 47: this convention is given to the Secretary General of the United Nations.

Article 48: The Convention is provided to all governments for the adoption and the agreement document of each government entitled "Acceptance Letter" is in the Secretary-General.

Article 49: when any government accepted this Agreement and sign the acceptance letter, the executive powers to the government is thirty days after signing the acceptance letter.

Article 53: The Secretary General of the United Nations is determined as the protector and

safeguard of the Convention (Saeednia, juvenile law, 235-241). Second, substantive differences by content examination each legal source under discussion, a few notes are mentioned: First, Quran is not affected by extremity and negligence on the Rights of the Child, that is what the right of the child has been said completely and as noted above, both material and spiritual law has been raised and even material to the spiritual rights of them is discussed more than material rights. But it seems that the convention are influenced by extremity and negligence in some cases. For example, it neglected in the discussion of education and spiritual rights and only in Article 28, education right and in Article 29, training objectives has been generally mentioned. These two articles are as follows: "Article 28 (right to education): 1. the states recognize the right to education for children. 2. Treaty-membered governments effort for the process of education in schools is worthy of human dignity and is consistent with the content of the treaty. 3. Governments welcomed international cooperation in education and training, especially follows the aim of eradication of illiteracy and expansion of technology and knowledge."

Article 29 (Educational Objectives): 1. Treaty-membered states verify that training should A) flourish and strengthen personality, talents and mental and physical abilities, B) it should foster a sense of respect for human rights and fundamental freedoms adopted by the United Nations among children, C) it should boost cultural and national identity, language and values of the Fatherland as well as create interest and respect for other cultures and lands related to parents, D) It should prepare children to live in a free society based on mutual understanding, peace, tolerance of dissenters, equality of sexes, and friendship of the peoples and ethnic religious or national groups, E) Interest and attention to the child related to the environment and nature (Saidnia, Code of children and adolescents, 226-228). Also, extremism can be observed in some articles, For example, in Article 3, on behalf of the child, it is stated that: "To take any action that is concerned to a child, whether in public, private, office or any other part, respecting the interests and health of a child takes precedence over all other issues." (Saeednia, Code of children and adolescents, 211). II. Quran has a comprehensive attitude, because it adds the rights and tasks together, it considers some duties for the rights of a child, For example, in the Sura of Nour, some obligations for the child in observing the rights of parents have been mentioned, "O you who believe! To those (slaves) that you are the owner and (the children) who have not reached puberty, they should ask you in three positions: before the Morning Prayer, and at noon when you take off your clothes, and after night prayers, [These are] three (specific time) for your sexual affairs; that after that (time) no sin is against you and the others that (enter without permission, because) some of you spun round others. God clearly states these revelations for you, and Allah is Knower, Wise. And when your children come to mature, so

they should get permission (at all times to enter the private room of parents), as those (of adults) who got permission before them, Allah recites His verses like this and Allah is knower and wise." However, no discussion of the roles of children in the Convention are included. Third, in Article 1 of the Convention, "child" is defined as follows: "In terms of this Convention, by a child, it means individuals under the age of eighteen years, unless under the law of applicable to the child, the age of puberty identifies less". (Saeednia, Code of children and adolescents, 210). According to the CRC, human persons less than eighteen years of age are considered children. This definition specifies the end of childhood, but does not refer to early childhood, if it is clear that early childhood is the birth of man, but in terms of Qur'an, early childhood is the moment of conception and its end from the beginning of puberty. Because every human has a special right from the moment of conception which cannot be ignored". Quran considers a child as "human" since the embryonic stages. "And certainly we created man from an excerpt of dust; Then we put it in little fluids water in a consistent place [= womb], then a little fluid water was created as a hanging [clot], and the hanging [clot] is created as something like chewed meat; and chewed meat are created as bones, and we covered meat on the bones, then brought it forth as another creation; and Blessed be Allah, the Best of Creators! ". This changes suggests that a fetus has also a right in the Koran; therefore jurists have also gave fatwa to the inheritance of embryo. It has also been stated in civil law that inheritance should be set aside for fetal (Article 875 and 878 of the Civil Code). Also, there is the right for alimony (Article 1109 of the Civil Code). (Assadi, family and its rights, 416).

Another point is that the Convention considers eighteen years for the end of childhood (Saeednia, Code of children and adolescents, 210), While Qur'an considers the maturity as the end of childhood. "And when your children become mature, so they should get permission (at all times to enter the private room of parents). As those (of adults) who were before them got permission. God will clear His revelations for you, God is wise and knowing. "

Fourth, eternal life is not only the most important right of a child, but the most important right of human, put the Convention has not considered it. Quranic verses on this subject is a lot. In all of these verses, attention to eternal life and the correct line of thought is based on the parents and is considered as child's rights. 1. "Abraham and Jacob (in the last moments of life) testate their children to this faith, and told their sons that: "My children! Pure religion Allah has chosen for you, and you do not go to heaven except to Islam [submission to Allah]. Were you were present when the death of Jacob comes? At the time he said to his sons: "After me, what you worship?" They said: "Thou art God, and the God of your fathers, Abraham and Ishmael and Isaac, God, and to Him we are submitters."

2. "My son! If your deeds is the weight of a mustard seed (for good or bad), and it is in a rock or in (part of) the heavens and the earth, Allah (in the Hereafter for the account) will bring it. Careful and aware is God! " (Loghman, 16).

3. "that Ship moved them through the waves like mountains (at the time), Noah called his son which was in a corner, Allah (in the Hereafter for the account) will bring it. Careful and aware is God! " (Hood, 42).

4. When Luqman said to his son while he preached: "My son! Thou unto Allah not any partners who Pagan is a great injustice (Loghman, 13).

5. The Qur'an has mentioned the details of the law, for example, the right name for your child's infancy and explains in detail:

1. (II / 33), "mothers, suckle their children for two whole years, (It is) for those who wish to complete the suckling. And those who the children were born to him [the father], It is necessary to properly feed and clothe mother (during breastfeeding, even if it's not divorced.) Nobody is obliged to exceed the amount of one's ability! Not mother (because of a dispute with the father) has the right to harm the child, not the father and the heirs also need to do this (the cost of mother is provided during infancy). And if the two wanted to ab lactate the child by mutual consent and consultation, there is no blame on them. And if you want to take a nanny for your children (the inability, or refusal mother), there is no blame on you, provided that the mother's right is paid decently. And avoid from those who are against Allah! And know God is the observer to what you are doing ".

2. "O Zakariya! We give thee glad tidings of a son whose name is "John" and before, have not been the same for him. "

3. "I'd put her name Mary and she and her children are protected (the whisperers) of the devil, you would be safe."

In contrast, the Convention don't mention these important details and do not consider them and as the infancy or if it has been mentioned, as the name, is purely generic and without giving any pattern.

Article 7: Every child shall have the right to a name from birth which must be recorded in the offices. Also, being a citizen is one's right and if possible, they should identify their parents and be maintained by them.

Article 8, treaty-membered states are obliged to respect the rights of the child and keep his individual identity, nationality, name and family by law. "(Saeednia juvenile law, 212 and 213). Sixth, given that the Convention is only contained in Article 54, of course, part of which relates to the shape of the Convention, execute, sign, maintenance, etc. and that the same basic material as well as general and vague, and this indicates that the Convention has not the required universality and has many shortcomings and defects.

3. Differences in the method: A) Quran has predicted structure for securing the rights of the child, for example, first the family, i.e. parents (II /

233), then the relatives and friends of the community (Nisa / 6), and then the Islamic state (Joseph / 21) and Qur'an mostly insists on the family. But the Convention does not take required attention relating the grading of structures with respect to the inclusion in its proper place and more emphasized on governments and international organizations.

Article 4: Treaty-membered states take necessary and appropriate legal and administrative actions, etc. to implement the rights recognized in the present Convention. To implement the provisions of this Treaty with respect to the rights and the social, political and cultural conditions, governments use all available national, and if needed, international resources (Saeednia, Code of children and adolescents, 211).

B) There are different ways to safeguard the rights of the child. Quran stated the procedures to observe rights in detail in different methods as story, modeling, objective and real examples, command and prohibition, etc. that which method and where should be applied and the variety of these methods and the variety of these methods. Quran hints the discussions related to children indirectly amidst the stories of prophets such as Abraham, Moses, Jesus, Joseph, Solomon, etc. and shows its practical instances. Also in the Luqman story and some other Surah such as Nour, and caution children's rights directly in the shape of forbidding and advice.

A) The indirect method:

1. The right for a good name: "O Zachariah, We give thee glad tidings of a son whose name is" John "and before, have not been the same for him."

2. The right to consult: "When he reached the rank of striving, He said: "My son! I dream that I am slaughtering you, what do you think? "Said my father! Run the command thou, God willing, you will find me of the steadfast. When both gave up, and Abraham put his bow on earth",

3. Financial Law: "And the wall, the two young orphans in the city, and beneath it there was treasure belonging to them, and their father was a righteous man and thy Lord willed they reach puberty and extract their treasure. It was a mercy from your Lord, and I did it arbitrarily. This was the secret of the things that you could not be patient at",

B) Direct method: "(Remember) when Luqman said to his son while he preached:" My son! Thou should not take partners unto Allah which Pagan is a great injustice". 2. "O you who believe, to those (slaves) that you are the owner and those (children) who have not reached puberty, they should ask you in three positions: before the Morning Prayer, and at noon when you take off your clothes, and after night prayers, [These are] three (specific time) for your sexual affairs; that after that (time) no sin is against you and the others that (enter without permission, because) some of you spun round others. God clearly states these revelations for you, and Allah is Knower, Wise. And when your children come to mature, so they should get permission (at all times to enter the private room of parents), as those (of adults) who

got permission before them, Allah recites His verses like this and Allah is knower and wise." In contrast, the methods of the Convention is very vague and is raised without any precision and finesse; as we have noted in content differences, and noted the generalizations and ambiguities of Articles 28 (right to education) and Article 29 (Educational Objectives).

#### 4. Conclusion

After studying and adjusting tow legal source on the Rights of the Child, it was clear that the CRC is incomplete and imperfect compared to Quran. First in legal quantity, in that compared to Quran, fewer rights are raised for children, especially in the area of intellectual rights that has more importance than material rights. Second, the quality of the law, meaning that the value, method and content are subject to numerous slips.

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