

## **Child Justice in Contemporary International Law and Islam**

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### **Abstract**

Children are considered one of the most vulnerable segments of society with regard to protection of their rights. Children are also human beings and possess all the rights which are available for all other human beings. Apart from that children also possess certain rights that are available for children only. Therefore, children are entitled to the protection of their rights at higher level than normal human beings. For instance, apart from protection of the right to life, security, liberty and protection from any harm, children are also entitled to some additional rights like right to maintenance, education and proper care. Almost every legal system of the world provides protection to the rights of children and international law also contains various special laws on the rights of child. Like other rights, Islam also contains special rights for children. The primary sources on the rights of child are the holy Quran and Sunnah of the holy Prophet (ﷺ). Islam has extended rights to the children in a unique way which was and has never been followed by any other legal system of the world. Islam extends rights to children before and after birth. Very few legal systems of the world talk about any right of children before birth. Furthermore, even after birth, most of the legal systems of the world talk about physical normal rights of the children for their protection from physical harm and at the maximum for their physical welfare. Islamic law focuses on the mental, emotional and social well being of the children apart from their protection from physical harm. Moreover, rights attached to the mental, emotional and social well being of the children have never been protected by any other legal system except Islam. For instance, children have the right to be given the best name, shaving his/her head on the seventh day of birth and giving the weight of the hairs in silver as charity and choosing the best spouse for children (with their consent), teachings good manners and characteristics are a few rights which have been provided by Islam exclusively and other legal systems of the world do not emphasize on these rights. Of course, Islam also protects child rights from any physical harm, abuse or maltreatment just like any other legal system, but protection of mental, social and emotional well being of the children makes Islam unique with regard to protection of their rights. In this regard, certain principles have been narrated in the holy Quran, but majority of these rights have been protected by the Sunnah of the holy Prophet (ﷺ). History has witnessed that principles laid down by the Sunnah of the holy Prophet (ﷺ) are proved to be the best for the welfare of children and protection of their rights. These principles, if followed by others, would serve to be the best mechanism for protection of child rights in every society. This paper intends to highlight the key principles for child justice provided under Islam in general and in accordance with Sunnah of the holy Prophet (ﷺ) in particular in comparison with the key principles of international and national laws to establish that

the former principles would serve the best practice to deal with the issue of child justice in today's world.

**Key words:** Islam, Sunnah, child justice, Rights, protection.

## Introduction

One of the distinguished features of Islam is that it gives rights to children over their parents in the same manner parents have been given rights over their children. These rights have been recognized in the main texts of the holy Quran and Sunnah of the holy Prophet (ﷺ). Islam ordains extraordinary rights and privileges to the children.<sup>1</sup> It has been narrated from Ibne Umar, who said “Allah has called them abrar (righteous) because they honoured (barru) their fathers and children. Just as your father has rights over you, so too your child has rights over you”.<sup>2</sup> According to another hadith narrated by Abdullah Ibne Umar, the Messenger of Allah (ﷺ) said “... and your child has rights over you”.<sup>3</sup> Therefore, it is well established that children do possess their rights just like their parents and other human beings, but the distinguishing feature of Islam is that apart from general rights granted to children, children in Islam hold rights against their parents which is an alien concept in many other legal systems. The details of rights applicable for children in Islam particularly against their parents are given below.

## Pre-birth Rights of Children

A unique feature of Islam is that it recognises pre-birth rights of children which feature is not available in other domestic, regional and international legal frameworks on the rights of the child including the Convention of the Rights of the Child (CRC). However, Islamic legal system recognises pre-birth rights of the children rather in some cases rights when even the child has not been conceived and parents have not got married. For instance, choosing a righteous wife is one of the rights of children. Although generally it is believed that this right directly relates with the rights of spouses, but it also covers the rights of children in accordance with the interpretation of many Muslim scholars. In one famous hadith of the holy Prophet (ﷺ) narrated by Abu Hurairah (may Allah be pleased with him), the holy Prophet (ﷺ) said “a woman may be married for four reasons: her wealth, her lineage, her beauty and her religious commitment. Marry the one who is religiously committed, may your hands be rubbed with dust (i.e., may you prosper)”.<sup>4</sup> It has also been narrated from the holy Prophet (ﷺ) who said: “If come to you a man whom you are satisfied with his character and his religion, marry him (with your daughter), ...”.<sup>5</sup> According to Sheikh Abdul Ghani Al-Dahlawi, always a woman of who is religiously committed, righteous and of a good decent shall be chosen for marriage. If a person chooses a woman who is of illegitimate decent, this bad characteristic may pass to the children born from the wedlock. Therefore, in choosing a righteous and religious wife, rights of children are also protected and these rights become available to them even before their parents getting married.

## Rights of the Children after Birth

The situation before Islam in respect of rights of children is known to everyone. Non-Muslims of Arab Jahiliyyah period use to burry newborn girls on account of a stigma and on the basis of apprehension of sharing property with them in accordance with their due share. However, when Islam came it banned all these practices declaring it a major sin. Islam banned all these practices and encouraged celebrations on birth of a child irrespective of his/her gender. The first and the foremost

<sup>1</sup> Imam Ibne Muflih, *Al-Adaab Al-Shari'iyah*, (Dar al-Kutub al-'Ilmiyyah, 1996), vol. 1, 244.

<sup>2</sup> Imam Bukhari, *Al-Adab al-Mufrad*, (UK Islamic Academy), hadith: 94.

<sup>3</sup> Muslim ibn al-Hajjaj, *Sahih Muslim* (Canada: Darussalam, 2007) vol 3, hadith no 1159.

<sup>4</sup> Muhammad ibn Isma'il Bukhari, *Al-Jami' al-Sahih*, Ahmad Ali Saharanpuri (ed), (Dihli: np 1848) hadith no 4802; Muslim, *Sahih Muslim* 1466.

<sup>5</sup> Muhammad bin Yazid Ibn Majah al-Qazvini, *Sunan Ibn Majah* (Canada: Darussalam, 2007) vol 2, hadith no 1957.

command of Islam is to show mercy to the children.

## **Mercy**

Children are to be treated with mercy and affection. In this regard, the holy Prophet (ﷺ) emphasized over treating children with mercy and affection and his own life is full of examples where he was seen treating children with mercy and affection irrespective of the relation with those children and irrespective of their religion, race, colour or sex. The holy Prophet (ﷺ) is reported to have said: “He is not one of us who does not have mercy on our young and does not respect our elders”.<sup>6</sup> Many other instances from the life of the holy Prophet (ﷺ) can be seen in Islamic history where he was seen showing mercy on the children and teaching others to do so irrespective of race, religion, color, creed or gender.

## **Tahnik**

One of the ways to celebrate is to offer any sweet at the time of birth of a child and this process in Islam is called Tahnik. The process of Tahnik is Sunnah and is followed by Muslims. It is also established that Tahnik was performed by the holy Prophet (ﷺ) himself at different occasions. For instance, it has been narrated by Anas Ibne Malik (may Allah be pleased with him) who said:

The son of Abu Talhah was sick. Abu Talhah went out and the child died, and when Abu Talhah returned he said, “What happened to my son?” Umm Sulaym (his wife) said, ‘He is quieter than he was.’ Then she brought him his dinner and he ate, then he had marital relations with her, and when he finished she said, “They buried the child.” The following morning, Abu Talhah went to the Messenger of Allah (peace and blessings of Allah be upon him) and told him what had happened. He said, “Did you have marital relations last night?” He said, “Yes.” He said, “O Allah, bless them.” She later gave birth to a boy. Abu Talhah said to me, “Keep him until I bring him to the Prophet (peace and blessings of Allah be upon him).” He brought him to the Prophet (peace and blessings of Allah be upon him) and I sent some dates with him. The Prophet (peace and blessings of Allah be upon him) took him and said, “Is there anything with him?” They said, “Yes, some dates.” The Prophet (peace and blessings of Allah be upon him) took some and chewed it, then he took some from his mouth and put it in the child’s mouth (tahnik), and named him ‘Abd-Allah’.<sup>7</sup> It is also narrated from Abu Musa, who said: “I had a baby boy and I brought him to the Prophet. He named him Ibrahim, did tahneek with a date and prayed for God to bless him, then he gave him back to me.”<sup>8</sup>

The hadith has been cited both by Bukhari and Muslim and there is no difference over performing tahnik as a Sunnah. This hadith has also been interpreted by Muslim leading scholars. According to Imam Al-Nawawi, it is agreed among the scholars of Islam that it is mustahabb (preferred act) to perform tahnik at the time of birth of a child by offering some dates. If that is not possible then any other kind of sweet can be offered instead. Although a new born child would not be able to eat dates, it is provided that dates should be chewed until they become soft enough to be swallowed by the child and after that a little of the date should be put in the mouth of the child.<sup>9</sup>

## **Good Name**

Another primary right of a child in Islam is that he/she should be given a good name. In this regard, Islam and particularly teachings of the holy Prophet (ﷺ) tell us that Abdullah and Abdul Rahman are good names. It has been narrated by Nafi that Ibne Umar (may Allah be pleased with him) said: The

<sup>6</sup> Muhammad ibne Isa al-Tirmidhi, *Sunan Al-Tirmidhi* (Beirut: Dār-ul-fiker, 1980) Ḥadīth no 1919 & 1920.

<sup>7</sup> Bukhari, *Al-Jami’ al-Ṣaḥīḥ*, 5153; Muslim, *Sahih Muslim*, 2144).

<sup>8</sup> Bukhari, *Al-Jami’ al-Ṣaḥīḥ*, 5730.

<sup>9</sup> Imam Al-Nawawi, *Sharh al-Nawawi ‘ala Muslim* (Beirut, Lebanon: Dar Al Marefah), 14/122-123.

Messenger of Allah (peace and blessings of Allah be upon him) said: “The most beloved of your names to Allah are ‘Abd-Allah and ‘Abd al-Rahman”.<sup>10</sup> It is also mustahabb to name the child in the name of a Prophet. Anas Bin Malik narrated that the Messenger of Allah (peace and blessings of Allah be upon him) said: “A child was born to me last night and I called him by the name of my father Ibrahim”.<sup>11</sup> It is also mustahabb that a child should be given his/her name on the seventh day of birth. However, there is no prohibition or harm in naming the child on the day of birth according to the saying of the holy Prophet (ﷺ) that he named the child on the night of his birth. It is also required in Islam to slaughter an animal or anything should be given on the seventh day of the birth of child to relatives and needy people as sadaqah (charity) which in Islam is called aqiqah. In this regard, it has been narrated by Samurah Ibne Jundub that the holy Prophet (ﷺ) said: “Every child is in pledge for (a sacrificial animal) which should be slaughtered for him on the seventh day, his head should be shaved and he should be named”.<sup>12</sup>

The purpose of naming a child has been stated he /she should be given identity. Ibne al-Qayyim says: “The purpose of naming is to define the thing named, because if there is something whose name is unknown it is difficult to refer to it. So it is permissible to name him (the child) on the day he is born, and it is permissible to delay the naming until the third day, or until the day of the ‘aqiqah, or before or after that. The matter is broad in scope”.<sup>13</sup> It has also been established from various Ahadith of the holy Prophet (ﷺ) that head of the child should be shaved on the seventh day of his birth and weight of his/her hair in silver should be given in charity. It has been narrated by Ali Ibne Abi Talib (may Allah be pleased with him) that “the Messenger of Allah (ﷺ) slaughtered a sheep as the ‘aqiqah for al-Hasan, and he said, “O Fatimah, shave his head and give the weight of his hair in silver in charity.” So she weighed it and its weight was a dirham or part of a dirham”.<sup>14</sup> It is also mustahabb to do aqiqah on as stated in the above mentioned hadith of the holy Prophet (ﷺ). It has also been defined that two sheep should be given as aqiqah of a boy and one for a girl. It has been narrated by Aisha (may Allah be pleased with her) that “the Messenger of Allah (ﷺ) commanded them (to sacrifice) two similar sheep for a boy and one for a girl”.<sup>15</sup>

## Circumcision

Circumcision is also one of the essential acts to be performed after birth of a child. Generally, it acquired the status of Sunnah, although according to some schools of thought, it is obligatory. The legal status has been derived from the narration of Abu Hurairah (may Allah be pleased with him) who narrated that the Messenger of Allah (ﷺ) said: “the fitrah (natural state) is five things, or five things are part of the fitrah: circumcision, shaving the pubic hairs, plucking the armpit hairs, clipping the nails and trimming the moustache”.<sup>16</sup> It is also narrated by Bukhari and Muslim that circumcision is also Sunnah of the Prophet Ibrahim and he circumcised himself at the age of eighty and according to the holy Quran, the Prophet Muhammad (ﷺ) has been commanded to follow the religion of Prophet Ibrahim as the holy Quran says: “follow the religion of your father Abraham, the upright in Faith”.<sup>17</sup> Thus, it is well established that circumcision is part of Islamic practices and has been given the status of Sunnah for males according to opinion of majority of Muslim jurists. Whereas, according to others

<sup>10</sup> Muslim, *Sahih Muslim*, 2132.

<sup>11</sup> Muslim, *Sahih Muslim*, 2315.

<sup>12</sup> Abu-Dawud Sulaiman bin Al-Aash'ath Al-Azdi as-Sijistani, *Sunan Abu Dawud* (Canada: Darussalam, 2007) vol 5, hadith no 2838; classed as sahih by Shaykh al-Albani in *Sahih al-Jami'*, 4541.

<sup>13</sup> Ibne al-Qayyim al-Jawziyyah, *Tuhfat al-Mawlud*, (Dar Al-Kotob Ilmiyah), 111.

<sup>14</sup> Tirmidhi, *Sunan Al-Tirmidhi*, 1519; classed as hasan by Shaykh al-Albani in *Sahih al-Tirmidhi*, 1226.

<sup>15</sup> Tirmidhi, *Sunan Al-Tirmidhi*, 1513; Tirmidhi, *Sunan Al-Tirmidhi*, 1221; Abu Dawud, *Sunan Abu Dawud*, 2834; Abū 'Abd ar-Rahmān Aḥmad ibn Shu'ayb ibn Alī ibn Sīnān al-Nasā'ī, *Sunan al-Nasa'i* (Canada: Darussalam, 2007), hadith no 4212; Ibn Majah, *Sunan Ibn Majah*, 3163.

<sup>16</sup> Bukhari, *Al-Jami' al-Shahih*, 5550; Muslim, *Sahih Muslim*, 257.

<sup>17</sup> Qur'an: 16:123.

like Shafiis and Hanbalis, circumcision of male is obligatory and circumcision of female is Sunnah. Muslim jurists also provided that there is no definite age of circumcision as it is also reported that Prophet Ibrahim circumcised himself at the age of eighty. However, the holy Prophet (ﷺ) recommended circumcision at an early age and many medical aspects and benefits are also attributed to circumcision which further affirms the concept of circumcision at an early age.

All the above mentioned rights of children are available exclusively in Islam and are part of the practice or teachings of the holy Prophet (ﷺ). None of the above mentioned rights are contained in the modern legal systems of the world including the CRC. For instance, right to have a good name by the parents, tahnik, aqiqah, and circumcision find no place in these legal systems and these rights are available for children exclusively in Islam. However, the modern legal systems including that of Muslim countries failed to incorporate these rights in their respective legislation and although these are being observed and practiced as religious teachings and norms, but it is highly recommended that these rights should form part of the legal system.

### **Right to Education and Upbringing**

Islam is the ideal code of life for all human beings. The best ethical standards are introduced by Islam with the main feature that these standards are for all the times and do not change over the passage of time as is the case with other legal systems. The human rights standards of every other system kept on changing, but the standards introduced in Islam never change and time also evinces that these standards proved to be the best in many cases and other legal systems are also adopting these standards introduced in Islam centuries ago. Islam also prescribes complete code of conduct for the education and upbringing of children. General teachings of Islam are commonly known where education has been given importance and ethical norms are introduced in every matter. However, in case of children, their parents and ascendants have been made responsible for the education and upbringing of children. In one of the teachings of the holy Prophet (ﷺ), Abdullah (may Allah be pleased with him) narrated that the holy Prophet (ﷺ) said: “each of you is a shepherd and is responsible for his flock. The ruler who is in charge of people is a shepherd and is responsible for them. The man is the shepherd of his household and is responsible for them. The woman is the shepherd of her husband’s house and child and is responsible for them. The slave is the shepherd of his master’s wealth and is responsible for it. Each of you is a shepherd and each of you is responsible for his flock”.<sup>18</sup> Therefore, parents have been specifically made responsible for all the matters of their children. According to various other teachings, it is the primary responsibility of parents to teach their children concept of belief (aqidah), worship and prayers, good manners and characteristics. The holy Quran also cites an example for teaching kids the best practices and concept of belief. Allah Almighty says “and (remember) when Luqman said to his son when he was advising him: “O my son! Join not in worship others with Allah. Verily, joining others in worship with Allah is a great Zulm (wrong) indeed”.<sup>19</sup>

Islam also commands to teach children to offer prayer. In one of the ahadith Abdul Malik Ibne Rabi Ibne Sabrah narrated from his father that his grandfather said, the holy Prophet (ﷺ) said: “teach the child to pray when he is seven years old, and smack him (lightly) if he does not pray when he is ten”.<sup>20</sup> In the same manner, teaching children fasting has also been recommended even if they did not attain the age of puberty and are not obligated to fast. In this regard, Al-Rubayyi’ binte Mu’awwidh said: “the Prophet (peace and blessings of Allah be upon him) sent word on the morning of Ashura to the areas where the Ansar lived (on the outskirts of Madinah), saying: Whoever did not fast this

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<sup>18</sup> Bukhari, *Al-Jami’ al-Ṣaḥiḥ*, 2416; Muslim, *Sahih Muslim*, 1829.

<sup>19</sup> Quran: 31;13.

<sup>20</sup> Tirmidhi, *Sunan Al-Tirmidhi*, 407; Abu Dawud, *Sunan Abu Dawud*, 494. Classed as sahih by Shaykh al-Albani in *Sahih al-Jami’*, 4025.

morning, let him not eat for the rest of the day, and whoever started fasting this morning, let him complete his fast. She said: We used to observe this fast after that, and we used to make our children fast and make them toys of wool; if one of them cried for food we would give him that toy until it was time to break the fast”.<sup>21</sup> Like prayer and fasting, it is also recommended to teach children other worships and pillars of Islam like hajj. Al-Saib ibne Yazid said: “I was taken for Hajj with the Messenger of Allah (peace and blessings of Allah be upon him) when I was seven years old”.<sup>22</sup>

Islam also casts a duty on parents to teach their children good manners and characteristics. Generally, Islam commands everyone to maintain good manners with all others including elders, young, neighbours, relatives, friends and teachers. Everyone has been commanded to maintain good manners with everyone else in this world. However, with regard to children, this duty has been imposed on parents. The first and foremost duty is to teach children faith and Islamic teachings. Abu Hurairah (may Allah be pleased with him) narrated that the holy Prophet (ﷺ) said: Every child is born in a state of fitrah (the natural state of man, i.e., Islam), then his parents make him into a Jew or a Christian or a Magian.<sup>23</sup> Muslim scholars have also interpreted this including other teachings to train children in accordance with Islamic teachings. According to Imam Al-Nawawi:

“The father must discipline his child and teach him what he needs to know about religious duties. This teaching is obligatory upon the father and all those in charge of children before the child reaches the age of adolescence. This was stated by al-Shafi’i and his companions. Al-Shafi’i and his companions said: This teaching is also obligatory upon the mother, if there is no father, because it is part of the child’s upbringing and they have a share of that and the wages for this teaching may be taken from the child’s own wealth. If the child has no wealth then the one who is obliged to spend on him may spend on his education, because it is one of the things that he needs. And Allah knows best.”<sup>24</sup>

Therefore, according to him, primarily it is the duty of father to teach the child all the basic teachings of Islam. Apart from that he is also obligated to teach the child basic manners to live in this world, including how to eat, drink, sleep and interact with other people. If father is not available, then this duty is shifted to the mother of the child. These duties are further clarified by Al-Manawi who says:

“Just as your parents have rights over you, so too your child has rights over you, rather many rights, such as teaching them the individual obligations, teaching them Islamic manners, giving them gifts equally, whether that is a gift, a waqf (endowment), or other gift. If preference is shown with no reason, that is regarded as invalid by some of the scholars and as makruh (disliked) by others.”<sup>25</sup>

Teaching children Islam and bringing them close to Islam is also a duty that has been mentioned in the holy Quran where it has been commanded that it is the duty of a person to protect his son, daughters and families from Fire. Allah Almighty says: “O you who believe! Ward off yourselves and your families against a Fire (Hell) whose fuel is men and stones, over which are (appointed) angels stern (and) severe, who disobey not, (from executing) the Commands they receive from Allah, but do that which they are commanded.”<sup>26</sup> This responsibility has been further clarified by hadith of the holy Prophet (ﷺ) where he said:

“Each of you is a shepherd and each of you is responsible for his flock. The ruler of the people is a shepherd and is responsible for his flock. A man is the shepherd of his household and is responsible for his flock. A woman is the shepherd of her husband’s house and children and is responsible for her flock. The slave is the shepherd of his master’s wealth and is responsible

<sup>21</sup> Bukhari, *Al-Jami’ al-Ṣaḥiḥ*, 1859; Muslim, *Saḥih Muslim*, 1136.

<sup>22</sup> Bukhari, *Al-Jami’ al-Ṣaḥiḥ*, 1759.

<sup>23</sup> Muslim, *Saḥih Muslim*, 6429.

<sup>24</sup> Imam Al-Nawawi, *Sharḥ al-Nawawi ‘ala Muslim* (Mu’assasa Qurtuba, 1994), 122-123.

<sup>25</sup> [Shaykh Abbas Qummi](#), *Fayḍ al-qadīr fī mā yata’allaq bi-ḥadīth al-Ghadīr*, (Najaf: Daftar Tableeghaat, 1321), 2/574).

<sup>26</sup> Quran: 66:6.

for it.”<sup>27</sup>

This verse has been interpreted by al-Qurtubi who said:

“Al-Hasan commented on this verse by saying: Command them and forbid them. One of the scholars said: (The phrase) Ward off (or protect) yourselves includes children, because the child is part of him, as it says in the verse (interpretation of the meaning): “...nor on yourselves, if you eat from your houses...” [al-Nur 24:61], where the various relatives are not mentioned individually. So he should teach him what is halal (lawful) and what is haram (unlawful), and make him avoid sin, and teach him other rulings.”<sup>28</sup>

Therefore, it is the responsibility of parents and particularly the father to teach his children about Islam and all the commandments given by Islam so that he can save himself and his children from Fire.

### **Maintenance of Children**

Spending on children is also one of the obligations of parents and rights of children. Parents have been made liable for maintenance of their children under Islamic law and teachings of the holy Prophet (ﷺ) also encourage spending on children and families. In Islam, this duty is primarily imposed on the father as he is liable for the maintenance of his wife as well as children. Any kind of negligence in this regard has been condemned and regarded as a sin. It has been narrated by Abdullah Ibne Amr (may Allah be pleased with him) who reported that the holy Prophet (ﷺ) said: “It is sufficient sin for a man if he neglects those on whom he is obliged to spend.”<sup>29</sup> Upbringing of children and taking care of them has also been considered a duty of parents and especially in case of girls it has also been rewarded. It has been narrated by Aisha (may Allah be pleased with her), who said:

A woman came to me with two daughters and asked me for food, and I could not find anything except one date which I gave to her. She shared it between her two daughters, then she got up and went out. The Prophet (ﷺ) came in and I told him what had happened. He said: “Whoever is in charge of any of these girls and treats them well, they will be a shield for him against the Fire.”<sup>30</sup>

Duty and responsibility regarding children has been imposed on father and mother alike. Father is primarily responsible for upbringing and fulfilling the needs of a child. While mother is responsible for nourishment and upbringing of the child. Ibne Al-Qayyim says “there are two types of guardianships. In one, father prevails over the mother and that is in matters of money and marriage. In the other one the mother prevails over the father and that is in matters of nourishing and upbringing.”<sup>31</sup>

### **Equality**

Maintaining equality amongst children is also one of the basic rights of children. No preference can be given to a male child over a female and vice versa. It has been narrated from the holy Prophet (ﷺ) that he said: “Fear Allah and treat your children fairly.”<sup>32</sup> It has also been clarified by the holy Prophet (ﷺ) that if a father seeks equal level of respect from his children, then he should also treat them equally. It is also narrated from the holy Prophet (ﷺ) who said to the father of al-Nauman, “Would you like them to honour you equally?” He said, “Yes.” The Prophet (ﷺ) meant that if you want to be

<sup>27</sup> Bukhari, *Al-Jami' al-Shahih*, 893; Muslim, *Sahih Muslim*, 1829.

<sup>28</sup> Imam Al-Qurtubi, *Tafsir al-Qurtubi*, tr. Aisha Bewley, (Diwan Press), 18/194-195, available at <https://dn721908.ca.archive.org/0/items/tafsir-al-qurtubi-4.-Volumes/Tafseer%20Al-Qurtubi/Tafsir%20al-Qurtubi%20Vol.%201.pdf>, last accessed on 18-03-2025.

<sup>29</sup> Abu Dawud, *Sunan Abu Dawud*, 1692; classed as hasan by Shaykh al-Albani in *Sahih al-Jami'*, 4481.

<sup>30</sup> Bukhari, *Al-Jami' al-Shahih*, 5649; Muslim, *Sahih Muslim*, 2629.

<sup>31</sup> Ibn Qayyam, *Zad al Ma'ad*, translated by Syed Rais Ahmad Jaferi (Karachi: Nafees Academy) Vol 4, p.289.

<sup>32</sup> Bukhari, *Al-Jami' al-Shahih*, 2447; Muslim, *Sahih Muslim*, 1623.



given equal respect then you should also treat them equally.

### **Juvenile Delinquency in Islam**

Juveniles and children below the age of majority are not liable for their acts and are not responsible even if a criminal act is done by them. This principle has been derived from the holy Quran and Sunnah of the holy Prophet (ﷺ). Allah Almighty says in the holy Quran: “And when the children among you come of age (puberty), then let them (also) ask for permission, as do those senior to them (in age): Thus Allāh makes clear His Signs to you (commandments & legal obligations): for Allāh is full of knowledge and wisdom”.<sup>33</sup> The Holy Prophet (P.B.U.H) also said: “Three persons are not accountable, a child until he reaches the age of puberty, a sleeping person until he awakes and an insane person until he becomes sane”.<sup>34</sup> Therefore, a child till the age of his/her puberty is exempted from any kind of liability including criminal liability. However, Islamic criminal law draws a balance on the basis of liability of a child with respect to commission of a crime. Islamic law exempts a child from criminal liability on the basis of above mentioned texts, however, makes him liable for property (maal) and liability (zimmah).<sup>35</sup> This fact is based on the obligation of parents and anybody else in the guardianship of a child to protect him from any kind of harm and to focus on his/her upbringing in a way which makes the child a perfect and righteous human being.<sup>36</sup>

Apart from the above mentioned rights given to children, the rights of the child in Islam include the right to health and nutrition, emotional and psychological wellbeing, a dignified and secure life, education and life skills, gender equity and protection from violation, among many more.<sup>37</sup>

### **International Legal Framework**

Attempts have been made to codify the rights of children granted by Islam. For instance, Cairo Declaration on the Human Rights in Islam contains several rights of children. For instance, Article 7 of the Declaration states “...As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care”.<sup>38</sup> If we look at the rights of children given in Islam, their nature differs from the ones given under modern legal systems including the CRC. CRC has though been adopted by majority of countries, but still any violation of the rights contained therein lack a proper sanction. This is not the case in Islamic legal system. Islamic legal system not only depends on legal sanctions provided in this world rather also makes the violations accountable on the day of resurrection. This concept alone suffices protection of child rights in a Muslim society and this is a reason that Muslim countries strive towards protection of child rights. Interestingly, Muslim world is often accused of violation of human rights in general and that of child rights in particular, but majority of Muslim countries have adopted the Convention. It signifies that Muslim countries are willing to protect child rights.<sup>39</sup>

### **Conclusion**

Islamic legal system is primarily based on the teachings of the holy Quran and Sunnah of the holy Prophet (ﷺ) and these two are the primary sources of Islamic law and Islamic jurisprudence. Sunnah

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<sup>33</sup> Qur’ān, 24:59.

<sup>34</sup> Ahmad ibn Hanbal al-Dhuhli, *Musnad Ahmad bin Hanbal* (Beirut: Dār-ul-fiker, 1999) vol. Jilid I, III, IV-VI.

<sup>35</sup> Imam Al-Shafi’I, *Al-Umm*, (Beirut: Dār-al-Marifah, 1393 A.H.), vol. 8, 311.

<sup>36</sup> Zayn al-Dīn ibn Ibrāhīm Ibn Nujaym, *Al-Bahr Al-Raiq*, (Beirut: Dār-al-Marifah), vol. 4, 180.

<sup>37</sup> Islamic Relief, *An Islamic Human Rights Perspective on Early and Forced Marriages*, (Birmingham: Islamic Relief Worldwide), 6.

<sup>38</sup> Cairo Declaration on Human Rights in Islam.

<sup>39</sup> Miftahur Ridho, “Islamic Perspective on Child Protection”, *Islamic Perspective*, Lentera, Vol. IXX, No. 2, December 2015, 189.



of the holy Prophet (ﷺ) is considered interpretation of the holy Quran. Both sources provide basic human rights including rights of children. Islamic legal system protects child rights even before birth in a number of ways. Modern legal systems including the CRC focus on child rights, like all other human rights, from tangible perspective. Most of the rights contained in the CRC are directly relating to children and are contained on the basis of violations reported with regard to child rights. However, Islamic legal system focuses on protection of these rights in a more coherent manner where not only directly available tangible rights of children are protected rather rights not recognized by the modern legal systems are also protected. For instance, showing mercy towards children is a right that has not been recognized by modern legal systems including national and international. However, this is one of the basic rights granted to children under Islamic law. Pre-birth rights of the children are not recognized by modern legal systems, but the same have been recognized and protected in Islam. Detailed rules regarding child rights are contained in the Sunnah of the holy Prophet (ﷺ) and the life of the holy Prophet (ﷺ) is full of examples where the best recognition and protection of child rights have been given. Modern legal systems, including the CRC are facing challenges for the proper enforcement and protection of the rights contained in the relevant laws, but Islam envisages divine enforcement mechanism. In a nutshell, we can say that Islam contains those child rights which are even not considered by the modern legal systems to be the rights, but these rights are essential for the best interest of the children. Only by following the rights provided in Islam and adopting the same strategy for enforcement, the rights of the children can be best protected.