



Motherhood rights in international human rights instruments and Islam: A comparative analysis

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Abstract

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The study was aimed at identifying the conceptual foundations, implementation mechanisms and convergence potential between universal human rights norms and Islamic legal doctrine in the field of motherhood protection. The methodology was based on the application of comparative

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legal analysis of international conventions, Islamic primary sources and contemporary legal acts of Muslim states. The research identified differences in sources of law: international law was grounded in secular universalism and the concept of human dignity, whereas the Islamic tradition derived norms from their divine origin as established in the Qur'an and the Sunnah. It was found that international law offered an individualistic model of rights guaranteed by the state through social mechanisms, while Islamic jurisprudence proposed a complementary system of mutual family and community obligations. The analysis of the legal systems of Saudi Arabia and Indonesia demonstrated differences in the mechanisms of financial support for motherhood: state responsibility in international law versus the nafaka system in Islam, as well as differing approaches to child custody – the best interests of the child principle versus the hadana framework. The study of bioethical principles revealed the unanimous position of Islamic jurists against surrogacy, rooted in the protection of lineage. At the same time, points of convergence were identified in the recognition of the special status of motherhood and the need for its protection. The practical significance of the research lies in the potential use of the findings to develop hybrid regulatory models of motherhood rights in Muslim countries that integrate international standards with religious-legal traditions, which is particularly relevant in the context of the globalisation of legal space

Keywords: nafaka; hadana; fiqh; Maqasid al-Sharia; discrimination

Introduction

Motherhood, as one of the fundamental social roles, lies at the intersection of diverse legal and cultural systems. In the contemporary world, rights related to motherhood are regulated both by universal norms of international law and by provisions of traditional legal systems, particularly Islamic jurisprudence. The interaction arising at the junction of these systems represents a complex issue in which universal principles of equality may collide with religious and cultural conceptions of the roles of men and women. The relevance of the study is conditioned by the growing need to understand the mechanisms of interaction between international standards for the protection of motherhood rights and Islamic legal traditions in the context of the globalisation of legal space and migration processes. Modern Muslim communities, both in traditionally Islamic countries and in diasporas, exist in a state of constant legal pluralism, where their family relations are simultaneously regulated by

international conventions, national legislation and norms of Sharia.

The current state of research on this topic is characterised by fragmented approaches and insufficient systematic comparative analysis. N.A.B.M. Daud (2025) carried out a critical examination of the reception of the Universal Declaration of Human Rights in Muslim communities, identifying deep epistemological divergences in the understanding of the sources and nature of human rights between Islamic and Western liberal traditions. The author found that the most significant contradictions are concentrated in the sphere of family relations and gender roles, where religious norms display maximum resistance to secular influences. F.R. Meybodi and S. Rasouli (2022) conducted a detailed comparative analysis of the Universal and Islamic Declarations of Human Rights in the field of women's and family rights, demonstrating that the differences between these documents concern

not only terminological formulations but also fundamental principles of rights conception. The researchers showed that the Islamic tradition offers a complementary model of rights based on mutual obligations and collective responsibility, which differs from the individualistic model of international law.

In the field of concrete aspects of the realisation of motherhood rights, a significant methodological contribution was made by N. Kumar and P. Ranga (2025), who analysed judicial practice concerning the protection of labour rights of pregnant women and mothers across various jurisdictions, identifying substantial gaps in the enforcement of international standards at the national level. The authors established the systemic nature of the phenomenon of the “motherhood penalty”, manifested in discriminatory practices by employers despite the formal legislative prohibition of such actions. Bioethical aspects of motherhood in the Islamic context received systematic development in the works of N. Jaser and C. Ahaddour (2023), who methodologically mapped Islamic ethical discourse on prenatal diagnostics and abortion, identifying the existence of significant intra-Islamic pluralism of views on complex biomedical issues. I. Jalili *et al.* (2024) conducted a comprehensive socio-legal analysis of the legitimacy of abortion in Islamic jurisprudence and Indonesian law, uncovering complex mechanisms for adapting classical religious norms to modern medical realities and reproductive technologies. These studies convincingly showed that the Islamic legal tradition possesses substantial internal hermeneutical flexibility that allows for the integration of scientific advances while preserving fundamental religious principles and ethical imperatives.

Contemporary trends in the evolution of Islamic family law were analysed in detail by N.E.H. Pane *et al.* (2024), who examined the influence of Sharia norms on the realisation of

women’s rights in comparative perspective with modern secular family law. The authors found that Muslim states demonstrate a wide array of models for harmonising traditional and modern legal norms – from conservative reproduction of classical provisions of medieval legal schools to innovative interpretations that take into account changing socio-economic conditions. E. Zuhriah *et al.* (2024) focused their research on the analysis of women’s right to refuse pregnancy in the Indonesian legal context, identifying complex institutional mechanisms for balancing religious norms and principles of reproductive autonomy in a pluralistic society. S. Ahmed (2024) offered a conceptual analysis of Muslim motherhood as a sociocultural phenomenon, identifying specific features of Islamic understandings of maternal roles and obligations. E. Lapiedra-Gutiérrez (2025) conducted a historical analysis of the concept and functions of motherhood in Islamic societies from the medieval period to the present, revealing evolutionary trends in the understanding of motherhood rights and status.

Despite the existence of a substantial body of individual studies on various aspects of motherhood rights in Islamic and international legal contexts, the academic literature lacks a comprehensive comparative analysis that would systematically address the conceptual foundations, institutional implementation mechanisms and convergence potential of these legal traditions. Most existing works focus either on individual aspects of motherhood rights or on the examination of specific national models of legal regulation, which does not allow for the development of a holistic scholarly understanding of the nature and dynamics of interaction between international law and Islamic jurisprudence in this critically important domain of human relations.

The present study was aimed at addressing the identified theoretical gap through a comparative analysis of motherhood rights in international

law and the Islamic legal tradition. The main objectives of the research were: the systematisation of international legal standards for the protection of motherhood and the identification of their evolutionary dynamics; the comprehensive analysis of the Islamic concept of the rights and obligations of the mother in the context of religious-legal doctrine; and the identification of points of conceptual intersection and fundamental doctrinal divergences between the legal systems under examination.

Materials and Methods

This study was conducted as a theoretical and applied work based on a comprehensive comparative legal analysis of international legal sources, religious legal texts and practical materials of international organisations that characterise contemporary approaches to the protection of maternal rights across different legal traditions. The methodological foundations of comparative jurisprudence were studied using the work of N. Kumar and P. Ranga (2025). The research was carried out from January 2024 to October 2025 with an examination of legal documents and judicial practice covering the period from 1948 (the adoption of the Universal Declaration of Human Rights) to October 2025, which made it possible to trace the full evolution of international standards for the protection of motherhood and their interaction with religious legal traditions. The geographical scope included an analysis of legal systems with a detailed examination of the contemporary practices of Saudi Arabia, Indonesia and Malaysia, as well as an analysis of Kazakhstan's family and marriage legislation as an example of a post-Soviet Muslim jurisdiction, representing different approaches to the implementation of religious norms in a modern legal context.

The empirical base of international law consisted of the key universal documents of the

United Nations (UN): The Universal Declaration of Human Rights (1948), United Nations General Assembly Resolution No. 2200A (XXI) (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations General Assembly..., 1979). Specialised conventions of the International Labour Organization (ILO) were examined, in particular the Maternity Protection Convention No. 183 (International Labour Organization, 2000), as well as regional instruments, including the European Convention on Human Rights (1950). A detailed analysis was carried out of the gap between formal legal norms and their practical implementation, which required the study of reports by international organisations, including documents of the United Nations International Children's Emergency Fund (UNICEF) (2019) and the Convention on the Rights of the Child (United Nations General Assembly..., 1989). The study also explored secondary sources, particularly M. Hyland and L. Shen (2022), which provided detailed analyses of relevant reports and documents from international organisations such as UN Women and the World Bank.

The Islamic legal framework of the study included primary sources of religious law: Qur'anic texts in authoritative databases (Quran.com, n.d.) and hadith collections in the electronic repository (Sunnah.com, 2025), encompassing all major Sunni compilations. Contemporary fatwas and decisions of Islamic legal institutions were examined, including materials of the International Islamic Fiqh Academy (n.d.), Egypt's Dar Al-Ifta (Al-Shari'ah, n.d.) and the Mufti of the Federal Territory's Office (2016). Modern codifications of Islamic family law were analysed, including the Personal Status Law No. M/73 (2022) and the Marriage Law of the Republic of Indonesia No. 1 (1974).

Judicial practice was studied through an analysis of decisions of the European Court of Human

Rights, the Court of Justice of the European Union and UN human rights committees. Contemporary bioethical and technological challenges in the field of maternal rights were examined, including decisions of the European Court of Human Rights (ECHR) on surrogacy and the definition of maternal legal status in the context of new reproductive technologies (European Court of Human Rights, 2025). Particular attention was given to landmark precedents such as *Webb vs EMO Air Cargo (UK) Ltd Case C-32/93* (1994) and cases from the series “They are girls, not mothers” (Amnesty International, 2025), which shaped contemporary standards of non-discrimination and reproductive rights. The criteria for selecting judicial precedents included: influence on the development of international standards of maternal rights, the presence of core legal positions on non-discrimination, reproductive rights and family relations, and relevance to comparative analysis with Islamic legal norms. Excluded were decisions on individual disputes without precedent value, cases not directly addressing maternal rights and judgments of national courts without international resonance. The study included an analysis of international legal protection against forced motherhood and the safeguarding of reproductive autonomy as an integral element of maternal rights.

The methodological basis of the study was built on the principles of critical comparative jurisprudence, applying historical legal, formal juridical, and systemic structural approaches to the analysis of legal norms. The comparative legal method was used to identify shared principles and differences between secular and religious legal traditions in the protection of motherhood. This approach allowed for a deeper understanding of how different legal systems conceptualise maternal rights, balancing universal human rights with culturally and religiously specific frameworks.

Results

Maternity rights in the system of international law

Motherhood as a social function and the right to non-discrimination are enshrined in the fundamental document CEDAW (United Nations General Assembly..., 1979), whose preamble emphasises the basic principle of the inadmissibility of discrimination against women on the basis of their reproductive role and calls for an understanding of motherhood as an important social function. This provision holds a central position, as it moves motherhood from a strictly private, biological sphere into the public and socially significant domain. If motherhood is understood as a social function, then responsibility for its support must be borne by society as a whole rather than by an individual employer. This principle serves as a key justification for financing maternity benefits through state or social funds, which prevents the entire burden from falling on enterprises and helps avoid discriminatory practices. Article 11 of CEDAW elaborates this approach, requiring State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment. This includes a prohibition on dismissal on the grounds of pregnancy or maternity leave, as well as the provision of paid leave and social benefits. Protection against discrimination and the right to paid maternity leave constitute interlinked elements forming a unified system. For example, the International Labour Organization (2000) explicitly prohibits the dismissal of a woman during pregnancy and maternity leave, except in circumstances unrelated to her condition, with the burden of proof placed on the employer. These provisions operate in conjunction to create a comprehensive system of protection aimed at ensuring the woman's economic stability and her equal access to the labour market during pregnancy and following childbirth.

The comprehensive system of international legal protection of motherhood is based on a range of international instruments, the key provisions of which are systematised in Table 1.

Table 1. Key articles of international instruments concerning maternity rights

Document	Article/ Paragraph	Core provision	Scope of application
CEDAW	Article 4	Special measures aimed at protecting maternity are not considered discriminatory.	General protection
	Article 11	Protection against dismissal due to pregnancy, paid maternity leave, establishment of childcare facilities.	Labour rights
	Article 12	The right to health care, including services related to family planning.	Health
Maternity Protection Convention No. 183	Various articles	Minimum duration of maternity leave (14 weeks), cash benefits (at least two thirds of previous earnings) financed through social insurance schemes.	Labour rights
Universal Declaration of Human Rights	Article 25	The right to medical care and social protection.	General protection, Health
ICESCR	Article 12	The right to the highest attainable standard of physical and mental health.	Health

Source: compiled by the authors based on Universal Declaration of Human Rights (1948), European Convention on Human Rights (1950), United Nations General Assembly Resolution No. 2200A (XXI) (1966), General Assembly Resolution No. 2200A (1966), United Nations General Assembly Resolution No. 34/180 (1979), United Nations General Assembly Resolution No. 44/25 (1989), International Labour Organization (2000), N. Kumar and P. Ranga (2025)

Protection of maternity rights is based on various international conventions. United Nations General Assembly Resolution No. 2200A (XXI) (1966) affirms the right of every person to social security (Article 9) and the right to the highest attainable standard of physical and mental health (Article 12). Although these provisions do not focus exclusively on maternity, they form a fundamental basis for its protection. Article 10 of the Covenant separately emphasises that mothers should receive special protection. In addition, maternity rights are considered in the context of the right to family and private life as enshrined in Article 8 of the European Convention on Human Rights (1950). This acquires particular relevance in light of new social and technological realities, such as surrogacy. The ECHR recognises that the legal presumption that the woman who gives birth to the child is its mother falls within the

wide margin of appreciation afforded to States (European Court of Human Rights, 2025). This position demonstrates the dynamic character of international law, which adapts to emerging challenges. At the same time, the broad margin of appreciation granted to States reflects the absence of a global consensus on ethically complex issues, leaving room for diverse national approaches. However, this pluralistic approach provides the flexibility necessary for implementation across different legal and cultural contexts and underscores the deep integration of maternity rights into the broader human rights system, covering dimensions ranging from labour relations to health and family life.

The ILO plays a central role in the protection of the rights of working women, beginning from 1919 (Addati, 2015). Its key instrument is the International Labour Organization (2000), which

establishes minimum standards for States. The core provisions of the Convention include the duration of leave: the minimum period of paid maternity leave is at least 14 weeks. The Convention provides for a mandatory six weeks of leave after childbirth, unless otherwise agreed at the national level. Cash benefits must amount to at least two thirds of the woman's previous earnings. Importantly, these benefits must be provided through compulsory social insurance or public funds, rather than directly by the employer. This is crucial for preventing discrimination, as transferring financial responsibility directly to employers may create incentives to refuse to hire or to dismiss pregnant women. Protection against discrimination is set out in Article 9, which expressly prohibits discrimination in employment on grounds of maternity. This includes the prohibition on requiring a pregnancy test at the time of recruitment. Breaks for breastfeeding must be granted as one or more daily breaks for feeding the child. These breaks must be counted as working time and remunerated accordingly.

The case law of the ECHR and the Court of Justice of the European Union (CJEU) plays a decisive role in shaping and expanding international standards for the protection of maternity rights. The courts emphasise that the financial interests of the State or employer cannot justify such discrimination. This reflects the uncompromising approach of international courts to the protection of the rights of pregnant women. Case law actively fills the gaps that exist in legislation. For instance, in the well-known case *Webb v EMO Air Cargo (UK) Ltd*, Case C-32/93 (1994), the CJEU examined a situation in which a woman was hired to replace another employee on maternity leave but was dismissed once she herself became pregnant. The Court held that dismissal on grounds of pregnancy constitutes unlawful direct discrimination, irrespective of circumstances. The ruling highlighted that the mere fact of pregnancy cannot be used as

a justification for termination of employment, reinforcing that discrimination on the basis of pregnancy violates fundamental rights to equality and non-discrimination. This case not only set a precedent in establishing the right of pregnant women to employment protection but also illustrated that case law does not simply apply existing norms but sets concrete criteria for assessing discrimination, transforming a general prohibition into a practical mechanism of protection.

Decisions of UN committees and other international judicial bodies demonstrate that maternity rights form part of the broader framework of reproductive rights. Landmark precedents such as the "They are girls, not mothers" cases, adopted by the UN Human Rights Committee, established new standards obliging States to ensure access to abortion for victims of rape, thereby prohibiting forced motherhood (Amnesty International, 2025). Similarly, other judicial decisions, including the protection of the rights of girls excluded from school due to pregnancy, demonstrate that motherhood must be a conscious and voluntary choice rather than the result of coercion or denial of medical care. These precedents show that the international legal protection of the rights of the mother begins even before childbirth, encompassing reproductive rights.

Despite strong legal mechanisms, discrimination against pregnant women and mothers remains widespread (Ryskaliyev *et al.*, 2019; Khamzina *et al.*, 2021). This gap between formal rights and actual practice is reflected in the phenomenon known as the "motherhood penalty". Research by S.J. Correll *et al.* (2007) indicated that mothers receive lower wages, have fewer promotion opportunities and are frequently perceived as less competent or less committed to work compared with childless women and men. There is a direct causal link between existing policies and this phenomenon. Insufficiently developed family policies and the absence of paid leave for fathers

exacerbate gender imbalances in childcare responsibilities. When mothers receive significantly more paid leave than fathers, employers develop expectations that women will bear the primary burden of childcare, which in turn leads to discrimination and loss of career opportunities. The absence of gender-neutral policies entrenches traditional gender roles and deepens inequality (International Labour Organization, 2025). International standards frequently do not extend to women working in the informal sector, who lack access to official protection mechanisms and social insurance. This creates a significant gap in the protection system, leaving millions of women without essential guarantees.

According to World Bank data, there is a clear global trend towards increasing the duration of maternity leave, which in many countries exceeds the ILO minimum of 14 weeks (Hyland and Shen, 2022). However, despite this progress, inequalities persist. International organisations such as UNICEF (2019) and UN Women actively promote the concept of “family-friendly policies”. This approach extends beyond traditional maternity leave and includes support for breastfeeding and access to quality childcare services. These organisations, as well as World Bank research, demonstrate that support for mothers and families is not only a human rights issue but also an economic tool. Family-oriented policies increase women’s labour force participation, reduce staff turnover, decrease absenteeism and stimulate Gross Domestic Product (GDP) growth.

Maternity rights in the Islamic legal tradition

Islamic jurisprudence (fiqh) represents a unique legal system, which differs from secular legal traditions in its approach to maternity rights. While modern international law is based on the concept of universal human rights, developed within the process of secularisation of Western society, Islamic law derives from the principle of

divine origin of norms enshrined in the Qur’an and the Sunnah of the Prophet Muhammad (Index of the Holy Quran, n.d.). This fundamental difference in sources of law establishes a distinct methodology of legal regulation, where rights and freedoms are not regarded as inherent or inalienable characteristics of the individual but as privileges granted by Allah, inextricably linked to corresponding duties. A central element of the Islamic approach to maternity rights is the concept of Maqasid al-Shariah (objectives of the Shariah), developed by classical Islamic jurists as a universal principle for interpreting religious law (Auda, 2008). According to this concept, all Islamic laws aim to protect five fundamental goods: religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-aql), progeny (hifz al-nasl), and property (hifz al-mal). The principle of hifz al-nasl occupies a central position in this hierarchy, as it ensures not only the biological continuation of the human race but also the preservation of the Islamic community (ummah) as a religious and social institution. This principle forms the philosophical foundation for all norms relating to marriage, family relations, child-rearing, and the regulation of reproductive behaviour among Muslims. The Islamic legal tradition rejects the individualistic approach to rights characteristic of Western liberalism. Instead, it provides a complementary system in which the rights of one subject are inseparably linked to the duties of another. In the context of maternity, this implies that a mother’s rights to financial support, protection, and respect are balanced by her duties in child-rearing and care, and correspond with the father’s obligations to provide for the family materially. Such interdependence creates a system of social protection founded not on state institutions solely but on familial ties and religious obligations. This model differs from secularised societies, where the State assumes responsibility for the social protection of maternity through social

insurance schemes, maternity benefits, and other mechanisms of public support.

The Qur'anic basis for maternity is enshrined in verses 17:23-24, which establish respect for parents as a religious duty immediately following worship of Allah. According to the authoritative database Quran.com (2025), these verses prescribe worship of Allah alone and doing good to one's parents. Hadith literature on the status of mothers is presented in the major electronic database Sunnah.com (2025), which includes all primary Sunni collections. Of particular significance is a hadith from Sunan an-Nasa'i (n.d.), which states that "Paradise lies beneath the feet of mothers", confirming the exceptional status of motherhood in Islam (Sunan an-Nasa'i, n.d.). This database provides hadiths in Arabic with translations into English and other languages. Maqasid al-Shariah, including *hifz al-nasl* (protection of progeny), is one of the five primary objectives of Islamic law. M. Al-Shari'ah (n.d.) explains that the protection of the family line and maternity is a fundamental principle underpinning all aspects of family law. Nafaqah norms establish a comprehensive system of financial support. Al-Islam.org defines nafaqa as the husband's obligation to provide for all family needs in accordance with available resources, customary practices, and the social and economic status of the family (Amini, n.d.).

The distinction between *hadana* and *wilaya* is clearly explained in the authoritative source Al-Islam.org. M.J. Mughniyya (n.d.) notes that custody (*hadana*) is not related to guardianship (*wilaya*) in respect of marriage and is limited to care for the child for purposes of upbringing and protection during the period in which female care is required. Age limits vary across *madhabs*: the Hanafi school provides custody for boys until age 7 and girls until age 9; the Shafi'i school until the age of discernment (*mumayyiz*), when the child may make a choice; the Maliki school – boys until puberty, girls until marriage; the Hanbali

school – 7 years irrespective of gender; thereafter the child chooses; the Imami (Shi'a) school – boys until 2 years, girls until 7 years. Islamic bioethical principles regarding maternity are based on the preservation of lineage (*hifz al-nasl*) as one of the five primary objectives of the Shariah. Research by S. Islam *et al.* (2013) confirms the unanimous position of Islamic scholars against surrogacy. The prohibition of surrogacy is based on several principles: mixing of lineage (*nasab*), creating uncertainty regarding true parentage; involvement of a third party, violating principles of family exclusivity; potential adultery (*zina*) when gametes are used outside marriage. The concept of *nasab* establishes legitimate lineage, which determines inheritance rights, marriage prohibitions, legal identity, and family obligations. The Mufti of Federal Territory's Office (2016) confirms the strict prohibition of surrogacy in Sunni schools of law.

Saudi Arabia represents a significant example of contemporary application of Islamic family law through The Personal Status Law No. M/73 (2022), enacted by Royal Decree. Key innovations in the field of maternity include: a minimum marriage age of 18 for both parties; maternal priority in child custody, with 2025 rules preserving custody even upon the mother's remarriage (for children under 2 years); expanded maternal rights to establish paternity through deoxyribonucleic acid (DNA) evidence without the husband's consent; retention by women of full control over their property. The Saudi Family Council provides full access to the legislation, including implementation regulations. This law consists of 252 provisions based on Hanbali jurisprudence, adapted to contemporary needs. Indonesia demonstrates a unique model of implementing Islamic family law within a pluralistic legal system through The Marriage Law of the Republic of Indonesia No. 1 (1974). The system of maternity rights includes requirements for a religious ceremony plus civil registration, a dual custody system

(Islamic law for Muslims, civil law for non-Muslims), in which Muslim mothers retain custody of children until age 12 (*mumayyiz*), after which the child may choose, and a system of joint property with exceptions for inheritance and gifts.

The Republic of Kazakhstan provides a distinctive example of a post-Soviet Muslim jurisdiction, where Islamic traditions are integrated into secular legislation via the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family” (2011). The Kazakh model of maternity rights is characterised by parental equality with prioritisation of the child’s interests, a system of state maternity and childbirth benefits equivalent to the average monthly income over 12 months, maternal leave of 126 calendar days (exceeding ILO standards), and the preservation of cultural traditions respecting maternity through the institution of “*ata-ana*” (parental veneration). The system includes a one-time birth allowance of 38 Monthly Calculation Index (MCI) (KZT 149,416 in 2025) for the first three children and 63 MCI (KZT 247,716) for the fourth and subsequent children (Electronic Government of the Republic of Kazakhstan, 2025).

The electronic platform “Egov.kz” ensures full access to family legal services via the composite service “Child Birth”, including registration of birth, assignment of benefits, and enrolment in kindergarten. Kazakh legislation also regulates surrogacy (Articles 54-59 of the Code), which distinguishes it from strict prohibitions in classical Islamic jurisprudence and demonstrates adaptation to contemporary reproductive technologies (Code of the Republic of Kazakhstan..., 2011). In comparative terms, Kazakhstan demonstrates a hybrid model, combining state responsibility for social protection of maternity with preservation of traditional family values, providing an alternative to both purely secular international approaches and religiously based systems of family obligations.

This integration of Islamic legal principles within a secular framework is not unique to Kazakhstan (Ahmad *et al.*, 2020). Across many Islamic countries, the ongoing dialogue between international human rights standards and traditional Islamic jurisprudence is exemplified in the growing involvement of contemporary female scholars in Islamic law. As seen in the work of the International Islamic Fiqh Academy (n.d.), which unites 57 member states of the Organisation of Islamic Cooperation, there is a dedicated department for family, women, children, and the elderly. The Academy’s issuance of collective fatwas on contemporary issues, including maternity and family rights, highlights the importance of engaging with modern legal challenges while remaining grounded in religious tradition. Institutions like Dar al-Ifta al-Misriya, which issues between 500 and 1,000 fatwas annually, further exemplify how Islamic legal institutions address evolving societal needs. Moreover, female scholars, such as Dr. Tasneem Al-Kiek from Rutgers University and Ustaza Maryam Amir from Al-Azhar University, are increasingly contributing to the shaping of Islamic jurisprudence, particularly in the realm of women’s rights (Women and Nonbinary Scholars of Islamic Studies, n.d.). Their involvement demonstrates the dynamic and evolving nature of Islamic law, where contemporary interpretations can complement traditional values and address modern challenges in areas such as maternity protection and family rights.

Comparative analysis of international and Islamic norms

Maternity rights in international law and the Islamic legal tradition exhibit both points of convergence and fundamental divergences. The most significant divergence lies in the source of rights. International law considers rights as universal, deriving from human dignity, whereas the Islamic tradition grounds them in divine origin.

This fundamental distinction shapes further differences in the mechanisms and subjects of legal protection. International law predominantly focuses on individual rights and freedoms guaranteed by the State through legislation and social mechanisms. Its objective is to achieve equality, which includes, for example, the right to paid maternity leave and job security (Silva-Fernández *et al.*, 2025). In contrast, the Islamic tradition emphasises family and community, where maternal rights are part of a system of mutual obligations among family members. Financial support for the mother is the responsibility of the husband or family, rather than the State. Differences also exist regarding child custody. International law adheres to the “best interests of the child” principle as the central criterion. In Islamic law, while the

child’s welfare is important, the principle of *hadana* grants the mother primary custody, which may be lost under certain conditions and may transfer to the father as the child reaches a specific age (Ghasemi *et al.*, 2023).

Despite these divergences, both systems aim to ensure the welfare of mother and child. Both approaches recognise the need to protect maternal health, provide support, and eliminate adverse conditions. The potential for dialogue between these systems lies in examining how Islamic legal systems in the contemporary world adapt traditional norms to the requirements of international law, for instance, in the areas of medical care and labour rights. To systematise the main differences between the two legal approaches to maternity, a comparative overview is presented in Table 2.

Table 2. Comparative analysis of maternity rights in international law and the Islamic legal tradition

Aspects	International law	Islamic legal tradition
Source of rights	Secular, universal, based on human dignity	Divine origin, based on religious doctrine
The nature of rights	Individual rights guaranteed by the State	Rights embedded in family and community obligations
Right to non-discrimination	Requires elimination of discrimination based on sex and maternity in all spheres, particularly in employment	The status of the mother is elevated, requiring special respect and care.
Paid leave	Provided by the State or employer according to national legislation (CEDAW, ILO Conventions)	Financial support during pregnancy and breastfeeding is the husband’s responsibility
Financial support	Falls within social protection provided by the State (ICESCR)	Responsibility of the husband, children, or guardian
Custody rights	Determined based on the “best interests of the child”	Mother has primary right (<i>hadana</i>), but this may be reviewed as the child ages
Adaptation to contemporary realities	Legal norms are periodically reviewed and updated based on social and scientific progress	Jurisprudence demonstrates flexibility, integrating scientific knowledge, e.g., regarding pregnancy duration

Source: compiled by the authors based on Quran.com (n.d.), Sunnah.com (n.d.), I. Amini (n.d.), M.J. Mughniyya (n.d.), Universal Declaration of Human Rights (1948), United Nations General Assembly Resolution No. 2200A (XXI) (1966), The Marriage Law of the Republic of Indonesia No. 1 (1974), United Nations General Assembly Resolution No. 34/180 (1979), United Nations General Assembly Resolution No. 44/25 (1989), International Labour Organization (2000), S. Islam *et al.* (2013), F.R. Meybodi and S. Rasouli (2022), The Personal Status Law No. M/73 (2022), N.A.B.M. Daud (2025)

The analysis of the presented table demonstrates that the primary divergences between international law and the Islamic legal tradition

concern the conceptual foundations and mechanisms for the implementation of maternity rights. International law is built on a secular basis,

emphasising individual rights and state guarantees, whereas Islamic law integrates the rights of the mother within a system of familial and communal obligations grounded in divine authority. Nonetheless, both systems recognise the special status of motherhood and the necessity of its protection, albeit through different mechanisms (Lakisa, 2025). The Islamic tradition confers upon the mother a high social status and primary custodial rights over young children, correlating with international standards of maternity protection. The divergence lies in the mechanisms of provision: international law places responsibility on the state, while Islamic law relies on the family and community (Misbah, 2024). The research identified significant potential for convergence between universal human rights and Islamic legal doctrine in the domain of maternity protection, based on shared foundational values regarding maternal health and child welfare. Contemporary Islamic states demonstrate the capacity to synthesise international standards with religious norms through mechanisms of legal pluralism and innovative interpretation of traditional texts. These points of convergence provide a basis for the development of hybrid regulatory models that combine universal principles with culturally and religiously specific frameworks. Such patterns warrant further detailed examination within contemporary scholarly debates and practical examples of implementation.

Discussion

The comparative analysis of maternity rights in international law and the Islamic legal tradition revealed substantial differences in conceptual approaches, which require detailed consideration within contemporary academic discourse. The data indicate a fundamental divergence between secular and religious paradigms of legal understanding, corroborated by existing scholarship. The identified conceptual difference in

the sources of rights – divine origin in the Islamic tradition versus secular universalism in international law – is further explored in the study by M. Vidūnaitė (2023), which examined the issue of agency in Islam and human rights among Baltic Muslim women. The author concluded that religious women do not perceive secular human rights as contradictory to their beliefs, but rather integrate them into their own value system through religious interpretation. This supports the findings of the present study on the possibility of synergy between legal systems despite differences in legitimacy sources and supplements the analysis with practical mechanisms of such integration at the level of individual legal consciousness.

The complementary nature of the Islamic legal model, based on mutual obligations, aligns with the findings of S.N. Tawakulli (2021), who analysed maternal responsibilities and custody rights in Islamic jurisprudence. The study demonstrated that Islamic law views maternal rights not as isolated privileges but as components of a complex system of family relationships, where the rights of one party correspond to the obligations of others. The present analysis extends this thesis by showing that such an approach differs from the individualistic model of international law, creating an alternative system of social protection for maternity. The examination of bioethical aspects of motherhood within the Islamic context revealed the presence of intra-Islamic pluralism on complex reproductive issues, as confirmed by S. Halepoto *et al.* (2025). The authors conducted a comparative analysis of the rights of unborn children under Islamic law and international human rights law, identifying differences among Islamic schools of jurisprudence regarding the determination of the beginning of life and associated rights. The prohibition of surrogacy in the Islamic tradition further complements this picture, demonstrating that despite pluralism, consensus positions exist on key reproductive ethics issues

(Toktarbekova *et al.*, 2025a). The models of harmonising international standards with Islamic norms are further substantiated by A.A. Elkholy (2024), who analysed anti-discrimination measures in Egypt following the 2014 Constitution. The study revealed that the Egyptian legal system demonstrates the ability to incorporate international non-discrimination standards while maintaining Islamic legal identity. The present data extend this understanding, showing specific mechanisms for harmonisation in the field of maternity rights and highlighting the potential for developing hybrid legal models.

The identified differences in mechanisms for financial provision during maternity – state responsibility under international law versus family obligations under Islamic law – correspond with findings by C. Pereira-Kotze *et al.* (2022), who analysed maternity protection legislation and policies in South Africa. The authors noted fragmented protection systems and insufficient state support mechanisms. The findings suggest that the Islamic family-support model (*nafaqa*) may serve as an additional mechanism of social protection, particularly where state institutions are weak. Differences in approaches to child custody were further explored in the work of R.A. Yusoff and M.M. Raihanah (2022), who examined maternal narratives in Muslim women's texts. The study established that the Islamic concept of motherhood includes specific cultural and religious elements not adequately reflected in the universalist frameworks of international law. The present analysis of *hadana* rights confirms and systematises these observations, demonstrating concrete legal mechanisms for the implementation of culturally specific understandings of motherhood. The analysis of contemporary trends revealed that Islamic legal systems are capable of innovative interpretations, as supported by B. Bensaid (2021), who examined Muslim spiritual education. The study showed that modern Islamic pedagogy

integrates developmental psychology and educational science while maintaining religious foundations. The present research on Saudi Arabia's The Personal Status Law No. M/73 (2022) and the Indonesian model of legal pluralism confirms this thesis at the level of legal systems, demonstrating mechanisms for adapting traditional norms to modern realities.

The identified potential for convergence between legal systems is corroborated by A.S. Miltenburg *et al.* (2016), who studied women's perceptions of the relationship between maternal support and human rights. Their research found that women from diverse cultural contexts share common understandings of basic maternal needs – safety, respect, and support – despite differences in legal traditions. The present comparative analysis develops this observation, showing that shared fundamental values can form a basis for dialogue between Islamic and international legal traditions. There is a notable correlation with the work of A.E. Yamin (2013) on applying human rights principles to maternal health. The author developed a methodology for integrating rights-based approaches into maternal healthcare, demonstrating the practical applicability of international standards regardless of cultural context. The Islamic concept of *hifz al-nasl* provides a religious foundation for such integration, confirming the feasibility of harmonising different approaches to maternal health protection (Toktarbekova *et al.*, 2025b). Finally, the research findings align with J. Earle (1999), who examined progress in maternal rights through the International Labour Organization. The study highlighted cultural resistance to implementing international standards in traditional societies. The present analysis explains the nature of such resistance through conceptual differences between legal systems and proposes pathways to overcome it by identifying points of convergence. The distinction between individualistic and complementary

models of rights is further substantiated by F. Almoayad (2025), who examined maternal and child health from an Islamic perspective. The author showed that the Islamic approach to healthcare is based on collective responsibility and mutual support, contrasting with Western models of individual patient rights. The present study extends this understanding to the broader domain of maternal rights, highlighting the systemic nature of differences between legal approaches.

Overall, the analysis demonstrated that the identified divergences between legal systems are not insurmountable barriers but rather alternative approaches to addressing common challenges in protecting motherhood. International law offers a universalist approach, grounded in individual rights and state guarantees, whereas the Islamic tradition provides a particularist framework based on familial and communal obligations. The findings indicated that both approaches have advantages and limitations in contemporary contexts, creating a foundation for mutual enrichment of legal traditions through the identification and utilisation of each system's strengths.

Conclusions

The conducted study established the existence of fundamental differences in conceptual approaches to maternity rights between international human rights law and the Islamic legal tradition. The primary conceptual divergence lies in the sources of legitimacy: international law is based on secular universalism and the concept of human dignity, whereas Islamic jurisprudence derives its norms from divine authority as enshrined in the Qur'an and Sunnah. This distinction underpins fundamentally different methodologies for regulating maternity rights.

The analysis revealed that international law offers an individualistic model of rights guaranteed by the state through social mechanisms and legislation, whereas the Islamic tradition develops

a complementary system of mutual familial and communal obligations. Significant differences were identified in mechanisms of financial provision for maternity: state responsibility through social insurance under international law contrasts with the nafaqa system in Islam, where responsibility lies with the husband and family. The study of the legal systems of Saudi Arabia and Indonesia demonstrated different models of adapting Islamic norms to contemporary realities. The analysis of Saudi Arabia demonstrated that contemporary reforms may update traditional family law without departing from its religious foundations, whereas the Indonesian example showed how legal pluralism can operate within a multi-confessional social order.

A systematic review of international instruments confirmed the comprehensive nature of maternity rights protection, encompassing labour relations, healthcare, and social security. At the same time, analysis of ECHR and EU Court case law highlighted the active role of precedent in shaping anti-discrimination standards. Examination of bioethical principles revealed a consensus position among Islamic scholars against surrogacy, based on the protection of nasab (lineage), contrasting with the more liberal approaches of international law to reproductive technologies. The concept of Maqasid al-Shari'ah, particularly the principle of hifz al-nasl, provides the philosophical foundation for the Islamic approach to the protection of motherhood. At the same time, significant points of convergence between the two legal systems were identified in the recognition of the special status of motherhood and the necessity of its protection. Both traditions emphasise the importance of safeguarding maternal health, providing support, and creating favourable conditions for child-rearing.

A limitation of the study is its focus on Sunni schools of Islamic law, with insufficient attention to Shia jurisprudence, which may constrain the generalisability of the conclusions across the

entire Islamic world. Prospective directions for further research include examining the implementation practices of maternity rights in other Islamic jurisdictions, analysing the influence of international law on the evolution of Islamic family law, and exploring opportunities for dialogue between religious and secular legal traditions in the protection of women's and children's rights.

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Права материнства в міжнародних інструментах з прав людини та Ісламі: порівняльний аналіз

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Анотація

Дослідження було спрямоване на виявлення концептуальних основ, механізмів впровадження та потенціалу збіжності між універсальними нормами прав людини та ісламською правовою доктриною в галузі захисту материнства. Методологія ґрунтувалася на застосуванні порівняльного правового аналізу міжнародних конвенцій, ісламських першоджерел та сучасних правових актів мусульманських держав. У ході дослідження виявлено відмінності в джерелах права: міжнародне право базується на секулярному універсалізмі та концепції гідності людини, тоді як ісламська традиція виводить норми з їх божественного походження, закріпленого в Корані та Сунні. Було встановлено, що міжнародне право пропонує індивідуалістичну модель прав, гарантованих державою через соціальні механізми, тоді як ісламська юриспруденція пропонує комплементарну систему взаємних сімейних та громадських зобов'язань. Аналіз правових систем Саудівської Аравії та Індонезії продемонстрував відмінності в механізмах фінансової підтримки материнства: державна відповідальність у міжнародному праві проти системи нафака в ісламі, а також різні підходи до опіки над дітьми – принцип найкращих інтересів дитини проти рамок хадана. Вивчення біоетичних принципів виявило єдину позицію ісламських юристів щодо неприйняття сурогатного материнства, обґрунтовану захистом родоводу. Водночас було

виявлено точки збіжності у визнанні особливого статусу материнства та необхідності його захисту. Практичне значення дослідження полягає в потенційному використанні отриманих результатів для розробки гібридних регуляторних моделей прав материнства в мусульманських країнах, які інтегрують міжнародні стандарти з релігійно-правовими традиціями, що особливо актуально в контексті глобалізації правового простору

Ключові слова: нафака; хадана; фікх; Макасид аш-Шарія; дискримінація