

## Rape-Related Birth; Ethical Right of Child to Sue Mother

*Alireza Maleki\**

Received Date: 05/03/2020      Acceptance Date: 19/08/2020

DOI: 10.22096/hr.2020.522128.1280

### Abstract

The moral and legal rights to sue a party do not always conform well. In cases where legal rights are not established, one may obviously be entitled to file a lawsuit against the action conducted outside the ethical frameworks. In contemporary legal systems, “the right to sue someone” must be based on statutory law; however, there are some issues which are not recognized in national laws or international right-oriented systems, but they have theoretical significance. Because some of these issues cannot be easily denied in terms of morality and just because they are not recognized, they cannot be rejected or undermined. In other words, a moral right shall not be denied merely because it is not recognized as a legal right.

Therefore, this article seeks to look at the moral right of the child born out of rape and prove that if a mother decides to keep and give birth to such a child, can the child bring a charge against the mother?

**Keywords:** Rape; Unintended Pregnancy; Voluntarily Giving Birth to a Child; Suing the Parents; Moral Right of the Child to Complaint.

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\* Ph.D. Student in Modern Philosophy, Mofid University, Qom, Iran.  
Email: armaleki@mofidu.ac.ir



## Introduction

Issues of philosophy of ethics have long been used and experienced within the applied and normative ethics. In fact, as Ethics entered the concrete and applied issues of everyday life, some new aspects were discovered and it found a more widespread application. The question here is not which one came first; that whether these issues first evolved in the context of society and then found a way into ethics, or the applied principles were unintentionally created out of subjective issues? However, there is no question that today Ethics and the related issues play an important role in defending human rights to advance and keep a fairly balanced social life. Some issues in Ethics commonly appear to improve the current situation while some others are formed to establish new trends in society. We may differentiate these two types of issues in general view; but it seems that the two categories do not differ that much, in terms of ethical efficiency, in problem solving stage and sometimes resolving the troubles.<sup>1</sup>

However, the issue discussed in this article is of a type that needs to be considered and studied carefully by Ethics when it occurs in the context of society. It is actually a kind of issue that if ignored, serious moral problems and harms may follow. Analysis of the issue by Ethics would be better realized if a solution is provided in addition to the analysis and distinguishing its different aspects so that the pains resulted from this problem in society would reasonably be reduced or, at the most, it changes from a neglected issue to a matter of concern in society.

The main idea of this article comes from the issues of rape and abortion. "Rape" and "abortion" are well defined for all; however, the methods and types might not be clear enough as the terms. After all, both of them are discussed in ethical system, various religions, and national laws of states as well as international law. They have also found a way into such second order science as human rights and humanitarian law. The process and result of this discussion seems to be both effective in Philosophy of Ethics and the issues related to rape and abortion and open discussions on whether children are ethically allowed to sue their parents in different situation at various levels. Therefore, the primary question of the article is:

Is a child of rape born by mother's choice ethically allowed to  
complaint against the mother?

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1. Here I used the words "problems" and "troubles" to show that, in my view, all the issues dealt with and looked at in Philosophy of Ethics should not necessarily be considered as ethical problems, or it should not be imagined that ignoring them may lead to ethical troubles.

The issue of rape is obviously recognized and denounced in Islamic Ethics, Islamic Shari'a law and, therefore, in Islamic Penal Code of Iran as well. In fact, rape is so defined that one cannot avoid denouncing or punishing the action in any ethical, religious or legal system and mechanism. Further, it would be better to define the moral complaint to start the discussion with a common understanding of the terms.

Disputes have long been settled by various authorities. In primitive systems, not organized as today, most of these disputes were resolved by elder members of a tribe or clan; however, with the advent of new ways of living and urbanization, some independent and specialized institutions were formed based on new areas of science, including the written law, to be used as a forum for proceedings. Despite the development of such forums, the concept of complaint and the authority to resolve conflicts did not find a totally legal nature and some old concepts such as "complaint" still continue to be moral. Therefore, some cases are still decided by nonlegal-judicial institutions and they are not referred to the judicial authorities to be resolved based on written rules of law. Ethics (applied/normative) is still used to decide cases and issue verdicts and we have heard a lot in everyday life that it is morally such and such.

This is also true for the moral complaint which seeks to consider cases from moral perspective, not from mere legal or judicial view. In the meantime, we should not lose sight of the fact that even legal and judicial decisions are not separate from the sphere of ethics; however, the relationship between these two is generality and peculiarity in some respect. The major question here is the moral reference of the verdicts, i.e. which kind of morality can be used as the reference to resolve the conflicts and complaints? Here, we do not intend to address the specialized issues of Ethics and the related branches to answer the question, and just as a maxim, we consider the customary morality in various individual and social aspects as the leading principle. In fact, moral complaint in this case is filed based on general custom. Raising the issue of general custom and the related ethics may both help us advance our goals and yet cause confusion and obstacles; as custom is characterized by so much diversity and plurality that it might be impossible to arrive at one common decision. After all, the best authority in this case, the results of which may fulfill the objectives of this article, is the customary morality with philosophical foundations. Therefore, it seems that the process and outcome of this discussion can not only be used in Ethics and the issues

related to rape and abortion, it can also be the starting point for a topic in Ethics on the potential for children to file a moral complaint against their parents at different levels and circumstances. Moreover, as the process and outcome of the discussion promotes the level of child support, it conforms to issues in the field of Human Rights.

The idea also seems to be rich enough to lead to revisions in national and international legal systems, in favor of children, particularly in criminal respect. For example, we may conclude that abortion shall be made obligatory by law under special conditions! Or even compel the guilty of rape to do a particular task or plan particular child support from the very beginning of birth, which is the topic discussed in this article. Further, we can avoid subjecting such a baby (a child of rape in Islamic Jurisprudence terms) to religious precepts incurred upon a normal child. Therefore, our discussion may have much wider implications than what will be addressed here and it will obviously be impossible to discuss them all for reasonable limitations of this article; however, the author believes that under this particular condition, the child can morally complaint against the mother for his birth and failing to make an attempt to abort him. Studies are required to come to such a conclusion which will specifically be discussed in this article.

As the discussion progresses, you will find that Ethics, and Kantian system in recognizing the child's right to complaint against the mother in particular, is focused because of its association with international Human Rights system; as many fundamental concepts of this system are founded on Kant's moral philosophy. This might be the reason why many experts consider Human Rights as an interdisciplinary knowledge and follow its roots in philosophy, law, political science and social science. Thus, it can be claimed that Human Rights, as the most right-oriented system in the world, is rich enough to recognize this specific right of the child. However, as long as this right is not brought forth well enough in Ethics, it cannot be discussed under the current situation.

Therefore, the article begins by discussing the moral right and its relationship with the legal right; then it outlines the potential for a child to complaint against the mother from the perspective of Law and the Ethics and follows by looking at abortion and the related assumptions. Finally, the condition of children will be examined to draw conclusion.

## **Different types of right and the distinction between ethics and law**

Before discussion starts, three points need to be mentioned:

1. The term *haq* (right) literally means “good, goodness, correct, correctness, just, fair, portion, part, estate, property, ...”;<sup>1</sup> however, this terminology is used in right-oriented systems, such as international human rights system, meaning “Right to” possess something not the right to be.<sup>2</sup>

2. According to Hohfeld’s well-known classification, every right is related to one of the following areas:

“a) Claim-Right which entails a duty on some other parties;

b) Liberty/Privilege Right entails individual’s privilege to be free, from obligation;

c) Power-Right is a unique ability not possessed by others and it may influence one’s rights or duties, such as government’s right to give subsidies;

d) Immunity-right which implies that the right holder is protected against others’ actions” (Elsan, 2006: 33)

3. It must be noted that there are two types of moral rights: individual and social. Among these two rights, “only the latter can take the form of legislation and is accompanied by an external force.” (Fanaei et al, 2020: 25)

As this article aims to propose the idea of recognizing and ensuring the child’s right to make a complaint on the given issue, then it will be related to the area of “claim right”; since the research hypothesis is that the mother has to be accountable for her child’s claim on violation of his right. As this violation of the right will have consequences for the child and society, in the end, it can be claimed that this right is morally a social and not individual right.

The concept of right can be considered as one of the most important intersections of Law and Philosophy. “Among the legal concepts, “right” is perhaps the most important factor that creates affinity between Law and such other disciplines as Philosophy, politics and social science so that one can claim “Philosophy” has surpassed Law in analyzing this concept and seems to be richer.” (Elsan, 2006: 33)

“First and foremost classification of rights in Philosophy has been Moral and legal rights. Dividing the absolute right into moral and

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1. See: Farhang Moein, in the entry of “haq”.

2. See: Nabavian, 2008: 131.

legal right is based on the origin of the right. To explain more, right always results from law, i.e., whenever there is a right, there has existed a law before. In other words, right is always the product and outcome of the law, i.e., without law, there would be no right. Moral right is the product of moral law; this is the same as legal right which comes out of the established law.” (Talebi & Talebi, 2014: 8)

To define these two types of right, it can be stated that a “moral right” is the right that can be approved by moral rules, while a “legal right” is recognized in a legal system and ensured by law. Moral right hierarchically precedes the legal right and results from Ethics. “Ethics or moral philosophy is a branch of philosophy that argues about fundamental questions of Ethics. Ethics deal with defining what is right and wrong, distinguishes the good and evil, and recognizes the virtues.” (Gensler, 2008: 30)

Normative ethics is a branch of ethics that can be used for explaining some “rights” by taking advantage of moral rules; therefore, we can use rules of normative ethics to provide a justification for human rights. Kant is one of the greatest philosophers whose basic principles are used to provide a moral justification for many rights stipulated in International Human Rights System. Moreover, “most of the philosophers who theorized about philosophical foundations of human rights, attempted to justify these rights by resorting to Kant’s principles of moral philosophy and normative ethics relying on such concepts as “human dignity”, “autonomy”, “respect individuals” and some of his formulations of moral categorical imperative.” (Fanaei et al, 2020: 17)

One of the most important reasons for this foundationalism is that fundamental moral principles exist in human nature. Morality plays such an important role in the social life that “if a law, devoid of any moral color and tone, is made or if it is contrary to moral and spiritual values, it will never be accepted by people in society. Therefore, to make a law which is welcomed by people, a legislator has to base the law in morality.” (Nikkhah & Ali Asgari, 2020: 33)

Therefore, it can be concluded that, first, moral and legal rights are mainly related to each other. Second, legal rights may manifest some moral rights in the field of social relations. Third, moral justifications work well in attracting the public’s attention to laws. Fourth, moral-social rights can change into legal rights; but this is impossible for personal rights, even if justified, and they will remain personal. In other words, a moral right that becomes a legal right is just a social right, not personal right.

It is noteworthy that the relationship between moral and legal rights is “generality and peculiarity in some respect”; i.e., only some moral rights are legal and vice versa.

### **Rape and Abortion**

“Rape”, as intended in this article, refers to sexual intercourse without consent and against the will of a female person. Such an act usually harms the raped person and incurs a wide range of common and serious physical harms or killing the rape victim, as well as much physical and mental harm. Each of these cases may include particular punishments and restrictions depending on the related intensity or weakness of the harms incurred. We do not intend to look at the amount of punishment specified for this offence; but we aim to identify rape as an immoral indecent action, contrary to canonical principles, and against the current rules and international law.

This criminal behavior is classified as an important offence in all legal systems throughout the world. In this respect, mother of the given child will be the victim of rape herself. Describing the raped person as a “victim” implies that they are not guilty of committing the criminal act. This word carries a moral and legal supportive load and because of this same feature, such a person is viewed as a harmed person who needs support both from the perspective of the legal system as the representative of society and the moral system which has its roots in human nature.

However, abortion is a different issue. This difference can not only be found in various decisions made in different systems (moral, canonical, conventional, legal and international) regarding the issue and its consequences, the act is also of different types itself. In fact, abortion occurs under many different conditions and grounds based on which different conclusions are made and the treatment will also be different. The difference is so big that this act is sometimes considered as an act of murder in current laws, while it is sometimes formally permitted by law!

Therefore, we cannot provide the same one-sided and strong view here as we discussed about rape. Different conditions under which abortion occurs do not permit us to do so. Consider abortion under a normal condition where a couple willingly decides to have a child and therefore the wife bears a healthy fetus, to abortion under a condition where a young girl is raped and gets pregnant. You can see that the two cases are not comparable at all and between the two

extremes there might be tens of conditions for abortion that when examined, they would have very different moral, canonical and legal outcomes. This major difference can change our attitude toward the raped person (This article intends a woman who is raped and there is the possibility of pregnancy) - from a criminal to a harmed person who deserves attention and pity.

Suppose a divorced woman or a young girl or a married woman who is raped; or a married woman who gets pregnant to her husband and all ask for abortion; or gang rape versus individual rape of a woman; or even the case of a woman or girl who falls pregnant through intercourse outside the marriage while she was not willing. These are only a few possible cases of pregnancy where the mother may want or have to undergo the abortion. Paying attention to the wide gap in this broad sphere of abortion formed the topic of this article and that is the point which makes examining of the issue difficult. But in order to look at the issue in a short writing, the scope of abortion types was limited to study only those cases of abortion where a woman or girl, who has the potential for pregnancy, is raped and the act of rape leads to her definite pregnancy and the resulted fetus is healthy in terms of the physical conditions during pregnancy. To limit more the scope of the topic, I suppose that abortion is also possible under such condition.

### **Child of rape**

An important point to consider about this issue is mother's choice to prevent the child's birth. To clarify the subject of abortion in this article and use it in favor of the child's right to complain, we should consider a mother:

- a) whose fetus is produced by rape;
- b) the fetus poses no health threat for her;
- c) the fetus is in a healthy condition.

If such a woman wants to prevent the child's birth, the only choice will be abortion; i.e., in this case, mother has no other choice but destruction of the fetus. The mother will face two challenges here:

- First: Giving birth to a child of rape;
- Second: abortion of the child of rape and preventing his birth.

Another point that is particularly noteworthy is that contrary to the common practice followed in discussions about rape and abortion, the article does not

aim to discuss about the effects of rape on the rapist and the raped. Here the point is not to argue about what to do with the rapist, or under what conditions a woman is raped, or which one of her rights is violated. The article mainly deals with what happens after rape and instead of the commonly followed discussions about outcomes of rape as related to the rapist and the raped, it looks at the outcomes for the child of rape.

Earlier, we explained briefly about abortion and rape that leads to such birth; however, what is noteworthy is not the woman's condition, but the state of the child of rape when he/she grows up and becomes mature enough to realize what has actually happened. It is normally impossible for a toddler to understand the situation. However, when he grows up and particularly develops awareness of his identity and his attention is directed toward the story, the situation turns crucial. He may develop certain moral features such as grumpiness, aggression, hatred, etc. in his own or his mother's life. Here the main question of the article reveals itself. Suppose that a woman (merely one who has the possibility of pregnancy in terms of physical condition, whether a married woman, woman or a girl) is raped (any sort of sexual assault that leads to her pregnancy); if the woman keeps the fetus resulted from the rape in her womb and bears the child (voluntarily or out of compulsion) to bring him into the world, is it morally possible for the child that, upon his knowledge of the fact, make a complaint against the mother for failing to abort and bringing him into the world and morally accuse her of his birth (not of rape)? Providing a morally clear answer to the question is impossible as there is no established standard to do so. Moreover, the different cases provided in parenthesis will influence the conclusion we can finally draw. Therefore, these various cases, that form the main question of the article, are expanded and the moral outcome for each case is explored. Of course, in order to find the only possible case for filing a moral complaint more quickly in this article, the problem is not fully studied so that it can be explored later.

Particular conditions in this article imply conditions which have led to the child birth. Think of a child's right to complaint where the child has been born with AIDS or a child whose parents decided to bring him/her into the world while they knew he/she was seriously disabled. Is there enough investigation to show that parents might be morally responsible for bringing such a child into world, while this responsibility is quite different from other responsibilities commonly found in the area of child rearing, and does this situation entitles a child to sue against the parents?

### **Feasibility study of child's complaint against mother, from legal and moral perspective**

Complaining against mother in this case is not accepted in any national or international legal system. Therefore, relying on the legal right of the child in the given case of the article will be impossible. For example, opponents of this right in Iran may argue that based on the legislation process in Iran's Law, everything proposed in other areas of knowledge, in order to become the "right protected by Iranian Law", should meet the following requirements:

a) They should be approved by the Islamic Shi'a Jurisprudence as a jurisprudential proposition; and that must be based on the famous saying approximately in all cases; (e.g.: Anyone who wastes other people's property, he shall be responsible.) and even if it is not such a proposition, it shall not be opposite to the indisputable rules of Islamic jurisprudence, such as traffic rules.

b) The proposition shall be convertible to the personal or social right; i.e., the recognized right must basically meet the requirements for development of the right for an individual or society and duty for others, such as property right.

c) Besides the two requirements mentioned above, the proposition must finally be recognized as the "right" by legal or criminal law, approved in the legislation process, and announced formally at the end, such as right to marry and right to retaliate.

Concerning the subject of the article, none of the above stages has occurred. The most important and practical than all is a principle in Law called "The Principle of legality of crimes and punishments" which states that an act is not considered a crime and deserves no punishment unless it is announced by the legislator. As the subject of this article is not considered as crime in penal code of Iran (whether in canonical or discretionary laws), then it does not enjoy the necessary condition to come to criminal courts. Concerning the legal claim, since the raped mother is not the stronger cause, then she has no legal and canonical choice; therefore, the child's claim cannot be presented in criminal courts as claim for damages.

To accept this case as a right in Ethics (minimum view point), it requires analysis first; i.e., it must be measured by Ethics. If it resulted in such defensible justifications as "right to freedom", it can be recognized as a moral right. Further, it must be determined based on the rules of Ethics that whether it is a personal or social right. Answer to these two questions may prove that if the issue can be approved by the national and international legal systems (the maximum view) and become a legal right guaranteed by law.

### **Looking at the problem from the perspective of the child of rape**

Following this elaborate introduction, we should now distinguish different cases of rape-related birth to clearly determine our perspective to the issue and know that what specific case is being judged here. Imagine a woman, who is engaged in prostitution and has set it as her job, gets pregnant and this leads to a child birth. This case may not be described as rape since the woman has willingly entered a relationship. Quite apart from the fact that she fell pregnant willingly or carelessly, this deliberate relationship has led to pregnancy which must be studied to see whether it has occurred with or without free will. There would be one case if she falls pregnant without free will and this leads to a child birth, and yet it will be another if she falls pregnant willingly in this free relationship and it results in a child birth. What happened in these two cases was not rape. Although the moral right of the child can be examined here to see if he can file a moral complaint against his mother, it is not the point to be discussed here.

Now consider the case of a woman or girl who is raped without her own will and intention while she had sexual intercourse with a person but she did not expect it at that interval, however she did not know it impossible to have intercourse with some other party; then it happens suddenly for her and leads to pregnancy and a child birth. In the sight of the public, the woman or girl is partly at fault in this case. Of course, this act is sometimes not considered rape by the Islamic penal code. Without looking at this part of the sight of the public or some court verdicts and moral evaluation of the case and right of the raped woman or girl, this assumption is not the main idea of this article either.

Now let us consider the main assumption of the article. What is the rule in case of a girl or woman who is raped by some unknown person without consent and this leads to her pregnancy? Is abortion the only reasonable solution? What about the moral issue of homicide if we propose the obligatory abortion? It seems that the sight of the public as well as the legislator here permit abortion without any moral or legal consequence for the mother. Women are normally unlikely to carry the rapist's baby to term in these cases because of suffering mental harms caused by the act of rape. Therefore, both custom and law permits her to perform abortion contrary to all current laws on abortion and the related restrictions. Although the moral side of this abortion is not addressed in this article, it can be studied in future articles.

Suppose that such a fetus grows to a child and is born. There is still another classification here: did the mother have free will to bring the baby to the world or

not? In fact, if a girl or woman falls pregnant after rape and she is not permitted to perform an abortion for medical or any other reason, it seems that the mother has no fault in giving birth; though a problem arises that two human souls (mother and fetus) are confronted. To recognize a moral right for the child to complaint against the mother, it must be noted that under what conditions the woman fell pregnant; was she a girl and she would not be able to fall pregnant anymore because of abortion, or she was a married woman and her formal husband did not agree the abortion, or she was a divorced woman who might get rid of loneliness resulted from divorce by giving birth to the child, or she was a woman whose husband was unable to make her pregnant, and some other cases that need to be studied. This case will not be addressed in this article either.

On the other side of this classification is a woman who willingly keeps the fetus and brings the child of rape into the world for any reason that does not require exploration. This child grows up and develops the ability to distinguish things and then the question comes to his mind that who is his father? Here, the mother may lie to him and describe an imaginary father to conceal the fact, or she may retell part of the fact, or she may tell the whole story. In the first case, the question raised in this article will be removed; but in the second and third case, we may suppose that the child has no problem with the story, but what would be the case if the adolescent or the young child would protest?

The strict case is that the child will know the mother was raped unwillingly and had no fault, but she brought up the baby with her own consent. Ignoring this case, we can consider some ways out for the mother, all of which are associated with internal compulsion to give birth to the child. Internal compulsion lies against the external compulsion which refers to conditions outside the mother's control and may include lack of access to abortion services, strict laws set by some governments to prevent abortion, serious health problems for mother in case of abortion, social conditions, etc. If we consider the strict case, which is addressed in this article, the child's question is that why he was not aborted and brought into the world with no identity. Inability to provide a reasonable and clear answer to this question makes it possible to file a moral complaint against the mother.

From the perspective of a person born after rape, the sight of the public and laws on issues related to rape and abortion turn out to be unimportant and he is more concerned with the sight of the public and laws on such issues as mother's compulsion to perform abortion and this question comes to his mind that shouldn't custom, ethics, and law obligate the woman to perform abortion

in such cases? Our discussion here is actually about the problems arising out of a rape-related pregnancy and birth. The person born after rape is examining his mother's ability and will for miscarriage and finds it problematic that his father is unknown and rapist and he is merely the product of a natural process and a sexual intercourse. Do mental harms and pains, paternal uncertainty, getting humiliated by people around, personality disorders, and many other problems when faced with such an issue give him the right to file a complaint against his mother? The point about moral complaint against the mother originates from the idea that mothers fail to understand such issues from the perspective of children at the time of pregnancy and giving birth, and they will impose an eternal pain on children by their birth.

In fact, to imagine and perceive the mental pains from the perspective of children of rape is difficult for other people. Thus, it seems that mothers, knowing about these problems, should avoid to continue their pregnancy and do not bring such children into the world; otherwise, can they remain responsible for their act and be accountable to all the pains and social conditions that those children may experience in their life? It is obviously impossible. Therefore, it appears that the mother is not morally permitted to do so and if she did, the child can morally file a complaint against the mother; because according to moral rules and custom, harming others and making them suffer is blameworthy and undesirable and, according to social ethics, people are prohibited to do anything which may cause harm or suffering to others. This principle is found not only in ethics, but also in religious texts and even national laws of many countries.

I actually argue that if such a birth causes mental harm and suffering for the child of rape, it shall be included in this category and suffering him is regarded as blameworthy based on moral rules and one who causes such suffering shall be condemned. The element of suffering and pain here is the voluntary birth of the child decided by mother; thus the child's mother can be called the element of suffering and pain which makes her morally blameworthy. In this given case, as inferred from its premises, the idea and claim made by the article becomes reliable and arguable; i.e., if we can subject an act and the actor to moral blame, then we can give right to the oppressed to set up a claim of injustice to himself and file a complaint, even a moral complaint, about the act.

In fact, if a child of rape complain about his birth and living condition and he has suffered some pains and harms in this respect, then he must be given the right to file a moral complaint against his mother.

## **Conclusion**

If a person born of rape reaches the age of discretion and is not satisfied with his condition and protests against it, i.e., he is too mentally harmed to accept his condition, he will have the moral right to complaint against his mother because the mother has disregarded the potential consequences and turned a compulsory pregnancy to some voluntary birth; thus, she is morally condemned. Of course, such a complaint may be legally pursued, but it can help people beware morally of their actions and decisions that may harm others.

There are laws in a wide range of legal systems such as Roman-German law, Common Law and religious systems (such as Islam), particularly the International Human Rights System, relying on each of which can prove a mother's responsibility to her child of rape. For example, the doctrine of Abuse of Rights, based on which no one is allowed to harm another for the sake of protecting his own right, can be a strong base for the child's right to complaint against the mother. This doctrine is so important that Article 29 (2) of the Universal Declaration of Human Rights (1948) stipulates that,

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others...”.

Therefore, where the right of mother (to pregnancy) contravenes the right of child (to not being born of rape), the child's right cannot be simply ignored in favor of the mother.

I believe that by looking through justice-based moral and legal systems, we can find some rules that all support the child's right to complaint intended by this article. I will briefly address only two of these rules expressed differently in these systems:

### **1. Golden Rule and Silver Rule**

In moral and legal systems which are directly based on Shari'a Law, mother can be made responsible for her child in the given case of the article using the Golden and Silver Rules. The Golden Rule which is the axiomatic rule of Ethics has two positive and negative aspects. The positive aspect holds that, “Treat others as you would like others to treat you.” The negative aspect, known as the Silver Rule, states a moral axiom that, “Do not treat others in ways that you would not like to be treated.”

Of course this rule is approved and emphasized by religions, but it is called nonreligious because it does not originate from religion, but from man's moral understanding; though it is markedly be found in the words of prophets and religious leaders.

After all, based on this rule, the raped mother should evaluate her act of bringing the child of rape into the world with this principle. Applying this rule, will eventually lead to mother's responsibility for the child. Because, as the mother does not like to be treated this way, thus she herself cannot treat in a way and provide a condition that her child is harmed by her behavior. But she has actually treated that way and her child has been harmed and the child has reasonably the right to complaint against her.

## **2. Principle of no harm or reciprocating harm**

It is one of the important principles emphasized in some Abrahamic religions which reflect how important it is to respect others' rights. In these religions, two propositions of "preventing harm to other individuals" and "responsibility of the person at fault" are among the indisputable moral, jurisprudential and legal principles. "No harm" principle, particularly in Islamic religious law, is focused by all sects of these Abrahamic religions and it is considered as a main principle in Islamic legislation and understanding. The principle that "There should be neither harming nor reciprocating harm," is the most well-known rule cited in most chapters of Islamic Jurisprudence. Looking into the use of the words "harm" and "reciprocating harm" in Islamic Jurisprudence references reveals that "harm" includes all injuries inflicted on others, but "dhirar" (reciprocating harm) only refers to the cases that a person uses a right or a canonical permission to harm others which is so called today as "misusing the right". "No harm" means that harming others is not permitted in Islam, and this lack of permission applies for both stages of legislation and law enforcement.<sup>1</sup> This rule is fully supported by Ethics. Based on this rule, it can be claimed that in religious-oriented moral systems, if we take a deeper look at such rules as No harm and necessity of compensating for the harm, we can make the mother with free will to bring the child of rape into the world responsible for the child, the outcome of which is the right of the child to plead for justice.

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1. <https://www.islamquest.net/fa/archive/question/fa52520>

### Bibliography

- Elsan, Mustafa (2005). “Theory of Right – Duty”, *The Journal of Human Rights*, Vol. 1, Issue 1, pp. 33-52.
- Fanaei, A., Hosseini, S., Hasankhani Taskoh, S. (2020). “The possibility of Moral Rights”, *The Journal of Human Rights*, Vol. 15, Issue 1, pp. 15-40.
- Moein, Mohammad (No Date). *Farhang-e Moein*, Tehran: Amir Kabir Press.
- Nabavian, S.M (2008). “An Inquiry into The Varieties of Right”, *Marifat-I Falsafi*, Vol. 5, No. 4, pp. 12-164.
- Nikkhah, Reza and Ebrahim AliAsgari (2015). “Hidden Role of Morality in Law”, *Bioethics Journal*, Vol. 5, No. 15, pp. 11-39.
- Talebi, Mohammad Hosein and Ali Talebi (2014). “Types of Rights in the Philosophy of Right”, *Journal of Philosophical Theological Research*, Vol. 16, Issue 1, pp. 7-32.
- “What is the Meaning of *La-Zarar va La-Zerar*?”  
<https://www.islamquest.net/fa/archive/question/fa52520>.

