



A Comparative Study of the Right to Educational Justice Based on Shia Jurisprudence in Iran and International Law Documents

Alireza Darzi Bourkhani¹

Ali Babaei Mehr²(Corresponding author)

Reza Nasiri Larimi³

ARTICLE INFO	ABSTRACT
<p>Received: 10 June 2023 Revised: 10 September 2023 Accepted: 17 October 2023 Online: 031 May 2024</p>	<p>Although the right to educational justice is a type of "human right", there is no single interpretation to achieve it in various social contexts. In this comparative research, using qualitative content analysis, we try to show that current laws in Iran have similarities and fundamental differences with international laws in interpreting the right to educational justice. The findings of the research revealed that there is less similarity between Iran's upstream documents and international law documents regarding the right to educational justice. This similarity exists in the two components of compulsory and free education. In the six components of the origin of laws, meaning of educational justice, age of puberty, permission to establish educational institutions, teaching the mother tongue and right to choose education for the child, Iran's legal system provides a different interpretation than what is accepted in international level. It seems that Iran's upstream documents did not pay more attention to the right to educational justice in an all-round way, and it is necessary to revise it by the legislator according to the requirements of the times and to take advantage of the principle of <i>ijtihad</i> in Shia jurisprudence.</p>
<p>KEYWORDS</p> <p>Educational Justice Legal Interpretations International Documents Shia Jurisprudence</p>	

¹ PhD Student, Department of Public Law, Sari Branch, Sari Islamic Azad University, Sari, Iran, Email: alirezadarzi40@gmail.com

² Assistant Professor, Department of Public Law, Chalous Branch, Islamic Azad University, Chalous, Iran, Email: alibabaeemehr2020@gmail.com

³ Assistant Professor, Department of Public Law, Sari Branch, Sari Islamic Azad University, Sari, Iran, Email: nasirilarimi1@gmail.com

1. Introduction

The right to educational justice itself involves two controversial theoretical traditions that have moved in two separate and even conflicting directions in terms of historical genealogy which are the tradition of "right" and tradition of "justice". The theorists in favor of the tradition of right often consider it separately from the theory of social justice due to the defense of freedom - as a value - as well as the acceptance of the principle of human dignity. They believe that the realization of social justice provides the ground for the intervention of public institutions - including the State - which, in addition to creating platforms for rent and corruption, also limits the scope of individual rights and freedoms (West, 2003; Ayers, Quinn & Stovall, 2008). On the other hand, the supporters of the tradition of justice believe that the focus on individual freedom in practice has turned humans into profit-seeking creatures who only seek to increase profits and reduce their own pain and suffering. They also ignore issues that can threaten humanity (Robeyns, 2017). Therefore, the thinkers of this tradition believe that there should always be public institutions that limit the self-destructive nature of unbridled and speculative individual freedoms for the sake of justice.

Despite this theoretical tradition that can be expressed in relation to the relationship between "right" and "justice" historically, it can be said that education is considered a human right and a necessary tool for the realization of other fundamental human rights (UNESCO & UNICEF, 2007). In such a way that people who are economically and socially marginalized can be empowered and reach an acceptable level of social dignity through having the right to education. The right to education can become a tool against widespread gender, ethnic, linguistic, religious and economic discrimination by empowering women, ethnic, linguistic, religious minorities, and deprived classes of society (UNESCO, 2023). Based on the importance and position that the right to educational justice - as a fundamental human right - has acquired in the Universal Declaration of Human Rights, the International Covenant on Economic, Social & Cultural Rights and the Convention on the Rights of Child have been explicitly emphasized. In the light of this theoretical introduction, it can be said that the right to educational justice is the possibility or privilege by which people can enjoy the desired and appropriate education equally without discrimination (Gorji Azandriani, 2016).

On the one hand, choosing the desired education confirms the dominance that the actors in this field have - teachers, parents and learners-, and on the other hand, it confirms their freedom in drawing their own educational future. Of course, in the issue of the right to educational justice, it should be added that the compulsion of education is not compatible with its right, although developmental goals and need to create national cohesion can justify this compulsion (Tomaševski,

2001). Educational justice and equality is one of the important pillars and elements of the right to education, which together with other elements - such as educational freedom, independence and plurality - form the pillars of the right to education. Despite the fact that at first glance it seems that human rights are obvious rights for everyone, but the different interpretations of legal systems have prevented the full implementation of these rights in terms of diversity in gender, race, language, religion and ethnicity.

In Iran, the victory of the Islamic Revolution in the late 1970s caused the change of the royal political system to the Islamic Republic - along with the ideological dominance of *Shia Imami* jurisprudence. This change had a major impact on the legal system in particular and changed all the rules and regulations of life accordingly. After the establishment and relative stability of the Islamic Republic of Iran - and especially during these last two decades - Iranian jurists realized that in some areas there is a difference of opinion between the principles of Shia jurisprudence and international law documents accepted by the majority of world governments. For example, Mazhari, Mousavi & Rawai (2022) believe that there is conformity and harmony between Iran's laws and international documents in most cases, except in the fields where Islam has its own laws. Derikvand (2022) received the Constitution of the Islamic Republic - inspired by the Islam and aligned with the Universal Declaration of Human Rights and international covenants - recognized the right to education as a social-citizenship right for the Iranian nation. Sadeghi Ram, Movazni & Pourrashid (2021) believed that although the universality and freedom of education is supported in the Iran constitution, this support is not comprehensive and efficient and in many cases it is in conflict with the international documents. Davoudi & Abuzari (2021) by examining the educational policies and citizenship rights of children in Iran have come to the conclusion that the neoliberal response to the shortcomings of general education is completely in conflict with the philosophy of the political system and has caused discrimination in access to appropriate educational quality. Yadalahi, Zarei & Yavari (2018a) with a comparative analysis of the approach of the UNESCO2030 document and the document of the "Fundamental Reform Document of Education of Iran" on the topic of "gender educational justice" found that the UNESCO2030 document believes in equality and the Iranian document believes in justice in education. Also, the authors found that Iran's legal system - influenced by the principles of Shia jurisprudence - does not recognize educational justice for all religious minorities equally (Yadalahi, Zarei and Yavari, 2018b). According to Rahai & Zaraq Marandi (2016), the purpose of the right to mother tongue is to create conditions for linguistic minorities to use their mother language instead of using the language of the majority, while in Iran this actually do not happens to many bilingual children in schools. Asadinejad, Rostami Chalkadi &

Moradi (2014) by comparing the right to education of children in Iran's laws and human rights documents found that punishment of children by parents is implicitly accepted in Iranian system. Pourabdullah; Hosseini & Sayar (2012) also confirm that in Iran's laws, in cases of possible conflict between the right of parents to raise a child and the right of a child to freedom of opinion and expression, priority should be given to the latter.

2. Research Method

The present research method is comparative using qualitative content analysis. This approach allows researchers to interpret the authenticity and truth of data subjectively but with a scientific method (Berge, 2001). Also, in terms of approach, the current research is a Summative Content Analysis type. In this type of analysis, the focus is on discovering the basic meanings of the word and its themes (Iman and Noshadi, 2010). The method of collecting data was documentary finding primary and secondary sources using the Boolean method and by searching keywords such as Imami jurisprudence, Shia jurisprudence, international documents, the right to education, human rights, and Islamic law in Iranian and international information databases. The method of analyzing the data and also presenting the results, the four-stage comparative method of Bereday includes description, interpretation, juxtaposition and comparison.

3. Findings

A) Description

1. International documents

The right to education is a social right and a guarantor of the spiritual life of a human being, which in addition to providing the privilege of reading and writing, provides the basis for awareness, empowerment and enjoyment of other human rights - such as freedom, employment, security, and peace. The most basic source for the recognition of the right to education is the Universal Declaration of Human Rights and the Covenant on Economic, Social & Cultural Rights. In addition, the documents approved by UNESCO are among the international sources of the right to education. In any case, based on the analysis of the content of international documents, the right to education has principles that are an integral part of it. These principles include universality, non-discrimination, freedom of education, compulsory education at the primary level, and gradualism & quality of education (Morgan, 2012).

The right to education is mentioned in many human rights documents, such as articles 26 and 27 of the Universal Declaration of Human Rights, the fourth paragraph of article 18 of the International Covenant on Civil & Political Rights, articles 13 and 14 of the International Covenant on Economic, Social & Cultural Rights, articles 29 and 28 of Convention on the Rights of the Child approved in 1989, Article 2 of the First Additional Protocol to the European Convention on the Declaration of Human Rights, Article 14 of the Charter of Fundamental Rights of the European Union, Articles 12 and 11 of the Declaration of Human Rights in Islam and the Convention against Discrimination in Education. From the set of mentioned documents, the existence of several principles can be deduced in order to guarantee the right and freedom of education: Compulsory, being free, freedom to establish educational institutions and right of parents to educate their children within the framework of their religious and moral beliefs (Mazhari, Mousavi & Ravai, 2022).

- *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights is an international treaty that was adopted by the United Nations General Assembly in 1948. The provisions of this declaration have specified the civil, cultural, economic, political, and social rights that all human beings in any country should enjoy. The International Charter of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social & Cultural Rights and the International Covenant on Civil & Political Rights and its two selected protocols (UN, 2003). In 1966, the General Assembly approved the two mentioned covenants. In 1976, when the International Bill of Human Rights was ratified by a sufficient number of nations, it became international law. Therefore, according to many researchers, the provisions of this declaration are binding and have international validity. Among the three articles of the Universal Declaration of Human Rights, Article 26 is dedicated to the right to education in the form of 3 specific clauses.

Article 26:

a) Everyone has the right to use education. Education should be free, at least in the level of primary and basic education. Technical and professional education should be possible for everyone. Access to higher education should be possible for everyone based on merit. Paragraph; b) The goal of education should be the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. Education should facilitate good understanding, tolerance and friendship between all nations and groups of any race or any religion, as well as the expansion of the activities of the United Nations to maintain peace ;

and c) Parents have priority to determine the type of education of their child (UN, 2015a: Article 26).

- *International Covenant on Economic, Social & Cultural Rights*

The International Covenant on Economic, Social & Cultural Rights is another important international document that emphasizes the right to educational justice and 171 countries are members of it. This covenant came into effect in 1976 with the provision of Article 27. Among the 31 articles of this covenant, articles 13 and 14 are especially dedicated to the issue of the right to educational justice (UN, 1976). According to Article 13, member countries of this covenant recognize everyone's right to education. The aforementioned countries agree that the goal of education should be the full realization of the human personality and its sense of dignity and strengthening the respect for human rights and fundamental freedoms. Also, the member countries acknowledge that in order to uphold this right, primary education should be made available to the public free of charge. Secondary education in its various forms - including technical & professional education - should be generalized and higher education should be made available to the public in all appropriate ways, equally and based on talent.

- *Convention on the Rights of the Child*

This convention is another international legal document that emphasizes the right to educational justice. In this document, a committee has been established to examine the status of countries in the field of children's rights (UN, 1990). In this convention, in addition to rights such as the prohibition of discrimination, right to survival, life and growth of the child, right to freedom of thought and opinion, and right to health, the right to education has been emphasized in detail. The text of this convention - regardless of the additional protocols - has 54 articles, which explicitly and directly emphasize educational freedom and justice for children in articles 28 and 29 and implicitly and indirectly in articles 30 and 32 (Verheyde, 2005). For example:

"Article 28-1. The countries that are parties to the convention recognize the right of the child to education and to gradually achieve this right and based on the creation of equal opportunities, they will take the following measures: a) Compulsory and free primary education for everyone; b) Encouraging the development of various forms of secondary education, including vocational education, and making such education available to all children and taking necessary measures such as providing financial aid if necessary; c) Making higher education available to everyone based on their abilities and in any appropriate way; d) making educational and professional information and guidance available to all children; and e) adopting measures to

encourage regular attendance of children in schools and reducing their absence from school (UN, 1990).

- *UNESCO 2030 document*

In 2015, the heads of state at the United Nations General Assembly approved the 2030 Agenda for Sustainable Development. This agenda includes 17 main goals and 169 sub-goals that drew the roadmap of the international community in the field of sustainable development for the next fifteen years (UN, 2015b). The declaration and action plan based on Goal 4, which is "Quality education is accessible and equal for all and learning opportunities are provided for all throughout life", was formed under the leadership of UNESCO under the title "Education 2030 Document". Although this document has not provided a precise definition of educational justice, it has made achieving it one of its most important goals. One of the most important areas that the 2030 document considers for the realization of educational justice is achieving gender justice (UN, 2016). From the analysis of the text of the document, it can be seen that its compilers mean by justice, the gender equality of all people - men and women - for full access to educational opportunities.

2. Iran

The right to educational justice is explicitly and implicitly considered in the Constitution of the Islamic Republic of Iran and other legal documents. The sixth paragraph of the second principle of the constitution refers to the category of dignity and freedom combined with the responsibility of man before God, and in the third principle, it foresees the necessary means to ensure and guarantee the realization of freedoms. According to the third principle, the government is obliged to provide free education and physical training for all people and at all educational levels. It is also stated in Principles 12 and 13 that the formal religion of Iran is Islam and Jafari's Twelver branch, and Iranian Zoroastrians, Jewish and Christians are the only religious minorities who have the right to education (Sadeghi Ram, Movazani & Pourrashid, 2021). In the constitution, the observance of the right to education for linguistic and ethnic minorities is also explicitly mentioned (Principles 15 and 16). Also, the "Fundamental Reform Document of Education" - as the most important upstream document in the field of education - refers to the elimination of educational discrimination by ignoring the influence of cultural, family, gender, ethnic and linguistic factors. However, both the words justice and equality are used in this document (Supreme Council of Cultural Revolution, 2018). The Comprehensive Program Document for the Development of Women and Family Affairs, which was prepared and adjusted according to the Fifth Development Plan of Iran, spoke about the

difference between justice and equality. In this document, the family and the role of wives and mothers of women are also emphasized (Ministry of Culture & Islamic Guidance, 2019). Also, in the Charter of Rights and Responsibilities of Iranian Women approved in 2004 by the Supreme Council of Cultural Revolution - which was also approved by the Islamic Parliament of Iran in 2006 -, gender justice instead of gender equality is emphasized.

B) Interpretation

The government of the Islamic Republic of Iran in the field of human rights is subject to the principles of *Shia Imamia Jurisprudence*. For this reason, in various aspects of life - such as work, marriage, inheritance, retribution, custody, religion and education - it is not necessarily subject to international laws (Shafii Sarvestani, 2015). For example, Article 13 of the Constitution of the Islamic Republic recognizes only three religions of Christianity, Judaism, and Zoroastrianism, as the formal religions of the country, and considers its legal responsibility to provide equal educational opportunities for the followers of these religions; while Iran has citizens who do not follow these religions (Sha'bani, 1999). In other words, although the constitution of the Islamic Republic of Iran and other upstream documents emphasize the equality of all citizens, the interpretation of the word equality - like other legal words - is placed in the circle of religious perceptions (Lotfi and Dehghanian, 2018). Naturally, these interpretations appear more in the field of education and have a great impact on people's future career and life. On the other hand, the emphasis of international documents on the lack of contradiction between the rights of different religious, racial, and linguistic groups with the national rights of each country, justifies the existence of some inequalities in a country like Iran (Yadalahe, Zarei & Yavari, 2018a).

C) Juxtaposition

The analysis of international documents shows that the right to educational justice is clearly recognized by international assemblies. Monopolizing the right to education and depriving some people of this right violates the principle of universality of education, which is emphasized in all international law documents. In line with the principle of the right to justice in education, it can be said that the use of the word "everyone" in Article 26 of the Universal Declaration of Human Rights and Article 13 of the Charter of Economic, Social & Cultural Rights means universal and at the same time fair acceptance of this right for everybody regardless of gender, religion, culture and so on. In fact, this principle is a prerequisite for equality and elimination of discrimination in education. Another point that can be inferred from the data analysis is that although there is no conceptual

distinction between the two words of “justice” and “equality” in international documents but according to Article 26 of the Universal Declaration of Human Rights, acceptance of principle of equality in the right to education is subordinate to the principle of justice because each person benefits from this right according to her/his talent and capabilities. Also, in Article 1 of the Convention against Discrimination in Education and Clause C of Article 2 of the International Convention on the Prevention and Punishment of the Crime of Apartheid, discrimination in any specific way, exclusion and preference based on color, race, language, gender or religion with the aim of destroying equality (UNESCO, 2006). However, the Universal Declaration of Human Rights considers parents as having the right to choose the type of education for their children. In addition, the International Covenant on Economic, Social & Cultural Rights also in its article 28 and under paragraph 1 of part A, emphasis on compulsory and free primary education for all. Although the implementation of the articles contained in the international covenants by the countries that joined these conventions and signed them is mandatory in their domestic laws; however, political, cultural and religious considerations in countries have caused some of these articles to either not be recognized or to be implemented with modifications. Therefore, in the national legal documents of the countries, the articles and provisions of the international law documents are implemented with various interpretations and sometimes from different aspects (Ammann, 2020).

The analysis of Iran's legal documents shows that the educational system requires compulsory, free access, and the right to educational justice - regardless of racial, ethnic, linguistic, cultural and economic differences. However, in the following areas, Iran's legal system has a sometimes different interpretation of what is stated in international documents regarding the right to educational justice and children's education methods:

- The legal age of puberty for girls and boys does not necessarily comply with international laws, which can sometimes violate individual rights in social relations.
- The fact that education is free does not necessarily mean that parents do not receive money for their children's education.
- In teaching language to children, teaching Persian as the formal and national language of the country has priority over teaching mother tongue languages.
- Cultural, religious, geographical and social considerations of each region should be considered in teaching children.
- For the right to education, gender justice should be considered, not gender equality.
- The Islamic government does not necessarily have a commitment to achieve educational equality for the followers of all religions except the four formal religions of the country.
- In teaching language to children, the teaching of the formal language, Farsi, to bilingual children has a higher priority for the Islamic State because of its role in creating national unity, although the government tried to teach other ethnic and local languages in schools.

- In the process of raising a child, two factors, the implementation of Islamic laws and the right of parental custody are preferred over other matters.

D) Comparison

The analysis of international documents shows that gender equality in all areas of life, including education, can be considered as one of their common goals. Based on this, the common consensus among international institutions - such as the United Nations, UNESCO and UNICEF - regarding ensuring quality, equal and inclusive education and promoting lifelong learning opportunities for all; and there is also the achievement of gender equality and the empowerment of all women and girls. The interpretation of international documents and especially the UNESCO2030 document of the concepts of justice and educational equality and gender equality means that these documents demand the equality of all human beings - regardless of their gender - in the teaching/learning process. Therefore, international documents - contrary to documents such as Fundamental Reform Document of Education - emphasize the equality of all girls and boys in the content of textbooks, extracurricular activities and the choice of academic fields .

From this point of view, the concept of justice is equal to absolute equality and does not accept different interpretations of these words. In this regard, for example, UNESCO insists on eliminating various interpretations of the concept of equality. In paragraph 20 of the "Framework for Action " document, it is clearly mentioned that in order to ensure gender equality, educational systems must explicitly take steps to eliminate gender prejudices and discriminations - resulting from cultural / social beliefs & practices and economic conditions - (UNESCO , 2015). This recommendation shows that the drafters of international documents on the right to educational justice do not believe in the physical differences between men and women in achieving various aspects of education. At the opposite point of this view, paragraph 16 of the value statement of the Fundamental Reform Document of Education mentions the keyword "educational justice" instead of "educational equality". Based on this, educational justice in quantitative aspects is universal and mandatory and from qualitative aspect - taking into account individual, gender, cultural and geographical differences - is one of the value propositions of the country's formal education (Supreme Council of Cultural Revolution, 2018).

In other words, the authors of the Fundamental Reform Document of Education believe in the quantitative equality of education for girls and boys, but they do not accept their qualitative equality in education (Farkhinia; Rasouli & Salimi, 2022). Negation of gender stereotypes is also common in all international documents of justice on the right to education. According to the High Commission of Human Rights (2014), gender stereotypes prevent women and men from realizing

their abilities, fulfilling their desires and aspirations, doing specialized work, and choosing a desired lifestyle. On the contrary, the upstream documents of Iran's educational system insist on the distinction between men and women. For example, the Fundamental Reform Document of Education mainly - relying on the principles governing Shia Imamia jurisprudence - emphasizes the distinguishing characteristics of women from men, and the authors of this document think that paying attention to the individual differences between female and male students coincidentally means observing justice because educational programs are considered appropriate to the needs and roles of each gender (Raouf Malayeri, Beheshti. Eskandari & Abbaspour, 2018; Farkhinia; Rasouli & Salimi, 2022). In this situation, it is obvious that the main difference between the two document producers comes back to their different interpretation of gender stereotypes.

Table 1: Comparison of similar and different components in international and Iran’s documents regarding the right to educational justice

Component	International documents	Iranian documents	Similarities	Differences
Origin of laws	Human	God	*	✓
Meaning of educational equality	Educational Justice	Educational equality	*	✓
Mandatory education	Accept	Accept	*	*
Free education	Accept	Accept	*	*
Freedom to establish educational institutions	Accept	Accept	*	✓
Right of parents to educate their children	Accept	Accept	*	*
Legal age of puberty	Same for both sex	Different for both sex	*	✓
Teaching mother tongue	Accept	conditional	*	✓

The data in the table shows that there are similarities between international documents and Iranian documents in two components and differences in six dimensions. The first similarity reveals that the education of children has become a mandatory right so that governments, parents and society have to provide equal opportunities to access education for all. The second similarity confirms the common emphasis of the authors of the documents regarding the provision of educational opportunities for free and free from economic pressures and poverty. The first important difference between the two groups of selected documents points to that Iran’s documents considers human rights to be of divine origin, including the right to educational justice.

The second difference is a different interpretation of the word “equality” in such a way that Iran’s documents do not necessarily consider people equal and believe that justice is more important than equality. The third difference refers to the right to freedom to establish educational institutions in a way that Iran’s documents allow the establishment of schools, universities and other educational centers only for the followers of four religions. The fourth difference refers to the point that the legal age of puberty in Iran for girls starts at the age of 9 and for boys at the age of 15, while higher ages are considered in international documents. Early onset of puberty can have negative effects on access to the right to education - through events such as early marriage of girls or early entry of boys into the labor market and dropping out of school. Iran's legal system has also not specified the right of parents to choose the appropriate education for their children in a clear and precise manner, while the centralized educational system of this country has not left much chance for parents' involvement in the education process. The last difference points to the fact that in Iran’s documents, the education of native and local languages has not necessarily become a right for all children or an obligation for the government.

4. Conclusion

The legal foundation of the right to educational justice was examined in this article. These foundations, which are emphasized in international conventions and covenants, are reflected in the national laws of countries - influenced by political, religious, economic and social/cultural factors - in different ways. In the meantime, education is considered both a human right and a necessary tool for the realization of other fundamental human rights. The importance and position that the right to educational justice has acquired - as a fundamental human right - has caused it to be legally accepted as an inalienable right in the Universal Declaration of Human Rights and other international and national documents. This research showed that the similarities between Iran's upstream documents and the international documents of the right to educational justice are less than the differences. This issue usually does not show a good image of Iran's legal system and makes it necessary to amend the laws based on the understanding of contemporary developments. Iran's legal system can support the right of justice to education in several ways and refrain from violating the laws contained in international documents. One of the measures can be withdrawing from international treaties and becoming a member of organizations such as UNESCO. This solution is simply erasing the problem instead of solving it and involves accepting more negative consequences on the world stage. The second solution is to change Iran's laws and adapt religious rules to the requirements and developments of the third millennium. Accepting this solution is

easier for those involved in Iran's legal system because Shia jurisprudence believes in the principle of *ijtihad* and can better realize the right to educational justice through it.

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