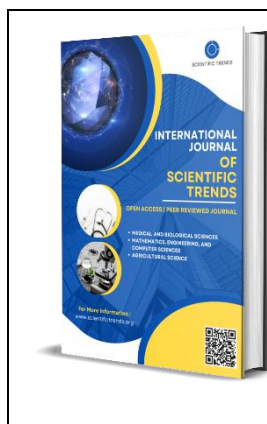


# The Interconnection and Distinctive Features of Goals and Mechanisms for Achieving the Human Rights of Specific Categories in Legal Norms

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## Abstract

**For the first time, Article 54 of our Constitution establishes that ensuring human rights and freedoms is the supreme goal of the state. In this direction, our country is actively harmonizing its national legal framework with universally recognized norms of international law. Ensuring human rights and serving humanity as a whole constitutes the core mission of the United Nations and its bodies.**

## Keywords:

## Introduction

At the same time, Article 21 of the Constitution stipulates that in exercising their rights and freedoms, individuals must not violate the rights, freedoms, and lawful interests of other persons, society, and the state. In other words, the human rights of one category should not restrict the human rights or prejudice the lawful interests of another category of individuals. After all, according to our basic Law, all citizens in the Republic of Uzbekistan possess equal rights and freedoms and are equal before the law, regardless of sex, race, nationality, language, religion, beliefs, social origin, or social status.

In this sense, first and foremost, within the framework of the state's legislative activity, it is imperative that expressing the interests of one category of individuals to ensure human rights and freedoms does not prejudice the lawful interests of another category. For instance, although many preferential norms established to protect the rights of women and children—who are considered relatively vulnerable categories of humanity—might at first glance appear to deviate from the principles of equality (specifically, equality between men and women), they are fundamentally necessary from the perspective of justice. Indeed, since the laws of nature (or the laws of the Creator) entrust women with unique burdens not shared by men, such as carrying a fetus, giving birth, breastfeeding, and nurturing an infant, providing them with benefits associated with these duties is a matter of inherent justice. Similarly, the fact that the physical capacities of young children are not equal to those of adults justifies the provision of various social benefits to children from a fairness standpoint.

Nevertheless, the burden of privileges aimed at protecting the rights of women and children, as relatively vulnerable categories, must be distributed equitably. Specifically, it is crucial for the state to reflect the interests of diverse subjects when imposing obligations on citizens and all entities in general. One of the most fundamental obligations is the payment of taxes and mandatory fees by entities under state jurisdiction. Naturally, the fair establishment of taxes and mandatory fees by the state for all subjects enhances their overall efficiency. Article 63 of our Constitution states that taxes and fees must be fair and must not impede citizens from exercising their constitutional rights. Furthermore, pursuant to Article 65 of our Constitution, the equality and legal protection of all forms of ownership are guaranteed in the Republic of Uzbekistan.

Let us attempt to interpret the concepts of "fairness of taxes and fees," "equality of all forms of ownership," and "non-impediment to citizens" from the aforementioned constitutional articles in a broader sense, deriving meaning from logical reasoning and the concepts of equality and justice defined in international treaties. We shall substitute the phrase "taxes and fees" with their overarching combining term, "economic obligations," and replace the words "all forms of ownership" and "citizens" with the generalizing term "subjects". Consequently, from a logical standpoint, we can expand the aforementioned articles into the following formulation : it can be concluded that economic obligations must be fair and equitably distributed among all subjects.

However, according to our observations, in ensuring the rights of certain socially vulnerable segments of the population, additional economic obligations are being imposed on specific categories of subjects, distinct from others. Although these norms were adopted with positive intentions, the economic obligations for ensuring the rights of socially vulnerable groups are not distributed equally among all; instead, instances exist where they are directly imposed on the subjects who enter into relations with these vulnerable groups. For example, in the sphere of labor relations, the burden of fulfilling certain privileges for women and children is directly placed on the employers who engage in labor relations with them. This, in turn, drives the burdened subjects—employers—to attempt, under various pretexts, to avoid entering into labor relations with women and children. Consequently, the norms intended to secure the labor rights of socially vulnerable groups (women and children) generate a counter-productive effect, ultimately leading to the violation of their labor rights.

Specifically, according to Article 394 of the Labor Code, the production or service quotas for pregnant women are reduced in accordance with a medical report, while maintaining their average monthly wage from their previous work, or they are transferred to lighter work or work free from the influence of adverse production factors. Furthermore, pursuant to Article 407 of the said Code, one of the parents (or guardians) of a child under the age of two is granted additional breaks for child feeding, separate from the standard rest and meal breaks. These breaks must be granted at least every three hours, with each break lasting no less than thirty minutes. In cases where there are two or more children under the age of two, the duration of the break is set to at least one hour. Breaks for child feeding are included in working hours and are compensated at the average wage rate.

While the objectives behind the privileges in these articles are positive, certain elements and mechanisms infringe upon the rights and interests of other categories. Specifically, it is not the reduction of production and service quotas or the granting of child-feeding breaks per se in Articles 394 and 407 that impacts employers, but rather the requirements to maintain the average monthly

wage despite reduced workloads and to provide paid breaks that directly affect the rights and interests of employers who are entrepreneurs. These articles impose certain economic obligations—in other words, "economic taxes" or additional expenditures—on employers. Similar obligations requiring extra expenditure also exist regarding child labor relations under Article 420 of the Labor Code. Namely, remuneration for employees under the age of eighteen with reduced working hours is paid in the same amount as that provided for corresponding categories of employees with full working hours.

These obligations may be negligible for state organizations, enterprises, and large business entities. However, they impose a significant burden on small business entities and impact their competitiveness. In other words, for them, this constitutes a unique additional tax for utilizing the labor of socially vulnerable groups, namely women and children.

The aforementioned norms of the Labor Code are not directly reflected in the international treaties to which Uzbekistan is a party. Article 10, Paragraph 2 of the International Labour Organization (ILO) Maternity Protection Convention No. 183 states:

"The period during which nursing breaks or a daily reduction of hours of work are allowed, the number, the duration of nursing breaks and the procedures for the daily reduction of hours of work shall be determined by national law and practice. These breaks or the daily reduction of hours of work shall be counted as working time and remunerated accordingly."

Although the Republic of Uzbekistan has not ratified this Convention, Target 7 of the National Social Protection Strategy of the Population of the Republic of Uzbekistan (approved by Decree of the President of the Republic of Uzbekistan No. UP-175 dated July 25, 2022) envisages "harmonizing national legislation with the ILO Maternity Protection Convention No. 183".

Paragraph 6 of the ILO Maternity Protection Recommendation No. 191 notes the following:

**“6. (1)** Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or breastfeeding woman and her child. The results of this assessment should be made known to the woman concerned.

**(2)** In the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, where appropriate on the basis of a medical certificate, an alternative to such work in the form of:

- a) elimination of risk;
- b) adaptation of her conditions of work;
- c) a transfer to another post, without loss of pay, if such an adaptation is not feasible;
- d) paid leave, in accordance with national laws, regulations or practice, if such a transfer is not feasible.

**(3)** Measures referred to in subparagraph (2) should in particular be taken in respect of:

- a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;
- b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;
- c) work requiring special balance;
- d) physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.

**4)** A pregnant or breastfeeding woman should not be obliged to perform night work if a medical certificate declares such work to be incompatible with her pregnancy or breastfeeding.

5) The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.

6) A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

As observed from this ILO recommendation, its content does not contain direct norms concerning the additional financial burden imposed on the employer as envisaged under Article 394 of the Labor Code of the Republic of Uzbekistan.

From the perspective of comparative jurisprudence, let us examine how sources of Islamic law approach this issue. In Article 425 of the *Majalla al-Ahkam al-Adliyya*—the 19th-century civil code of the Ottoman Empire, which was compiled primarily on the basis of Hanafi jurisprudence (fiqh)—it is stated: "If the employee holds himself ready to work during the period of the lease/hire, he is entitled to his wages. It is not a condition that he must have actually performed the work. However, he cannot refuse to work; if he refuses to work, he is not entitled to wages." That is, if the employee remains ready at the workplace or at the employer's disposal, wages are paid even if the employer does not utilize their services. Therefore, remuneration is paid not solely for the result, but because the employee places their labor capacity at the employer's disposal. However, if the employee himself refuses to work, fails to appear, or declines to serve, he cannot claim wages.

In our view, even if the employee does not refuse to work but is not available to work during a specific part of the working hours—for instance, while nursing a child—deducting the wages for the time spent nursing the child from the employee's salary would be the employer's right.

At the same time, the privileges granted to women and children in Articles 394, 407, and 420 of the Labor Code may serve against their interests rather than expressing them and creating favorable working conditions. Lawrence H. Summers, a prominent American economist, former US Secretary of the Treasury, former Chief Economist of the World Bank, and former President of Harvard University, expressed critical views on the economic consequences of mandated labor benefits. Specifically, in his view, if the cost of benefits varies across different employees but wages are not permitted to reflect this difference, "employers will seek to hire employees with lower benefit costs". Consequently, "mandated benefits can work against the interests of those groups who are most in need of them".

It should be emphasized that the Republic of Uzbekistan is just a few steps away from acceding to the WTO. Following WTO accession, entrepreneurial subjects will enter into even more intense competition, not only internally, but also with business entities from large states possessing higher capacity and power. For this reason, during the period of development and transition, exempting business entities from additional social obligations and having the state assume them will mitigate the burden of competition. Otherwise, the level of national production may decline, potentially increasing dependency on foreign nations for manufactured products.

At this juncture, it must be noted that in accordance with international treaties to which Uzbekistan is a party, the protection of maternity and childhood is primarily the obligation of the state, not of small business entities. Therefore, it is proposed to review certain preferential norms related to the labor relations of women and children in the Labor Code and introduce editorial amendments that establish a more favorable "golden mean" for both employers, children, and women.

In this regard, it is expedient that the costs associated with fulfilling certain obligations under Articles 394, 407, and 420 of the Labor Code by small business entities be reimbursed by the state, or that these requirements be altogether exempted for small business entities.

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