

Public Order in Legal, Jurisprudential and Sociological Approach

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Abstract

There are prevailing rules and values in every society that forms the basis for social institutions namely legal ones. Actually, these values take the image of public interest in social relationships. From long time ago jurists have tried to develop a mechanism to protect these rules and values on which the integrity and durability of the societies depends and creates public order. Studying the legal rules and institutions, jurists identified the meaning of public order and considers it a criterion for restriction of free will of individuals. But, there is no agreement among jurists on the nature of the concept of public order. This is because of the base of this concept which has made it difficult to understand its reality. This article aims to provide a theoretical and sociological analysis for the concept of public order and tries to present a different perspective. It is concluded from this research that despite some current notions, public order is not a rule generally and it is not a legal term specifically, but it is a social concept generated by society. Therefore, the public order by itself is a major feature of social life. So the necessity of its observance and protection is an undisputable rule which guides every legal system to which legislators always adhere for legislation and magistrates also provide interpretations to meet legislators' goals in maintaining social order.

Keywords: principle of social disorder refutation, public order, social order, sociology of law.

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A Research on “Jurisprudential Rules of the Quran and Its Scope”

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Abstract

The Quran is the first and most important source of canonizing religious commands which encompasses all commands required by humans; however, since all these commands are not explained in details and explicitly in the Quran, they should be sought through other methods of the Quran’s explanation. One of these methods is explaining jurisprudential commands in the form of general rules which are known as “jurisprudential rules” in terminology of jurisprudence. On this basis, deducting the Quran’s religious commands, the Islamic jurists have drawn numerous general rules out of the divine book and inserted them into the domain of jurisprudence, in addition to citing to the verses related to the special and small commands. These efforts, though being worthy and fruitful, do not cover on one hand the whole general rules of the Quran- there are many other verses in the Quran which can be used as the documents for modern jurisprudential rules - and on the other hand, they are not used in jurisprudence up to their level of capacity; there are other subjects in jurisprudence the religious commands of which can be explained relying on these rules. Therefore, referring to the reasons for extracting jurisprudential rules out of the Quran, a number of new rules which can be extracted out of the Quran’s verses as well as other subjects the religious commands thereto can be explained based on the available jurisprudential rules, are explained in this research and their Quranic documents are provided.

Keywords: Holy Quran, jurisprudence, jurisprudential rules, religious commands.

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The Meaning and the Basis of Parliamentary Attorneyship

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Abstract

Considering the specifications of Islamic Republic of Iran and its radical differences with conventional systems, it is important to know the jurisprudential basis for parliament membership in this system. In conventional systems, the relationship between parliament member (MP) and the people determines the legal role and responsibilities of the MP. But in the Islamic Republic of Iran, due to its jurisprudential basis, finding out the legal and jurisprudential status of the MP is not limited only to the relationship between the MP and the people, but the relationship of the MP with the status of the supreme leader is also equally important. This article seeks to show that although some types of relationship such as attorney ship and delegation have been taken into consideration, it seems that each type of relationship is exclusively focused on one of these relationships (the relationship between MP and the people and the relationship between MP and the Supreme Leader), and none of them have considered both types of relationship simultaneously and within a single theory, while the necessity of knowing the jurisprudential basis of both of them simultaneously and within a single theory is felt.

Keywords: attorneyship, delegation, legal basis, parliament membership, typology.

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Mechanisms for Discovering the Purposes of Shari'a

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Abstract

Ways of violating the text, studying the causes and the criteria of religious law, and mechanisms for discovering the purposes of the Shari'a are among the discourses for Shari'a dynamics that can bring changes in social matters and conditions to determine how the religious law is changed. Although the ability to understand the purposes of religious law leads to the development of the jurisprudence, it is not without regulation. Reviewing the Shi'a scholars, the preset text explains the purposes of the Shari'a and the reasons for proving those purposes with traditional and rational proofs. It also studies the methods of discovering these purposes including the method of induction, the method of understanding the reasons for what have been ordered and what have been prohibited, the abstract of preliminary orders and prohibitions, the method of using interpretations and legislator's silence in the case of existence of the required condition and lack of barrier.

Keywords: criteria of religious law, discovering the purposes of Shari'a, evidences for proving purposes, ways of violating the text.

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A Comparative Study of Islamic Religious Command for the Establishment of Milk Bank

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Abstract

Breast milk is the most important and valuable food for children. Breast milk, because of having minerals, digestive enzymes and antibodies, is an important factor for maintaining health and increasing intelligence of the infant. These and many other benefits of breast milk made some people think about establishment of a place for collection of breast milk and providing the sick infants with it for treating them. This place is known as bank of milk. What is threatening is that the women who provide the bank with their milk are not known; because it is impossible to distinguish the real mother which results in mixing of kinships. According to Sunni scholars, including *Shafi'i*, *Maliki*, *Hanbali* and *Hanafi*, even dropping the milk into the mouth or nose of the child leads to spreading of prohibition. Since these banks operate in this way, so using the milks spreads prohibition. But if one casts doubt about the number or the donor, then it is considered that the milk is not unlawful and it is judged that the banks are valid. According to Shi'ite scholars since all the conditions of fosterage are not gathered practically, using the milk of these banks would not lead to any prohibition.

Keywords: breast milk, fosterage, milk bank, sucking.

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A Comparative Study of Penalties for Defloration in Imamiyyah Jurisprudence and Criminal Law

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Abstract

The penalty for defloration may vary based on the gender of the criminal, consent of the maiden, and the behavior of the perpetrator (intercourse or non-intercourse). In cases of defloration through adultery, in addition to the *Hadd*, execution of *ta'zir* is not permitted, and in this case if the defloration is performed under duress, the liability for *Mehr-ol-mesl* is not equal to indemnity for defloration; this is contrary to the case of defloration under duress through non-intercourse where the *Mehr-ol-mesl* is the same as indemnity for defloration and is incorporated into the rules governing the indemnity. But according to the famous *Imamiyyah* jurists, defloration in cases of non-intercourse is an instance of designated legal *ta'zir*; in addition, a unique feature of this kind of defloration compared to other sexual offences, is the victim's right of retribution. This right is exercised in the event that a virgin girl attempts to deflower the maiden without her consent. While, defloration in cases of non-intercourse is not subject to "not mentioned-*Hadd*" of Article 220 of the Islamic Penal Code or "designated legal *ta'zir*" subject to the clause 2 of Article 115 of the same law. Furthermore, defloration in cases of non-intercourse, based on the quality of behavior performed can be subject to certain provisions of the Islamic Penal Code in the *ta'zir* section.

Keywords: defloration, penalty, Ta'zir (discretionary punishment).

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Ineffectiveness of Unilateral Acts

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Abstract

Ineffectiveness is the executive guarantee for lack of some basic terms and conditions of validity of contracts and is generally proposed in unauthorized reluctant contracts and some contracts of legally incompetent persons. According to this legal situation, contract is in effect and its fate depends on the next incorporation of the valid assent (allowing) or declaration of refusing by beneficiary. This situation is generally recognized in contracts; but famous opinion rejects it in unilateral acts. However, the question is whether the reasons of famous opinion have the ability to justify the difference between the contract and unilateral act in this regard? Taking a jurisprudential-legal approach and descriptive-analytical method this article aims to explain and criticize the reasons for rejection of ineffectiveness of unilateral acts on the one hand, and to analyze and prove the theory of accepting the ineffectiveness of unilateral acts on the other.

Keywords: contract, ineffectiveness, legal act, reluctant unilateral act, unauthorized unilateral act, unilateral act, will,

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The Feasibility of the Transfer of Intellectual Property in the Form of Current Contracts

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Abstract

Today the intellectual property has amazingly expanded in two areas of intellectual property and industrial property. This expansion and prevalence is seeking support and facility of transfer of intellectual property. The current Iranian law implies the ability to transfer intellectual property, but the principles of this transfer have not been referred to. In addition, there are some legal gaps in transferability in general forms. The current law to prove possession and the importance of intellectual property rights is relatively acceptable, but there are some difficulties in complete compliance of the traditional and customary ownership and transfer of intellectual property with intellectual property system and the method of its transfer. The transfer of intellectual property in some contracts such as mortgages, peace, and gift is facing obstacles and the current law is not responsive to some contracts such as rent, attorneyship, and loan. Considering articles 454 and 465 of the Civil Code it is possible to transfer intellectual property in the form of bilateral contract. Studying the specified contracts and the feasibility of transfer of intellectual property in the form of these contracts, the author refers to the current challenges and explains the correct method for transferring these properties.

Keywords: intellectual property, intellectual property transfer, specified contracts.

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