

Certainty in Viewpoint of SAHEB MADAREK: from Acceptance to Denial

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Abstract

This article exhausts to the analysis and revision of the principal idea of SAHEB MADAREK about rightful certainty or not rightful. Although there are no principal work traces attributed to SAHEB MADAREK till based on that comment about his view on this issue, but a lot of descendent jurists argue that he is one of disputants of rightful certainty, therefore absence of rightful certainty is attributed to him according to some of arguments redacted in MADAREKOLAHKAM book of SAHEB MADAREK. The writer exposed to wording which demonstrates holistically SAHEB MADAREK resorted to argument of rightful certainty, thereby he applies those reasons to prove sharia decree according to the scrutiny and analysis of words of MADAREKOLAHKAM book as new findings accessible by the current writer. Meanwhile there are stories narrated by him which the skepticism in credentiality is inferred from those words, hence the whole stories are reasonable which attributed to other meanings.

Keywords: SEYYED MOHAMMAD MUSAVI AMELI- SAHEB MADAREK-MADAREKOLAHKAM- certainty- rightful.

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The Effect of Station of Ibrahim in Tawaf

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Abstract

The role of Ibrahim's station in Tawaf of the Venerated Kaaba is quoted in seemingly contradictory statements of Immaculate Imams (a). Lack of broad and integrated research on this issue led to the ambiguity in the extent of meaning and means of reconciling among the traditions (Hadith). Therefore, the question of the role of Ibrahim's Station in the boundary of Tawaf is the problem that needs more exploring to the phase of appropriate response. The report of Halabi from Ja'far bin Muhammad (a), with strong implications and authentic document, legitimates the Tawaf of the respected Kaaba out of Ibrahim' boundary. This study aimed to discover the limits and borders of the traditional and jurisprudential elaboration of Tawaf boundary in Hajj and 'Umrah. Achieving this target is probable in light of the description and analysis of the judiciary propositions with collecting library data which may result in a judicial clarification of Tawaf limit in Masjid al-Haram (the Sacred Mosque) due to perform worshiping ritual of Hajj and 'Umrah.

Keywords: Tawaf boundary, Station of Ibrahim, Kaaba.

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Defining Expediency as a Scale of Forcible Guardianship

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Abstract

Scale The Expediency can be clearly observed in all the Islamic commandments related to natural guardianship. The divine law regarding natural guardianship is intended to guarantee the best interests of the ward. Of course, the term best interest is different from that used in prayers, which is beyond human understanding. Guardianship as well as the regulations and characteristics set forth for the guardian, and in the context of the veracity and ratification of the relevant possessions, the Expediency is used as a scale to control, guide, and monitor both in process and the results. Transferring a child's guardianship to the father (or to the grandfather) shall be enforced with due consideration of the necessity of realizing the legislator's demand in achieving the infant's Expediency; and such transfer is, in fact, supported by the Principle of Expediency which seems perfectly reasonable and justifiable. The assumption of mother's sole/shared custody lacks sufficient upright reasoning. Transferring guardianship to the mother or giving the mother shared custody of the child would be against the multiple interests of the society, the child, the mother, and the newly founded family. This study reviews the emergence and adoption of the Principle of Expediency in natural guardianship and the statements related thereto in Islam.

Keywords: Expediency, forcible guardianship, the ward, father, grandfather, Scale.

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Prosecutor's Authorities while doing Preliminary Investigations and its Compatibility with the Fair Trial Principles

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Abstract

One of the objectives of the trial procedures in the criminal law is observing the citizen's rights and freedom and providing the accused persons with defending rights and to achieve a judgment, it looks necessary for the investigator to be independent from being chased by the prosecutor, however based on the article 92 of criminal law (2013), approved in 1392, the prosecutor is allowed to do the preliminary investigations; including gathering information against the accused, issuance of the accused also commenting about the accused whether he is the guilty or innocence, along with being the responsible for pursuing and performing public litigation against the accused. So the prosecutor's authority on doing preliminary investigations sometimes looks predominant while, based on the justly trial principles, like the equality of the opponent parties, the neutrality of the judge, disowning security and freedom, it necessitates the independency of the investigators from the prosecution attendant also the complainant should not be in the place of the judge.

Keywords: The independence of the investigator, prosecution, principles of a fair trial, preliminary investigation.

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Re-investigate the Definition and Concept of Anfal in the Shiite Jurists thought (With Emphasis on the Ideas of Imam Khomeini "RA")

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Abstract

By studying the Islamic legal texts of the ancients to the latter's Shiite jurists this raises that Islamic Jurists stated in the definition of the Anfal just some examples of it. However, this method was suitable for their age, but today due to lack of defined criteria for the Anfal, new examples cannot be easily revealed. In the essay, the author specifies the definition of Anfal and with an emphasis on Imam Khomeini and disposal of bugs of this theory that believe: The term "non-owner" according to the traditions is the criteria of the Anfal. The use and understanding of causation that is in serious trouble analyzed in this paper. Finally, we believe that Anfal should be defined based on the reason importing to traditions. New instances can be identified by our words.

Keywords: Anfal, public property, public resources.

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Individual Prison Legislation; Basics and Challenges

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Abstract

One of the most prominent topics in Iran's criminal law system, under the issue of imprisonment, is the use of solitary confinement for defendants and criminals, referred to in the Iranian law as "single-player prison". Although none of the Imams' jurists and Muslim jurists explicitly condemn the legitimacy of solitary confinement, but by examining the legal and legal effects, it can be obtained in order to prove the legitimacy of such imprisonment to documents such as the generalization of evidence of the absolute legitimacy of imprisonment, as well as the philosophy of placing the accused And criminals are cited in solitary confinement. However, taking into account the principle of the severity of crimes and penalties, one can not only perceive the general nature of the evidence of the absolute legitimacy of imprisonment, but also, based on the prohibition of torture and conflict, the legitimacy of solitary confinement with principles such as the principle of human dignity, the principle The criminal offense and the philosophy of punishment can be demonstrated by the lack of legitimacy of solitary confinement.

Keywords: "Solitary Confinement", "Individual Prison", "Prison", "Punishment", "Torture".

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Reference Study in Certain Excommunication

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Abstract

After the expressing general standards for cause of atheism and recognizing infidel by jurisconsult, we must determine instances of it for enforcement of orders in out. determination of reference in certain commination and assessment of atheism are from most important topics in regarding issue of excommunication. There is not discussions on this issue in jurisprudence, but can be probable in foregoing assumptions to determine a certain reference generally in four theory of common custom, specific custom, jurisconsult, judge. this article checking description opinions and theories possible about this topic. result this research will be determine only one reference to certain excommunication is not compatible with different dimensions and different forms of atheism issue. Know must here regarding to type of case, become believer to compilation of references to Islamic court, common and specific custom.

Keywords: Profanity, Excommunicate, Institution, Expert, Lawyer, Pretorian.

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An Analysis of the Domain of "Optimal Jurisprudence" in Shiite thought (with a Thematic Domain Approach)

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Abstract

The scope of the realm of jurisprudence is the issues holding an important and strategic role in the study of religion and its functions. By analyzing of all programs and legislations in four human interactions (interaction with God, himself, people and nature) can be considered three detentions 1) Subjective 2) sentence 3) a method or program in them, these three ones can be seen in the capacity of "desired jurisprudence" and its topic as also underway. This article is intended to speak about subject domain, and is each title or phenomenon that deals with religious edict in engagement and exposure. This means that if interact and deal with each topic and something we need Sutra, it is placed as a matter of jurisprudence in the realm of phenomena.

Keywords: The realm of jurisprudence, strategic, the study of religion, functions.

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Legislative All-comprehensiveness of the Holy Quran and Approaches to Explain it

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Abstract

Comprehensiveness of the holy Quran to Islamic legal edicts required by human until the Day of Judgment is an important issue on which Islamic interpreters and jurists have proposed different views. Some have overdone this issue and considered Quran as a comprehensive for all edicts required by human so that tradition of Imams is not required. Some other have wasted and have suggested the doubt that the Quran is not legislative. Others have only mentioned the legislative all-comprehensiveness of the holy Quran and some others have considered Quran with tradition or two mentioned sources with consensus and comprehensive deduction of all legal edicts. This study has pointed to different views proposed on this issue and their criticism, and correct view; that is, legislative all-comprehensiveness of the holy Quran with its mentioned reasons and has explained the approaches of its comprehensiveness.

Keywords: Quran, all-comprehensiveness, legislation, Islamic legal edicts, tradition.

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Investigation the Validity Principle of Correctness of Unilateral Acts

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Abstract

What is being discussed and investigated in this article is the principle of correctness of unilateral acts. The principle of correctness is one of the norms that applies to most branches of jurisprudence (Fiqh) including transactions and acts of worship. The majority of Islamic Jurists (Fuqaha) are of the belief that the bases for the validity of the principle of correctness, like “fulfill obligations” and “trade by mutual good-will”, include unilateral acts as well. In contrast, some Islamic Jurists have raised objections to the enforcement of the principle of correctness in unilateral acts. After reviewing and criticizing these objections, we will conclude that the principle of correctness is also applicable to unilateral acts. Therefore, we should come to the view that Article 223 of civil law which stipulates that “Any transaction made is predicated on correctness...” also includes unilateral acts. Accordingly, after the attainment of the conventional title of unilateral act and doubting its conditions on the basis of the principle of correctness, we can affirm the correctness of that unilateral act.

Keywords: norm, principle, correctness, contract, unilateral act, transaction, bases of the principle of correctness.

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