Historical Review of the Viewpoint of Shi'ite Imams (AS) Exempting *Khums*

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(Date of Receipt: July 23, 2017 ; Date of Acceptance: May 6, 2019)

Abstract

The article presents a historical review of the belief that the payment of *khums* was exempted by some of the Imams (AS). For this purpose, first the narrations that cite the exemption of *khums* by each Imam (AS) have been categorically gathered and their validity have been assessed. Next, its conditions that caused this phenomenon during the era of the Imam (AS) have been analyzed. Further, other historical evidences have also been mentioned which reject this belief; evidences like the belief that *zakat* can be replaced by *khums* for the family of the Prophet (PBUH), the existence of ahadith that affirms the payment of *khums* from Imams (AS) that quoted narrations of *tahlil*. In addition, the creation and support of a wide network of representatives along with the duties including collection of *khums* by the succeeding Imams (AS) are among other proofs that reject the historical viewpoint of *khums* being absolutely exempted. Therefore, it seems that alongside the general rule of *khums* exemption, concerning *khums* of transferred property through dealings of non-Shi'a with Shi'a, the political, social, and security conditions of some the Imams (AS) caused the Shi'a to temporarily be exempt from paying *khums* on their surplus belongings according to these ahadith. The exemption of *khums* has been occurred in specific cases given the specific conditions of the people that referred to Imams (AS) for this purpose and it never has been generalized to all people at all times.

Keywords: Shi'ite Imams (AS), Exempting *Khums* (Tahlil), *Khums*, Share of the Kin.

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The Nature and Basis of the General Theory of Indemnity *(Arsh)* and Its Comparison with the Theory of Reduction of Price in the Vienna Convention

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(Date of Receipt: September 18, 2018 ; Date of Acceptance: May 6, 2019)

Abstract
The review of traditional institutions is an appropriate policy for efficient contractual sanctions. "Indemnity" is one of the institutions that is mostly raised in the area of option of defect. The present paper tries to review the views of jurisprudents about indemnity in order to raise it as a general theory. However, this review did not mean that we are going to make a structural change in the nature of indemnity, but it is intended to perform a jurisprudential investigation into the matter. About the nature of the general theory of indemnity, it can be said that it takes a nature of damage and compensation, but it is raised as a result of a contract breach and as a contractual liability; in this case it will be in accordance with the rule. Regarding the basis of damage, the general theory of indemnity also has a dual nature. It is based on the contractual compensation, but if contractual compensation cannot be compensated in its broadest sense, compensation will be used in the form of civil and compulsory liability. Of course, the basis of reduction of price is commutative justice that is the basis for contractual liability in the philosophy of the rights of contracts.

Keywords: Indemnity, Nature, Basis, Theory of Reduction of Price, General Theory.

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Review of Insanity in Shi'a and Sunni Jurisprudence with an Insight into the Islamic Penal Code

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(Date of Receipt: July 5, 2018 ; Date of Acceptance: May 6, 2019)

Abstract

The removal of penal accountability for insane, while insanity covers a wide range of meaning, is a definitive principle both in jurisprudence and Islamic positive law. Elaboration on the jurisprudential and legal concept of insanity is of utmost significance due to various usages of insanity and its vague relation to similar terms like: lunatic, idiot, foolish, silly, etc. which is the aim of the present text. The outcome of contrast between Shi'a and Sunni jurisprudence with descriptive, comparative and interpretive approach would result in graded meaning of insanity which has two key features: disorder and defect of reason. Penal code also takes up jurisprudential definition and interpretation of insanity that is the very lack of perception and discernment faculty in the scope of committed crime and thus provides the executor of Islamic law with definite criteria for judging about mental disorders. Therefore, mental disorders with different levels which falls under jurisprudential subject of insanity will be exonerated from both penal accountability and receiving punishment.

Keywords: Insanity, Shi'a and Sunni Jurisprudence, Penal Code, Retributive Punishment, Lunatic.

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A Research on Validity of Conditional Release in Islamic Jurisprudence

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(Date of Receipt: April 24, 2018 ; Date of Acceptance: May 6, 2019)

Abstract

Sometimes the creditor waives his debt under some conditions. This may make it conditional or suspend it because of the structure of legal act. These two assumptions may be discussed and reviewed depending on the theory of release being a unilateral legal act or a contract. Based on the theory maintaining that release is a contract, conditional release faces no specific challenge, although its composition in a way that hangs it on the fulfillment of the condition contradicts to the viewpoint of the majority of jurisprudents maintaining that *tanjiz* is a condition of the composition of legal act. Based on the theory maintaining that release is a unilateral legal act, the existence of consideration term faces several objections. Some of the objections pertain to the structure and the nature of the unilateral legal act of release, some of them relate to the requirements of release and its primary effect, and some others are based on the nature of condition and its binding nature. The present article, using comparative jurisprudence studies and analytical method, reviews different viewpoints in Islamic jurisprudence in this regard and assesses their proofs in order to achieve more clear and substantial results pertaining to the jurisprudential views in this mater.

Keywords: Release, Commitment, Unilateral Legal Act, Initial Condition, Consideration Term.

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An Attitude Towards the Status of the Guarantee of the Wife's Maintenance (*Nafaqah*)

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(Date of Receipt: May 29, 2018; Date of Acceptance: May 6, 2019)

Abstract

The authenticity of the guarantee as an accessory contract depends on the existence of debt. Therefore, a non-existent debt can not be guaranteed. There is a controversy in marriage about whether the source of wife's maintenance (*nafaqah*) is obedience (*tamkin*), marriage, or headship of husband. This disparity shows itself, in particular, in the discussion of the validity of the guarantee of the future cost of maintenance of the wife. The famous jurisprudents accept that there is a consideration or quasi-consideration relationship between maintenance and the obedience (put maintenance as a consideration of obedience) and maintain that obligation of maintenance depends on obedience. On this basis, the guarantee of the maintenance of the wife has been declared void. In contrast, unpopular opinion maintains that the absolute cause of maintenance is a marriage contract and regards the guarantee of maintenance valid. The present research, using analytical-descriptive method, aims at elaborating the nature of maintenance and describing the cost of maintenance in terms of a right or a prescription. Meanwhile it aims at estimating the capability of guaranteeing the future cost of maintenance of the wife as well as its effects. Briefly, it can be said that maintenance is essentially a right and it originates from marriage contract and headship of husband. Whenever the marriage contract is written and the rights and duties of the couple are established, the husband is obliged to pay the cost of maintenance. Therefore, maintenance of the wife can be guaranteed.

Keywords: Obedience (*Tamkin*), Guarantee, Disobedience, Marriage, Cost of Maintenance (*Nafaqah*).

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Reconstruction of the Theoretical Foundations of *Abaziyah* Jurisprudence in the Contemporary Period

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(Date of Receipt: June 14, 2018 ; Date of Acceptance: May 6, 2019)

Abstract

All religious denominations need to be reconstructed and renewed in order to survive. In order to reconstruct their denomination, *Abaziyah* embarked upon a reconstruction and reestablishment of the theoretical foundations of their jurisprudence (*fiqh*) so as to survive as an Islamic denomination and increasingly develop and grow. Such an approach is followed by contemporary *Abaziyah* within nine pivots, the most important of which include: reconstruction of materials and sources of jurisprudence, engagement in comparative studies, dynamicization of purpose-based jurisprudence (*al-fiqh al-maqasidiyyah)*, formation of new jurisprudential research, and reconstruction of the schema of jurisprudence. *Abaziyah* jurisprudence has undergone six stages, the contemporary period being of particular importance. Since the reconstruction and facilitation of jurisprudence has been particularly taken into account, this paper tackles the reconstruction of the theoretical foundations of *Abaziyah* jurisprudence with a descriptive-analytic approach and the library research method.

Keywords: *Abaziyah*, Theoretical Foundations, Reconstruction, Contemporary Period, Jurisprudence.

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The Conceptual Limitation and Feasibility of Deprivation of Right from the Viewpoint of Jurisprudents

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(Date of Receipt: July 24, 2018 ; Date of Acceptance: May 6, 2019)

Abstract

Right is a concept that despite its wide usage has a lot of conceptual ambiguity and one cannot give a single definition of it. In Islamic jurisprudence, the issue of the concept of right, its features, and its effects including the possibility of deprivation of right, which is interpreted as the ability of waver of right, has always been studied by the jurisprudents along with its examples and applications. The majority of jurisprudents consider the right to be equal to sovereignty. Some also consider it as kingdom or a rank lower than that. By this definition, the right is posited against ruling one of the main features and requirements of which is the ability of waiver, which makes it distinct from the ruling; in that if it cannot be waived it is not right. Some other jurisprudents regard the right as an independent credit based on which there is a disagreement among them as to the possibility of waiver. However, in any case, there are conditions for deprivation of right such as creating the cause of right and the lack of opposition to the Holy Quran and the tradition.

Keywords: Waiver of Right, Independent Credit, Right, Deprivation of Right, Sovereignty, Jurisprudents, Kingdom.

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Review of the Rules of Warrant Birth Control and Contraception with an Approach to the Necessity of Increasing Population and Aging Crisis

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(Date of Receipt: April 16, 2017 ; Date of Acceptance: May 6, 2019)

Abstract

Population is a basic element for identifying human communities the control of which has a significant role in economic growth of the countries. One of the most important factors affecting the population is the rate of birth and fertility. For this reason, most countries try to control population through controlling fertility or creating or removing restrictions of using contraception tools. Our country is not exempted from this rule and has adopted different solutions at different circumstances in the way that in the years after the war, because of encountering the situation of population explosion, it has attempted to control the population either through removing restrictions or nowadays because of experiencing aging crisis, by crating restriction for using contraception services that of course has raised oppositions against using these solutions. The present research aims at reviewing the jurisprudential approach to the subject of birth control and the arguments of pros and cons in order to find an answer for the warrant birth control. The results show that despite the desirability of population growth and its recommendation in Islam, birth control and restriction is accepted widely; although the diagnosis and selection of methods of control depends on the requirements of the time and the opinions of Islamic competent scholars.

Keywords: Self-harm, Contraception, Dominance, Reproductive Rights, Birth Control.

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