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Study of Role of Expediency from the Perspective of Religions

Mojtaba Mohammadi*, Seyyed Mohammad Shafi'ie Mazandarani**

(Received: 28 May, 2016; Accepted: 28 July, 2016)

Abstract

The term, expediency, is among the terms, though apparently simple and easily understandable, has complexities that thinkers at times raise disagreements over its implication and applications. Expediency is not exclusive to the Islamic jurisprudence and is regarded as an important element and even infrastructural in western schools. In Islamic thought, expediency is spoken of in two independent areas; area of theosophy (whether rulings are mainly based upon expediency?) and area of jurisprudence (can expediency be used in inferring the religious laws?). In this article, effort is being made to verify expediency in Imamiyya jurisprudence and Sunni jurisprudence. It is hoped that action might be taken towards clarification of some angles of expediency in the viewpoint of jurisprudence.

Keywords

Expediency, Jurisprudence, Imamiyya Jurisprudence, Messengered Expediencies, Sunni Jurisprudence.

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A Critical Study of Legitimacy and Preference of Mourning for Imam Husayn (‘a) and Pathology of its Doubts

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Abstract

Mourning, Elegy and lamenting has since long been customary among different nations of the world and has devoted some part of literature, culture, customs and traditions of all tribes. It is always believed that mourning for Progeny (Ahl-e Bayt) leads to their remembrance side by side their culture, school and objective. In other words, the community is inspired by their path in a spiritual way and it establishes constant steadfast between followers of the school and the leaders; elapse of ages and centuries cannot separate them from each other. The same thing causes the nation not to be effected and deviated by the enemies and still keeps the school safe and sound. Therefore, mourning ceremony, religiously speaking, is strongly linked to self-esteem; in other words, it creates grounds of self-esteem in them because one is able to promote his self-esteem as much as he appreciates it for himself. Nowadays, wrong beliefs have religiously become common on mourning rites in the community by means of which dagger-stabbing and unconventional acts like harming face in itself and beyond the existing conditions of the community are lawful. In a sense, the primary rule says it is lawful but if the religious authorities have banned the acts, it is because of specific conditions of Muslim World.

Keywords

Ashura, Imam Husayn (‘a), Jurisprudence, Mourning.

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Post-Divorce Rulings in the Eyes of Hanafi and Shafe'ie Jurisprudents

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Abstract

Courts of law experience post-divorce rulings and in case claimants are from the religious minorities, judges should examine their cases based on their related religions. This article descriptively explores post-divorce rulings in the viewpoints of Hanafi and Shafe'ie jurisprudents. The Constitution of the Islamic Republic of Iran respects such differentiation and non-Shiite religions act in their personal status (marriage, divorce, inheritance and will) in accordance with their own religions based on articles 12 and 13 of the Constitution of Iran and they freely practice their own religions for rulings, regulations and ceremonies. Compliance with these articles of the Constitution necessitates that courts of law and judiciary authorities verify the claims based on rulings and regulations of religions. Since the existing laws concerning personal status are regulated based on Imamiyya jurisprudence and judges are not informed about regulations of non-Shiite religions and that Sunni judges are often informed about rules of their religions, justices are practically faced with problems to examine cases pertinent to personal status of Sunnis and they inevitably refer to Sunni scientific centers for receiving official fatwas. This article tries to take a step, though small, and provide conditions for compliance with article 12 of the Constitution.

Keywords

Divorce, Hanafi Jurisprudence, Personal Status, Shafe'ie Jurisprudence.

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Judging on Nahjolbalaghe

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Abstract

so that the NahjolBalaghe be picked to be addressed. Ali Noorani , that the Prophet said: “light noted Mjalskm Ali ibn Abi Talib”. and the discovery of behavioral patterns Ali fact is clear to us is how to know , how he was and how to live and how we should be . Nahj ol balaghe the light is bright and valuable discussions of practical issues that are crucial Not only are only theoretical asp To their parliaments in the name of Ali (AS) that the Prophet said luminous : “Light Mjalskm mention Ali ibn Abi Talib” and the discovery of behavioral patterns Ali fact how being clear ect's but also the model of the Prophet's Sira and the day . to us how to live and then to know how and how we should be.

Keywords

Crime, Judgment, Nahjolbalaghe.

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Compensation of Physical Damage through Institution of Blood Money or Rules of Civil Liability

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Abstract

One of the inalienably jurisprudential and legal principles is compensation of all losses inflicted upon people, including physical damage incurred upon people that should be compensated, but there is disagreement over how it needs to be compensated. A number of jurists say physical damage shall be compensated only through rules of civil liability; others like Imamiyya jurists and some jurists say it has to be compensated only through blood money. Post-Islamic revolution enacted laws approve of compensation through blood money; however, in some cases, physical losses of people remained uncompensated due to increased treatment costs, leading to criticism of the injured on one hand as well as criticism of a group of jurists of the way physical losses are compensated while sufficing it through institution of blood money on the other hand and no response is made by jurisprudence. This is while no losses and damages shall remain uncompensated in accordance with the inalienably jurisprudential and legal rules. Therefore, blood money institution shall be complied with and no losses shall be allowed to remain uncompensated by approving new laws proportionate to demand of society and compatible with acceptably religious conventions.

Keywords

Blood Money, Civil Liability, Compensation of Losses, Physical Damages.

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Effect of the Mortgaged on Rights of Mortgagee

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Abstract

Mortgage contract is one of the authentication contracts, meaning that some property of debtor's assets is placed as mortgage to act as belonging right of the mortgagee for authentication and guarantee of demanded credits of creditor; in this way, creditor is given priority to administer his right from that property over other creditors. Since the mortgaged property might undergo waste or exhaustion before it falls due to be transferred, this question is posed that what effect the waste of the mortgaged property has on the right of the mortgagee. In this article, for answering this question, civil law, registration law, official documents executive bylaws and other pertinent regulations are examined. Finally, this conclusion is drawn that, considering the subordinate contract of mortgage, waste of the mortgaged property whether it is real or unreal except for one case in article 107 of Iran's Marine Law fails to drop the main demands of the mortgagee and right of mortgage of mortgagee is removed; in this case, creditor can gain his credits out of other assets of debtor based on his obligatory documents. Given the waste pursuant to article 791 of civil law, exchange for the wasted mortgage property replaces the wasted mortgage property and the exchange secured by the waster shall spontaneously be mortgage property according to law with no need of concluding any new contract .

Keywords

Mortgaged Property, Mortgagee, Mortgage Document, Obligatory Document, Waste.

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