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Civil and Criminal Rights of Illegitimate Child

Musayyib Taqizadeh*, Alireza Askari**

(Received: 30 May, 2016; Accepted: 4 June, 2016)

Abstract

Illegitimate Child is a child who is born from illegitimate relationship “without any marriage contract” including adultery or marrying (Mahaarem) unlawful relatives. This child remains deprived of some rights in the community because of building no religious relationship. Until 1997 (1376), the child has had no right whatsoever except for being a lawful member (Mahram) pursuant to ruling article 1167 of civil law. Considering vote precedent No. 1376. 4.3.617 and by citing what a number of Imamiyya jurists and well-known theory of Imam Khomeini (RA) put in this regard, jurists established all civil rights such as guardianship, alimony except inheritance for the illegitimate child. Also, if illegitimate child is murdered by legally born person, the person shall be retaliated (Qesaas); according to known opinion of jurists, the child’s blood money equals that of a legally born person. Therefore, in case he has no heirs, Imam or religious ruler is his heir.

Keywords

Alimony, Blood money, Guardianship, Illegitimate child, Inheritance, Marriage, Retaliation (qesaas).

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The Intelligent and the Intelligible in Unity in the Eyes of Avicenna and Mullasadra

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Abstract

One of the philosophical matters incorporated into philosophy of Islam and has become differential opinions of the Islamic philosophers is unity of the intelligent and the intelligible. Avicenna is one of the outstanding figures among those who stand against unity of the intelligent and the intelligible. The late Farabi and Mullasadra, as salient personalities, are among those who stand by the unity. The late Akhund not only argued and deduced unity of intelligence, intelligent and intelligible, but also he substantiated that all perceptive forms including sensual, imaginary or rational forms are unified with their exhibits. This article tries to reconsider argument, opinions and votes of these two prominent Islamic philosophers.

Keywords

Accidental intelligible, Correlation, Essential intelligible, Intelligence, Intelligent, Unity.

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Rule for Fighting with Disbelievers and Insurgents

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Abstract

Jihad is, socially speaking, one of the supreme rules of Islam. At first look, dissidents say jihad is the same as war as it is persistent in other religions and nations and regard the same rules effective on jihad. But the question raised relates to a time when the Immaculate Imam ('a) is on Occultation and Islamic community is being managed by certain or general viceroys assigned; what is rule of jihad at this time? In most jurisprudent books or books in which issues of jihad are raised by jurisprudents, jihad is subdivided into primary jihad and defensive jihad. Ulema and jurisprudents have resorted to verses and narrations for permission and legitimacy of primary jihad as well as its non-permission and illegitimacy in the Occultation Age. Included among those who approve of its permission and legitimacy in the Occultation Age, Sheikh Mufid, Abusalah Halabi, Sallar, Ayatullah Khowie and the supreme leader, Ayatullah Khameneie can be named. Among those who disbelieve in illegitimacy and non-permission of primary jihad, Sheikh Tusi, Qadi Ibn Beraj, Mohammad Ibn Ali Ibn Hamza Tusi in "Wasileh", Mohammad Ibn Edris Helli, Allameh Helli, Shahid Thani, Saheb Jawaher and Imam Khomeini (RA) can be named. Those who believe in illegitimacy of primary jihad in the Occultation Age have mentioned conditions to make jihad effective that are: Presence of Imam ('a), Maturity, Intellect, Permission of parents, Physical Health and....

Keywords

Battle, Defensive jihad, Killing, Narrations of jihad, Primary jihad, Verses of jihad.

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Right of Dissolving Matrimony because of New Diseases

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Abstract

Civil law makes a mention of proven diseases in articles 1121, 1122 and 1123 by following votes of Imamiyya jurists; diseases as a result of which each spouse is authorized to demand dissolution of marriage. One of the legal challenges facing courts of law is that: do newly emerged diseases like Diabetes, Cancer, AIDS and.....in each one of spouses cause the other one to have right of dissolution or do diseases exclusively stipulated in articles 1121, 1122 and 1123 lead to right of dissolution? In other words, new diseases topically differ from proven diseases; now is there any right of dissolution for spouses for diseases different from proven ones? If the party suffering from such diseases is cured, what effect it will put on right of dissolution; does it take away the right of dissolution? This article tries to respond to the above questions.

Keywords

Right of dissolution, Proven diseases, Newly emerged diseases.

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Deficiencies Leading to Marriage Dissolution in Hanafiyya and Shafe'ie Religions

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Abstract

The deficiencies that lead to Marriage dissolution according to Hanafiyya are: Impotency, severed genital and castration; but the other cases fail to lead to marriage dissolution even though they are serious (with condition or without condition); for example, leprosy and the like whether they occur before or after conclusion of marriage or health is or is not stipulated as a condition. In case, the husband suffers from leprosy, the wife has the right of dissolution through five conditions: 1. She must be free; 2. She must be mature; 3. The wife must not have intercourse-impeding deficiencies such as Rataq, 'Afal and Qaran (these are abnormal female vulva diseases); 4. The wife must not know about deficiencies before marriage; 5. The wife is not pleased with the deficiency after marriage. As for impotency of husband, the wife can ask for dissolution through five conditions as mentioned about husband with severed genital; the woman cannot have the right of dissolution if the castrated man (somebody whose testicles are gone) can have intercourse whether orgasm is rendered or not but he cannot have intercourse, decision for impotency is made. In addition, cases of apostasy are raised in this respect. But in Shafe'iyya, deficiencies that result in dissolution of marriage are classified into two exclusive and common groups: Common groups of between wife and husband are: Insanity, leprosy. Deficiencies exclusive to wife are: Rataq and Qaran; deficiencies exclusive to husband are: impotency and severed genital but other deficiencies cannot dissolve marriage. If spouses or one of them turn to apostasy before intercourse, marriage immediately is discontinued; apostasy brings about dissolution of marriage; therefore, it is not regarded as cases of divorce. Alimony of children and wife is paid from assets of the apostate husband. If wife has turned to apostasy and she is divorced before intercourse, she is not eligible for receiving marriage portion; if husband becomes apostate and wife is divorced before intercourse, she deserves receiving half of the marriage portion but this ceases to affect marriage portion after intercourse.

Keywords

Deficiencies, Dissolution of marriage, Impotency, Severed genital and castration.

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Functional Rule of Negating Hardship in Family Rights

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Abstract

Rule of negating hardship is among jurisprudential rules which shows legally dynamic and comprehensive system of Islam and can open ways for lots of current problems of families. This rule, with its inclusions, is one of the rules that unlocks many deadlocks in the ongoing trend of family and lets family members out of suspension. The rule of negating hardship is applied to different areas of family rights; it influences relationships of spouses and is beneficially applicable to each of them under circumstances. For example, when it becomes obvious that husband cannot pay marriage portion to wife, which is mostly on demand, court of law decides it is to be paid in instalments affordable to husband by observing justice in favor of both spouses or if, for one reason or another, husband is faced with hardships on the part of wife, court of law decides on re-marriage of husband under circumstances; where wife faces hardships on the part of husband for the mentioned reasons, court of law binds husband to divorce wife. This rule is also applicable to parent-child relationships. In this regard, child abuse and unusually repeated thrash on the part of parents can be considered.

Keywords

Child, Family, Husband, Negating hardships, Wife.

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