Jurisprudential Semantic Diversity of Justice: Challenges and Answers (Analytical Study of the Nature of Judge's Justice in Imamiyya Scholars' Words)

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Abstract

Justice with its privilege of extracting different jurisprudential meanings is one of the most important and functional concepts in Imamiyya jurisprudence. The major jurisprudential views on the structure of justice include the superficial good conduct, firm disposition of human soul, stopping forbidden acts, avoiding vicious acts, and practical adherence to religious bases, which has many significant jurisprudential challenges and advantages. Analyzing each of them depends on three major elements of good appearance, the method of performance, or firmness of disposition of justice. The sum of the mentioned concepts and the absolute induction in Imamiyya jurisprudential texts brings new meanings of justice called 'certain, indubitable quantity or *qadre motayaqqan'* of justice to the mind, which will answer the internal and external challenges of the statements of the jurisprudents. The analysis and answer to each of them have been presented and discussed in detail in this paper.

Keywords: Justice, Jurisprudential Justice, Good Conduct, Firm Disposition, Vicious Conduct.

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Jurisprudential Principles of Risk Management Theory against Criminality

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Abstract

There are two basic approaches for dealing with crime. The first one is a value-based approach that foresees the determination of the criminal behavior and reactions against it based on the values of the society in a dogmatic way and considers it necessary and useful to exercise it in any conditions and at any cost. The second approach is the risk management that instead of looking at the norms and values only, believes that the crime must be accepted and managed as a social phenomenon with the social structure as its most principal factor. According to the Risk Management Theory, perhaps in some cases one should decriminalize behaviors with a lower risk to prevent from highly risky behaviors. Sometimes this is not consistent with the normal view. According to this theory, criminal policy matches with some principles of Shi'a jurisprudence that deserves examining. Matters like the most important and important rule, preventing from the worst thing by doing a bad thing, and so forth can open new horizons in the area of the criminal policy of Islamic Republic of Iran.

Keywords: Risk Management, Criminality, Islamic Criminal Policy, Jurisprudence, Opportunity, Risk.

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"Prayer in the Temples of the People of the Book" from the Perspective of Islamic Jurisprudence: Views and Standard Theory of Imamiyya

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Abstract
There are some conditions, in Islamic jurisprudence, for the place of prayer including permission of occupation, and exclusion of impurity and images. According to the approaches of a number of Sunni and Shi'ite jurisprudents, the temples of the people of the book lack these conditions; because from the one hand these places are dedicated to the worship of the people of the book, which are usually decorated with some images. On the other hand, the basis for abrogation of religions and impurity of the people of the book invalidates these places to be used for worship. Therefore, there are some problems with performing prayer in these places. The present research discusses and evaluates the evidences and documents of this view and considering its weaknesses, it proves the permissibility view as the standard theory of the Shi'ite jurisprudence for the problem of performing prayer in the temples of the people of the book. This theory is in line with the Quranic approach, the hadiths of the Household of the Prophet (A.S), the practical principles, and the famous opinion of the Shi'ite jurisprudents and lacks the weaknesses of the prohibition approach.

Keywords: The People of the Book, Temples, Prayer, the Place of Prayer, Ritual Purity and Impurity of the People of the Book.

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Cases of Judicial Judgment Cassation in Imamiyya Jurisprudence

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Abstract
According to the Imamiyya jurisprudence judgment rendered by judge is not reversible except in the case where there is an error in its rendering process. In respect of those causes (errors) that make the judgment reversible such as "disqualification of the judge who rendered the judgment", and "invalidity of proof that is the basis of judgment" we do not face different explanations and views. However, in respect of some other causes such as "the error of judge's inference" and "where the judgment is contrary to the truth" we face numerous and sometimes different explications and interpretations. This situation demands examination and analysis of the matter. Contradictory views on the role of "accord of parties to a suit" in appealing and cassation of the rendered judgment are also noticeable.

Keywords: Judicial Judgment, Judgment Cassation, Causes of Judgment Cassation, Error of the Judge.

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Proving the Judgment by No-Harm Rule

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Abstract

The juridical no-harm rule is one of the most important Islamic jurisprudential rules, which is applied in all areas of Islamic jurisprudence. There is no doubt that it is possible to eliminate harmful rules by applying this rule. However, if the lack of a rule leads to a loss, there is a disagreement over the matter that whether relying on this rule one can forge the said judgment? The need to compensate for the loss is a rational issue. In this regard, reason does not distinguish between existential and non-existential affairs. In addition, by referring to the custom, it can be understood that non-existential harmful matters should also be compensated. The reasons for the no-harm rule, in addition to being general, are absolute in the sense that any damage, whether existential or non-existential, should be compensated.

Keywords: Loss, Supremacy of No-Harm Rule, Rejection of Judgment, Lack of Judgment, Proving the Judgment.

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Analysis of the Concept of Anklebone in Wiping the Feet from Imamiyya Jurisprudential Perspective

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Abstract

According to Shi'a jurisprudence, anklebone is defined as the end of longitudinal area for wiping the feet. Literally, anklebone is applied to four spots of the foot. Although there is a consensus among all Shi'a scholars that, in contrast to Sunni Scientists, anklebone in ablution is not the projections of two sides of the foot, there are disagreements over specifying it from among other instances. There are two different opinions in this regard. The first group holds that anklebone is the projection on the foot. The second group holds that it is tarsal joint. The disagreement results from the fact that literally anklebone is applied to these two areas and the hadiths on ablution. Studying the literal, jurisprudential, and traditional evidences of the two opinions it has been made clear that none of them is absolute. It is not possible to determine absolutely the area of anklebone and it has a narrow concept. Therefore, since these two minimum and maximum areas of wiping are practically connected to each other, *birā't* rule is applied to the excessive amount, i.e. the projection to the ankle. As a result, wiping to the projection on the foot is enough.

Keyword: Feet Wiping, Anklebone, Ankle.

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A Study of the Generalization of the Evidences for Fulfilling the Condition to the Primary Condition

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Abstract
The primary condition is a type of condition. There is disagreement among the jurisprudents on the necessity of fulfilling or not fulfilling the condition. Most of the jurisprudents do not consider it necessary to fulfill the conditions but some modern jurisprudents, in spite of the famous opinion, hold that it is necessary to fulfill the conditions. Condition has different customary and literal meanings in the areas of principles of jurisprudence, jurisprudence, law and so on. But because it has not been defined by legislator, it is confined to its customary meaning. Condition is applied in two different customary meanings: necessity of and adherence to the stipulation, and absolute necessity and adherence. The same two meanings are the basis for the development of two different views of the pros and cons of fulfilling the primary condition. The present study, using an analytical-descriptive method of research, studies the concept of primary condition. Next, reviewing the evidences of the pros and cons of primary condition, on the one hand it criticizes the evidences of the pros and holds that they are insufficient. On the other, it relies on the general and specific, private and public evidences for the fulfillment of the conditions like *al-mu'minūna 'inda shurūtihim* and arbitrariness of the science of jurisprudence and tries to strengthen the view of the cons of fulfillment of the primary condition.

Keywords: Condition, Primary Condition, Stipulation, Self Determination.

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The Study of the Concept of Media *Qadhf* and Principles of Its Punishment Aggravation

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Abstract

One of the most serious crimes against spiritual character of people is sexual accusation called *qadhf*. With the advent and prevalence of Mass Media, the scope of crimes against spiritual character of people has broadened and created new challenges for the researchers in the area of jurisprudence and law. This study tries to see whether the concept of *qadhf* is applicable to some widespread crimes that occur in Mass Media. Thus, first the concept of *qadhf* is defined and its conditions are explained. Based on the definition, *qadhf* is applicable to written sexual accusations, sexual accusations found on the internet and also pornography. Factors such as wider audience, slander on people's honor, promotion of prostitution, retention and playback capabilities and also the role that Media can play in directing pop culture can be considered as aggravating circumstances that justify a more severe punishment of *qadhf* in Mass Media in comparison with ordinary *qadhf*.

Keywords: *Qadhf*, Media Crimes, Pornography, Punishment Aggravation.

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Primary Prevention of Environmental Crimes in Quran Doctrines

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Abstract

The Holy Quran has valuable doctrines for prevention of environmental crimes. Adhering to and using them in the light of primary prevention model can play an important role in crime prevention. The primary prevention model (in contrast to the secondary and ternary prevention models which have encountered some problems and crises) no crisis has been created yet. Therefore, the goals of this model focus on the prevention of damaging circumstances. By looking at the Holy Quran, it is made clear that the Quran doctrines reveal two individual-centered and social-centered approaches for the prevention of environmental crimes. The individual-centered approach includes a number of doctrines like preventive beliefs (faith to God, the belief that environmental creatures are signs of God and the belief that the nature has some benefits for human kind) and ethical doctrines (internal control for respecting the environment). While, in the light of social-centered approach, one can refer to role of economical doctrines (prevention of dissipation and lavish on the earth and recommendation for its improvement and flourishing) and social doctrines (environmental justice and prohibition of environmental discrimination).

Keywords: Holy Quran, Environmental Crimes, Primary Prevention, Individual-Centered Approach, Social-Centered Approach.

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A Review of the Condition of the Guarantee in Trust Contracts

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Abstract

One of the important matters that the jurisprudents have raised under the issues related to the trust contracts is the validity or invalidity of stipulation of guarantee in such contracts. To put it another way, can the owner of the property secure the contractor by making a stipulation, even in the case of non-aggression or negligence? Some of the jurisprudents believe that, given the contradiction of this condition to the book, the *Sunna*, and the requirement of the contract, as well as the contradiction of this stipulation to the consensus on its invalidity, such a stipulation is void and it can invalidate the contract. In contrast, another group of jurisprudents believes that the arguments of the opponents are insufficient to prove the invalidity of the stipulation and considering the generalities and specifications of the arguments for the obligation to comply with the terms and conditions, this stipulation is correct and it is obligatory to commit to it. The present article, using a descriptive-analytical method of research, aims to investigate the matter and to prove the hypothesis that the condition of the guarantee in trust contracts is correct except in the case where the title of beneficent (*mohsen*) is applied to a person.

Keywords: Trust Contract, Guarantee Clause, *Ehsan* Rule, Condition against the Requirement of the Contract, Beneficent (*Mohsen*).

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A Review of the Jurisprudential Documents of the Prohibition of a Muslim Marrying a Non-Muslim

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Abstract

Marriage is one of the most sensitive, fundamental, and social programs of every culture and nation. Accordingly, the marriage formation, agreement and contract are ceremonial affairs with special rules and regulations. Islamic jurisprudential rules and regulations have also specified certain conditions for this ceremonial contract. Among these issues is the circumstance and the rule for a Muslim marrying a non-Muslim. The famous theory of the jurisprudents holds that: A Muslim woman does not have the right to marry a non-Muslim man under any circumstances. And also, the Muslim man cannot marry permanently a non-Muslim woman. Of course, in the case of a temporary marriage of a Muslim man and a non-Muslim woman and the birth of a child, the child is attached to the Muslim man. There are very controvertial views, questions, and doubts regarding the jurisprudential evidences of this matter. The present paper, using a descriptive content-analysis methodology, library tools, research data and notes reviews the jurisprudential documents of this matter and answers a number of questions in this regard.

Keywords: Marriage, the People of the Book (*Ahl al-Kitab*), Non-Muslim, Jurisprudential Documents, Marriage Prohibition.

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A Jurisprudential Exploration on the Blood Money for Injuring Earlobe: A Critical Approach to Islamic Penal Code

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Abstract
From the viewpoint of many Imamiyya jurisprudents, injuring the earlobe leading to its perforation or tear, has ordained blood money, the amount of which is controversial among them. Some hold that it is one-sixth and some others hold that it is one-eighth of the total blood money. The present paper, using an analytical-descriptive methodology and through investigation into the available evidences, came to the conclusion that the basis for determining blood money in this crime is hadiths as well as consensus. Examination of the documents shows that none of them is capable of proving ordained blood money. Therefore, in consistent with some modern jurisprudents, it should be considered as non-ordained blood money. The Islamic Penal Code, under the Article (601) of 2013, has only considered the earlobe tearing incompletely and surprisingly has determined one-ninth of the total blood money for that, a decision which has no legal support.

Keywords: Earlobe, Blood Money for Injuring Ear, Non-Ordained Blood Money, Penal Jurisprudence, Islamic Penal Code.

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