

The Role of Judiciary Procedure in Implementation of Article 1130 Civil Law

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Abstract

Article 1133 of civil law empower man to divorce woman whenever he wants but rights of divorce for woman was allowed in special cases such as article 1130 of the civil law. The mentioned article, which is based on "la osr- haraj" (no hardship rules) introduces "osr- haraj" (hardship) criterion without stipulation to particular description or explanation as a way for woman releasment of her hard life and adjusts the general rule "attalagh beyad man akhaz bessagh" (divorce depends on who take the leg) The present article is supposed to reveal crucial role of judiciary procedure in applying provisions and identifying examples of article 1130 of the civil law, in order to resolve executive problems of article 1130, as while as examining existing problems and gaps in judiciary procedure.

Key words

"La Osr- Haraj" (No Hardship Rules), Law, Judiciary Procedure, Divorce, Woman

Husband's Right to Ban his Wife's Employment

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Abstract

According to the Iranian Civil Code, the husband is entitled to ask the court to ban his wife's employment if he considers that in contrast with his prestige or family expediencies. The doctrine and legal procedure in enforcing this article acts to the wife's detriment. Wide interpretation of "prestige" and "family expediencies", the possibility of employment banning despite an implied term of contrast, the enforceability of the verdict which as a result forces the court to end her employment relationship with the third person and imposing her damages resulting from ending the relationship, are all detriments concerning the wife. Studying the doctrine and legal procedure in interpreting article 1117 of the Iranian Civil Code and answering the arguments represented in the two legal sources, this paper will provide solutions to preserve wife's rights and preventing damages to her.

Key Words

Employment, Wife, Disobedience, Family Expediencies, Employment Ban, Implied Contract Term.

Harmless Effect on the Disobedience and Dissention of the Spouse Decree

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Abstract

Family is one of the significant educational bases in the observance of the human rights ,although several factors such as grudge, illness, selfishness and irresponsibility have made spouses incapable of fulfilling one another's rights easily. Upon the emergence of a dispute between couples, the Holy Qur'an recommends that the two should get along through reconciliation via practicing educational principles such as beneficence, peace, friendship, mercy and doing the good at first, which has to be conducted and performed by own couples, and in case this was ineffective, the Qurán recommends arbitration and ultimately, the power of the ruler to settle the dispute between them. Spouses are supposed to be kept away from harms throughout all these stages, and if and when one side abuses his/her right, which does harm to the other side, the ruler has the authority to take specific measures while taking to consideration the strengthening and safeguarding of the family as a major goal and elimination of harms that are in conflict with the rights of the two parties.

Key words

Harmless, Disobedience, Dissention, Arbitration, Ruler

The Role of Damage Rejection Rule in Wife's Right to Avoid Particular Obedience

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Abstract

As soon as the marriage contract is concluded, conjugal relationship and the resulting rights and responsibilities are executed between the parties. Despite, the Islamic fiqh and consequently the Iranian legislator has exempted wife from particular obedience in some cases. The Iranian Civil Code has prescribed obedience exemption explicitly, only in case of husband's affliction with any of venereal diseases; while many other cases have not been in the focus of command; like aggravation of wife's disease or a delay in her recovery as a result of particular obedience, husband's contagious illness, or some sexual deviations of his. In these cases, according to the damage rejection rule, one should sentence to wife's right in particular disobedience. Although amendment of current regulations, and especially to mention explicitly some prominent instances, is necessary.

Key Words

Particular Obedience, Damage Rejection Rule, Sexual Deviation, Illness.

Imam Khomeini's View on the Principle of No Harm and Its Application to the Family Law

Muhammad Soroush

Abstract

Imam Khomeini takes no specific view on the principle of no harm (La Zarar); he interprets it as the governmental prohibition. According to him, the proposition “no harm” consists of two principles in the prohibition of the both physical and mental damage, as well as the prohibition of causing stress. Thus, the principle of no harm is not a secondary law underlying all of the religious laws such as the principle of no blame (La Haraj). Imam Khomeini's specific interpretation of the family law produces significant results: first, whatever behavior of either of the spouse which causes harm or blame to another is not allowed; second, the responsibility of the spouse towards each other is limited by this principle; and third, in case of harm one can petition the Muslim ruler and ask him to help prevent the harm.

Key words

No harm, Governmental Decree, No Blame, Family Law, Divorce.

**Restudy on the Leaving of a Woman from Home
without the Permission of her Husband from the View
Point of the Rule of without Harm**

Abolghasem Alidust

Mohammad Ashayeri Monfared

Abstract

The blessed Islam religion has made the members of families responsible for some rights and duties in order to balance the holy base of family. The jurisprudents are finding the rights and duties by a systematic inquiry within the framework of Fiqh science. On the basis of their findings, one of the rights which the God on high has recognized for a man is that his wife doesn't have to go out of home without his permission, yet it wasn't an important question when the old styles of life made the women more interested in staying at their homes - But this subject has encountered some questions when the new styles of life lead the women to go out of home to the society (or to the virtual space). In this article at first we will take care of some studies about the Fiqhi position of this subject and then we will research the connection between the right of 'a man and the second topic of 'the harm and losses

Key words

Leaving of a Woman from Home, Permission of Husband, Defiance, Agreed Condition in Mind of the Two Parties, Without Harm

La-Zarar(No-Harm) as a Theory in the Structure of Islamic law

Mahmood Hekmatnia

Abstract

La-zarar(no-harm) is one of the important rules governing the system of family law in islam. Islamic jurists(foqaha) have expressed different views on narratives about la-zarar and how to use it in inferring legal rules in the Islamic legal system in general and family law system in particular.Despite the importance of discussions conducted about these narratives this paper will attempt to reinvestigate these topics in the form of a theory (harm negation and prevention theory). Here we first define the theory domains and levels of the Islamic legal system. Then through a systematic look, the position of harm .negation and prevention is considered

Key words

Family Law, Family Law System, Legal System of Islam, La-Zarar (No-Harm), La-Zarar (No-Harm) Theory, La-Zarar (No-Harm) Rule, Behavior of Bound Person (Mokkallaf), The Behavior of Government