Explaining the Collective Bargaining: An approach to the Iranian Labor Law

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Abstract

Collective bargaining is one of the forms of social dialogue that consists negotiations between an employer, a group of employers or employers' representatives and employees' representatives to determine the issues related to wages and conditions of employment. International Labor Organization (I.L.O) described it as Bipartite Social Dialogue. This social dialogue takes the expansion of satisfaction, agreement and liberal participation of all interested parties in labor world as its main goal. Meanwhile, employers and employees as two important classes in society need to perform the social dialogue and collective bargaining with each other from one hand, and with the government on the other, to achieving their objectives and attaining their rights. Different issues related to work relations between employee and employer can be discussed in such negotiations in which with regard to the economic, political and social conditions in each country, other issues can be raised.

This paper deals with the nature of the collective bargaining as a process, from rising differences and disputes to achieving some agreement, consent or a collective agreement (contract) between parties. Of course, the authors try depending on the discussions, to take a glance on Iranian labor law in the course of paper.

Key words: Collective bargaining, Bipartite Social Dialogue, Trade Union, Employer Union

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A Legal Survey on Sex Change and Its penal responsibility

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Abstract

The question of Sex change is one of the main subjects to which not only the attention of physicians but also that of lawyers paid. Lawyers attracted to this subject from the penal viewpoint. The topics, with which they are dealing in this regard, are as follows:

1. Is the sex change crime?
2. Is the impunity clause of father from nemesis due to killing his child applied to a sex changed person, too?
3. How can the difference between man and woman be applied to a sex changed person with regard to nemesis?
4. Is sex change affective on one's penal responsibility pertaining to a period before sex change?
5. As regards the new genitals of a sex changed person, which can not regarded literally as male or female ones, and as regards in coition time, the sexual intercourse (*iltiqa' khitānīn*) does not literally occurred, does the coition of such a person can be considered as adultery or sodomy?

This article devotes itself to the above questions and similar ones.

Key words: sex change, penal responsibility, nemesis, adultery, blood-money

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Judicial Responsibility in Preventing Crime in the Light of Paragraph 5 of Article 156 of the Constitution

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Abstract

According to the paragraph 5 of Article 156 of the Constitution, "the appropriate action to prevent crime and reform criminals" is regarded as one of the duties of the judiciary power. Since crime prevention is used in both general and specific meaning, and also includes various methods and examples, it is important to understand the exact meaning of "crime prevention" mentioned in paragraph 5 of Article 156 of the Constitution. Its logical and correct understanding is the main prerequisite so that this clause of the Constitution is correctly executed. There have been some disputes about the clause from the very codification of this principle in the Council of Constitutional Experts. These disputes manifested in the legal theories, are combined with the practical aspects when formulating the bill of crime prevention.

Therefore, this article tries to propose an explanation of this clause, according to the spirit of the Constitution. From the perspective of this article, according to paragraph 1 of Article 156 of the Constitution, both Islamic Republic of Iran as a whole, and the judiciary power, by committing to the principle of separation of powers, are responsible in preventing crime.

Keywords: crime prevention, paragraph 5 of Article 156 of the constitution, bill of prevention of crime

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An Analytical Defense of Men's Right of Divorce in Islamic Law

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Abstractg

There has been the right of divorce in the course of history as well as the marriage. Because if there was no such right, undoubtedly it had been replaced by other alternatives as family violence, separation and single-living and emotional divorce and etc, none of which is acceptable. In Islamic Law, there is a middle way for such situation i.e. the divorce neither is a closed road nor it is a paved way but it is an uneven one hard to be walked for any body. It is a very difficult option with many conditions and constraints, for both couples for the sake of their own benefits and especially of their children. For instance, in Islamic Law such things as successive and arbitrary divorces, irreversible (*zihār*) divorce, swearing to abstain from intercourse (*īlā'a)* have been forbidden and instead, men can choose between two options: keeping spouse fairly (*imsāki be m'arūf*) or emancipating spouse fairly (*tasrīh be ihsān*). Here an objection can be raised that why has the right of divorce been delegated only to men and how can women take their right?
The author in present paper by dividing man's right of divorce into two rights: that of separation from women and that of keeping her for himself, tries to explain the reason of this delegation. At last, it is focused on the especial supports of women rights in Islamic Law.

Keywords: analysis of divorce, the most detestable permissible, stages of divorce, right of divorce

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Reducing the crime in the light of components of social working

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Abstract

The individual difficulties & failures can be regarded as stemming from the social problems, one of which is the extensive outbreak of the elements creating crime in the society. Judicial knowledge by way of law-making & punishing the criminal has not only failed to reduce these extensive elements, but aggravated the crime and paved the way for criminals. The criminologists and penologists, by expanding their studies on criminals & grounds causing the crimes, have tried to lessen the agonies arising from the phenomenon and to draw the attention of law-makers & knowledge of criminal law towards prevention of its reiteration. Criminology, regarding its nature of acceptability towards all social sciences and seeking help from them, has resorted to the social working studies. Because, there are some common characteristics between two sciences regarding the environment & issue of social workers; a social worker will only succeed if he can overcome the social difficulties. Therefore, understanding the social problems & deficiencies almost all of which, are grounds for crimes, would pave the way for better improvements in the realm of social working.

The present paper tries to study & analyze the social worker`s role in giving reduction to a crime by way of preventative actions which prevent its reiteration by the wrong doers.

Keywords: Reduction of crime, Social Working, Criminology, Crime, seeking help.

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A study on Hans Kelsen's Legal thought

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Abstract

Hans Kelsen was not only a very great jurist but he possessed of exceptional personality. During his life, Kelsen devoted a considerable attention to the issues like as the maintenance of peace, international matters, and the nature and concept of law. He sought to describe law as separate from both ethics and ideology. Kelsen's legal positivism is of some features as follows:

1. it is free from any ethical or ideological issues;
2. in his theory no value judgment is made concerning the legal system *per se*;
3. all historical, sociological and ethical issues are beyond the scope of this theory;
4. this theory is set up first by making a fundamental distinction between the prescriptive and the descriptive aspects of positive law;
5. Kelsen separated the validity from the efficacy; in his view, the validity means that there is norm or legal order, and the validity of the legal norms within any system stems from a basic and fundamental norm;
6. Kelsen's theory redounds to some unity between international and national law, between objective and subjective law, and between the state and the law.

Keywords: basic norm, validity, efficacy, legal positivism, rational reconstruction

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A critical study on Exile Punishment in Islamic Jurisprudence and Iranian law

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Abstract

There are some various understanding of exile such as distancing, jailing, submerging in water and putting to death, among the Jurisprudents. Regarding the Iranian Law, the local controllable exile is constrained by some special limits. Since the Saint Legislator has not exactly asserted the features of, its particular conditions depend on customs and judge decision. So the article 5 of the securing and training Act regarding to the place of exile and its particular conditions has not been nullified and may be acted by judge. If some guilty has been condemned to several punishments, the exile can only be enforced when other punishments have been executed. The exile punishment can only be substituted with other ones such as jail or cash fine by judge when guilty has not submitted to exiling. In Law, the amount of these punishments has not been determined by law- makers, which can be reversing the constitutional principle of lawfulness of all punishments; but it can be justified as a preparation for making punishments appropriate to guilty.
The present paper deals mainly with the nature and features of exiling and how and under what conditions can it be substituted with alternative punishments.

Key words: guilty, exile, punishment, jailing

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