

The Couple's Remarriage in Iranian Legislative Process with an Approach to Governmental Jurisprudence and Shari's Policy

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Abstract

Remarriage of the husband as one of the issues related to family rights was modified and restricted several times in a historical process after entering in Iranian Civil Law. The reason of these changes and revisions is aligning of this institution with the objective realities of the family, in order to strengthen its foundations and prevent its destruction. But if the legislation, changes and revisions are not be based on a macro perspective to comply with the general principles and the goals governing family, it can't to produce a convergent and organized legal system in which its components are not be in conflict. This article with descriptive- analytic method studies the issue of couple's remarriage in the context of fundamental principles such as expediency, tolerance, justice and the fame principle. In this explanation, the structure of Islamic law is considered as a pyramid and under the principled rule that stretched until the base of the pyramid and is the absolute criterion of lows legitimacy. The principle of the legitimacy of marriage is related to the preservation of the essential expediency of preserving generation, but its multiplicity is due to the praise and requirement expediencies, based on the rule of leniency, relieves embarrassment and prevents the dissolution of the family. In the Iranian legal system, the praise and requirement expediencies should not ultimately negate and violate the essential expediencies that require preserving the family structure and preventing the destruction of its foundations, which is also emphasized by Article 10 of the Constitution.

Keywords: polygamy, Shari's policy, Sharia goals, the praise expediencies, the requirement expediencies, the justice principle, the fame principle

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