

Comparative Study of Contractual Freedom in Family Law with emphasis on Marriage in Imami Jurisprudence and French Law

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Abstract

Marriage is the main and traditional form of family formation in the two legal systems of Islam and France. In the evolution of French family law in recent years, a concept called contractualization has been the focus of lawyers' attention. Contractualization is a process in which areas of family law that have not been contractable become contractable with the approval of new laws. It seems that contractual freedom in family law faces at least three interpretations. The comparative study of these interpretations in French family law and Imami jurisprudence as the origin of Iranian family law shows that in French family law, the process of contractualization reflects the lack of contractual freedom with the three interpretations in family law. While according to the author's view, the contractual freedom with the proposed three interpretations is current based on the Iranian family law and Imami jurisprudence. The first interpretation is the principle of non-opposition of the agreement, with the mandatory rules of family law in the cases of suspected opposition. The second interpretation is the possibility of determining the terms of the contract, which indicates serious freedom in applying the agreements of the spouses. According to the author's opinion, this principle also does not exist in French family law. The third interpretation is the well-known interpretation in the law of obligations, which does not exist in French law related to marriage.

Keywords: contractual freedom, mandatory rules of family law, eternal absence, rule of conditions, contractualization

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