

ABSTRACTS

Contractual Justice in Afghanistan Law

Mohammad Taqi Maghrebi^{1*}, Jalil Ghanavati^{2**}, Sayed Alimohammad Yasrebi²

- 1- Ph.D student Private Law, Farabi Campus - University of Tehran, Tehran, Iran
- 2- Scientific board member of Law faculty, Farabi Campus - University of Tehran, Tehran, Iran

Abstract

Contractual Injustice is one of the challenges to modern contract law, based on individualism. The diversity of injustice obligations, apparently, in the legal contract frameworks, supported by principles of contractual freedom, which were challenging to the idea of justice, made legal scholars make sure of balance between principles of contractual freedom and the ultimate goal of justice, by making subtle adjustments to these principles to match justice criteria. The effects of this effort are visible in different legal systems and different countries, based on their capacities and understanding of their requirements. In Afghan statutes, justice has a glorious and just position. Afghanistan constitution has recognized justice as a basic goal of the new Afghan political system, requiring the executive entities and judiciary to apply it. In contract law, Afghanistan civil law has identified the justice as a criterion to determine the level of individuals' obligations in constant and adhesion contracts in many cases, explicitly or implicitly, as well as it has recognized the contracts arising from fraud and abuse of rights voidable. Furthermore, in some specific laws, like "law of support of consumer" and "law of commercial contracts and property sales", the unfair contract terms have been considered explicitly invalid, explained by some examples.

Key words: *Justice, Unfair terms, Afghanistan law*

*- Maghrebi1384@yahoo.com (Corresponding Author)

**-. ghanavaty@ut.ac.ir

Received: 29/06/2019
Accepted: 14/09/2019
ISSN (Print): 2706-7262
ISSN (Online): 2706-7270

Kateb Quarterly (Scientific - Research)
Vol. 6, No. 14, Autumn 2019
PP. 133-156

Correction and treatment in Afghanistan and Iran's criminal law policy

Mohammad Taqi Mohaqqiq^{1*}, Zaynab Saberi^{2**}

1- Ph.D student International Law, Shahid Beheshti University, Tehran, Iran

2- Master student of Criminal Law and Criminology, Imam Khomeini International University, Qazvin, Iran

Abstract

Correction and rehabilitation of the perpetrators are of the important approaches and policies that the criminologists have studied and worked on in the last one or two centuries. This approach is not only a humane approach towards confronting the phenomenon of crime but has also been emphasized by the United Nations. Criminal policymakers of Iran and Afghanistan, inspired by the doctrines of clinical criminology, have put efforts to consider and apply the corrective-therapeutic aspect of punishments in dealing with some types of crime. Therefore, authors of the constitution of the Islamic Republic of Iran, in paragraph 156, and the legislators of legislative and infra-legislative regulations abiding by it, have anticipated the rehabilitation of the perpetrators as part of the judiciary and law enforcement bodies' goals and functions. The constitution of the Islamic Republic of Afghanistan has not specifically referred to correction and treatment of the perpetrators, but abiding by and emphasizing the Universal Declaration of Human Rights and international treaties, which largely emphasize the correction and treatment of delinquents, has made possible the acceptance of this approach. Afghanistan's Penal Code has seen significant changes compared to the old one, has anticipated the creation of institutions for correction and treatment of the perpetrators. The study of the status of correction and treatment of perpetrators in the legislative criminal policy of Iran and Afghanistan, especially as stated in the supra legislative, legislative, and infra legislative laws and regulations, is the subject of this peer-reviewed article.

Key words: *Correction, Rehabilitation, Criminal Policy, Legislative Criminal Policy, Afghanistan, Iran*

*- m.mohaghegh@yahoo.com (Corresponding Author)

** - Zainab.saberi1368@gmail.com

Characteristics of Limited liability Company in the Afghanistan legal system

Eidmohammad Fallah^{1*}

1- Scientific board member of Law and Political Science faculty, Parvan University, Parvan, Afghanistan

Abstract

According to the third article of the Law on Limited Liability Companies, approved in 2017 (1396). The Limited Liability Company has a separate personality from its owners and has a certain capital. The capital is divided into shares. The responsibility of each shareholder is limited to the size of his shares. The law provides a new concept for limited liability companies. The characteristics of joint-stock companies; such as the division of capital into shares are parts of the characteristics of limited liability companies. With these changes, joint-stock companies and limited liability companies, which were established by the Law on Joint Stock Companies and Limited Liability Company in 2006(1385), didn't have the characteristics of mentioned companies in 2017 (1396) law. The company's new law doesn't limit the old companies. So these companies have to change their characteristics; for example, their capital is not divided into shares. They must divide their capital into shares, or they have to act with the previous characteristics. The purpose of this study is to explain and describe the characteristics of limited liability companies and the law prevailing previous companies because of the country's legal system. Commercial companies divide into different types. To separate these companies is challenging. By defining and characterizing commercial companies, companies separate easily. The most important characteristics of a limited liability company are its commercial nature, the division of capital into shares, having an independent legal personality, and the limited liability of shareholders. This is library-based research. The data collected in the form of libraries. The research method is qualitative. The type of research is descriptive-analytical research.

Key words: *company, limited liability, share, subject of commercial, memorandum and legal personality*

*- eidmohammad.fallah@gmail.com

Instances of the Non-opposability between Afghanistan and Iran Commercial Law

Murtaza Mohiqi^{1*}, Saeed Mohseni^{2**}

- 1- Ph.D student Private Law, Ferdowsi University of Mashhad, Mashhad, Iran
- 2- Scientific board member of Law faculty, Ferdowsi University of Mashhad, Mashhad, Iran

Abstract

Non-opposability considers as a situation that is exceptional and opposite to the principle of "opposability". Or non-opposability along with the guarantee of known performances of "invalidity", "accuracy" and "non-influence" is another type of legal situation. Based on this situation, the combination of correctness and invalidity is authenticity between the parties and discredit against third parties. Non-opposability is a fundamental protection of third parties and the provision of their legal security. A general rule governing the concept of this situation does not exist in Afghan and Iranian law and this makes it difficult to find real examples of non-opposability. Although careful consideration of the rules in various legal areas can find in most of these institutions in civil law, commercial law, intellectual property laws, and insurance law are observed. Some of these examples relate to the text of the law, such as the Law on Co-operative and Limited Liability Companies of Afghanistan and the provisions of the Iranian Trade Code. Legal thinkers or judiciaries suggested some examples in civil law, the existence of some jurisprudential examples, such as the opinion of some jurists about the effects of apparent advocacy, the status of the buyer's transactions with the intercessor, the transaction to escape from religion indicates a brief acceptance of the concept of invalidity. Due to the invalidity of citation in trade law, it considers as a public executive guarantee along with other guarantees of commercial law performances. It also seems that the general rules of invalidity can achieve to collect and obtain scattered examples. The conclusion to be drawn from the non-opposability commercial law is that it is sometimes unreliable due to non-compliance with the disclosure required by the legislature or due to non-compliance with the rules; sometimes due to concealment in legal relations; sometimes due to protection of third parties against invalidity; and ultimately for the maximum protection of recent persons. The prevalence of general rules over scattered instances of non-opposability can give our discussion a practical and applied aspect, and the explicit disclosure of certain instances can extend to silent or suspicious cases. Especially in business matters; where the issue of speed and efficiency of transactions is always very important. The institution of invalidity or non-opposability can solve some problems effectively.

Key words: *Non-opposability, Dissemination, Noncompliance, Secrecy, Invalid Citation, Maximum Third Party Protection*

*- murtaza.mohiqi@gmail.com (Corresponding Author)

** - s-mohseni@um.ac.ir

Examining the main challenges of non-availability of labor rights in Afghanistan

Abdulmajid Wardak^{1*}, Hasan Khosravi^{2**}, Abdulhossain Mosavi³

- 1- Graduated of International Law, Payame Nor University, Kabul, Afghanistan
- 2- Scientific board member of Law faculty, Payame Nor University, Tehran, Iran
- 3- Professor of Law and Political Science faculty, Payame Nor University, Kabul, Afghanistan

Abstract

The right of labor is the logical consequence of the freedom to work and the right to arrange a job for all people who work in the community and, if they do not have it, they can use a pension to compensate them. Everyone has the right to labor because everyone is required to work. This right is one of the most basic of human rights, including the elements of access to work and employment, as well as the rights it enjoys in the course of an employee's work, including the right to equality and non-discrimination, the security right in work, the right to enjoy. It comes from proper working conditions such as clear and proper working hours, a safe working environment, and so on. The importance of employment and unemployment has always been undeniable in economic, political, and social issues that make it real. The first step in enforcing the right of the labor is familiarity with the content and explanation of the elements and components of this right in national and international documents. This research seeks to identify the main challenges and barriers to access the right of labor in Afghanistan. The research results show that the right of the labor guaranteed and protected in various national and international documents. But unfortunately in Afghanistan some of the challenges, such as war and political turmoil, poverty, tribal cultures, corruption, etc. have made it impossible for people to access this basic right and sometimes even impossible.

Key words: *Right of the labor, Afghanistan law, Unemployment, women, juvenile*

* - waiswaziry@gmail.com (Corresponding Author)

** - hkh.be82@yahoo.com

Received: 05/06/2019
Accepted: 10/08/2019
ISSN (Print): 2706-7262
ISSN (Online): 2706-7270

Kateb Quarterly (Scientific - Research)
Vol. 6, No. 14, Autumn 2019
PP. 57-74

Investigating the Right to Life in Islam and the Modern Human Rights System

Mohammad Salim Mohseni^{1*}

1- Professor in Al-Mustafa International University, Qom, Iran

Abstract

The right to life is very important both in Islam and the international system of human rights. In Islam, its significance is extremely extended that killing a person is considered to be the killing of all human beings. Human rights instruments supported this issue. The right to life is identified as the first human right and even has gone up to the abolition of the death penalty. This research is an attempt to compare both the rights in Islam and international instruments of human rights. Therefore, we applied the descriptive-analytical method to achieve the goal. We used from religious sources and human rights documents. The findings show that in Islam, the right to life is very important and various measures have been taken to support it. Comparing the Islamic legal system with the modern human rights system, it does not seem different from the principle of recognizing the right to life because both emphasize the importance of the right to life, they have taken various supportive measures. But simultaneously, there are differences between the two in terms of fundamentals, goals, and attitudes toward the issue.

Key words: *Islam, the right to life, the importance of the right to life, supporting the right to life*

* - safidabb@gmail.com

Received: 30/04/2019
Accepted: 23/07/2019
ISSN (Print): 2706-7262
ISSN (Online): 2706-7270

Kateb Quarterly (Scientific - Research)
Vol. 6, No. 14, Autumn 2019
PP. 29-55

Investigating the causes and factors of the crime of kidnapping in Afghanistan

Sayed Heidarshah Mousavi^{1*}, Mohammad Ali haji dehabadi^{2**}

1- Ph.D student of Criminal Law and Criminology, Qom University, Qom, Iran
2- Scientific board member of Law faculty, Qom University, Qom, Iran

Abstract

One of the most prominent components of insecurity in Afghanistan in recent years after terrorist groups and armed drug convoys is the ominous phenomenon of kidnapping. Kidnapping is one of the crimes that in addition to inflicting material and spiritual damages on the individual and his relatives, causes disarray and severe disorder in the society. As its occurrence widely reported in the media and public opinion. Effective combating the phenomenon of kidnapping requires identifying and rooting out the causes and motives for this crime. To provide appropriate solutions to prevent and reduce kidnapping occurrence. The existing research attempts using a descriptive-analytical method to explain the most important causes and factors behind this phenomenon in Afghanistan. Research findings show that economic factors have the most influence on the phenomenon of this crime beside that social, political, and geographical factors influence the occurrence of this phenomenon. Accordingly, the basic priorities in preventive measures of this phenomenon are economic, social, political, and environmental.

Key words: *Kidnapping, Economic factors, social factors, Political factors, Geographical factors, crime*

*- Sayedhaidar786@gmail.com (Corresponding Author)

**-. Dr_hajidehabadi@yahoo.com

Received: 01/06/2019
Accepted: 27/08/2019
ISSN (Print): 2706-7262
ISSN (Online): 2706-7270

Kateb Quarterly (Scientific - Research)
Vol. 6, No. 14, Autumn 2019
PP. 9-28

Rules of interpretation of the contracts in Afghanistan and Iran legal system

Mohammad Mustafa Mohiqi^{1*}

1- Scientific board member of Law and Political Science faculty, Kateb University, Kabul, Afghanistan

Abstract

Many of the contracts written by non-specialists who cannot set them correctly but sometimes it happened that the most accurate contracts need the interpretation, too. In this case, the parties may have to refer to the court and the judge is obligated to discover the real intention of parties. Courts for solving disputes arising from contracts, need specific rules to prevent disagreements. The rules of interpretation of the contracts in Afghan law and Iranian law are in two categories: inside rules that search in the text. The most important inside rules are positive interpretation (terms to be given effect), pay attention to the nature of the contract, analogy, and reference to the contract as a whole. The judges in Afghanistan and Iran do not limit themselves to the contracts. They also pay attention to outside rules like the interpretation of the contracts in favor of promisor, good faith, the law, and contra proferentem rule. In Iranian law –despite Afghanistan- the rules of interpretation of the contracts are not explained and merely mentions scattered examples.

Key words: *Interpretation of the contract, real intention, inside rules, outside rules*

*- dr.mohiqi@kateb.edu.af

Contents

| | |
|--|----|
| Rules of interpretation of the contracts in Afghanistan and Iran legal system | 5 |
| Investigating the causes and factors of the crime of kidnapping in Afghanistan | 6 |
| Examining the Right to Life in Islam and the Modern Human Rights System | 7 |
| Examining the main challenges of non-availability of labor rights in Afghanistan | 8 |
| Instances of the Non-opposability between Afghanistan and Iran Commercial Law | 9 |
| Characteristics of Limited liability Company in the Afghanistan legal system | 10 |
| Correction and treatment in Afghanistan and Iran's criminal law policy | 11 |
| Contractual Justice in Afghanistan Law..... | 12 |

Proprietor: Kateb University

Managing Director:

Dr. Mohammad Musa Jafari

Chief Editors:

Dr. Mohammad Musa Jafari

Dr. Abdulkhaliq Qasemi

Dr. Mahdi Mohaqiq

Dr. Hasan Rohani

Dr. Mortaza Nikzad

Editorial Board:

Dr. Mohammad Musa Jafari

Dr. Abdulaziz Danesh

Dr. Zakiya Adeli

Dr. Mahdi Mohaqiq

Dr. Amanullah Fasihi

Dr. Baqer Rezaee

Dr. M.Akram Arefi

Dr. GholamHosein Amiri

Dr. Hossain Golestani

Dr. Mohammad Arif Naimzad

Dr. Seyed Hamid Mosavi

Dr. Saeed Nazari Tavakoli (Iran)

Dr. Zohre Mazaheri (Iran)

Dr. Abolfazl Mahmoodi (Iran)

Dr. Ahmad Alrehl (Syria)

Executive Director:

Mohammad Reza Samadi

ISSN (Print): 2706-7262

ISSN (Online): 2706-7270

Address: Darulaman St. Kateb University, Scientific Research Center, Office of Kateb Quarterly, Kabul, Afghanistan

Phone: +93 (0)72 9008 779

Website: <https://research.kateb.edu.af>

Email: Journal@kateb.edu.af

KATEB QUARTERLY

Scientific - Research

Vol. 6 – No. 14, Autumn 2019

ISSN (Print): 2706-7262

ISSN (Online): 2706-7270

