

The limits of free will in the creation of contractual obligations in Iran civil rights

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ABSTRACT: The principle of freedom of in our law has been declared by Article 10 of the Civil Code. Under this provision: "The private contracts to those who have signed it, if not contrary to law, are valid. So, except in cases where the law has created an obstacle placed in the way of influence, will those treaties governing their fate and free will to be the 'original' was. Current law, rule governing its former territory is lost, and the two sides agreed to another contract do not respect its past. It is a set of rules of contract growing, and some of them, such as a business or rental contract, no compromise in terms of the legal effects of marriage are important. Some contracts have such an important social figures, the law imposes on individuals them. It also requires a belief in the principle of contractual freedom individualist ideas about sovereignty "will" is not. Current law, all more or less accepted that the real rule of law, But practically respect to treaties has led use that "freedom of contract" is accepted as the true basis of the considerations of social and economic policy.

Keywords: the principle of contractual freedom, free will, Iran civil rights.

INTRODUCTION

As a result of increasing interference of government in the economical affairs, the concept of public discipline has been developed and the freedom of two contract parties decreased. The causes of nullity of contracts are increasing and the most conditions that have the social aspect are imposed by the government and the individuals (Qhanvati, 2009). Obligatory provisions of contracts remained its previous credit and this idea strengthens that if the cash value decreases as a result of unpredicted event, the court can fit debtor commitment with the economical condition by modification of contract conditions.

It has also been suggested if the certain obliged money in the contracts has not reasonable proportion the court can change its amount (Safei, 2003). The provisions and the effects of contracts never present for people absolutely and legislator limits their freedom by various means. The purpose of the principle of free will is every whoa law doesn't have the special order; the will of two contract ear tie is respectful (katazian, 2001). The addition of this title indicates this fact that, contractual freedom" is respectful, if it isn't contradicted with the social and legal system.

To clarify the domain, of topic, the times of free will in the contractual commitments in Iran civil law have been studied.

Research purposes:

1. Determine and find the nature of implementing the contractual commitments.
2. Determine and find the limits of free will

Free will:

Free wills are free to establish contract and body can force contract parties to conclude. Also, the parties are free to create contract relationships and they can adjust contract (Jafari langrodi, 2005).

The principles of freedom in law:

Eternal God creates free his servants, According to Islam, human dominate on his/her self and his/her property, body and laws. The man can choose his job, housing, politics, beverages and mackerel which are not contrary to the law of God. And the principles of freedom in each school. Especially Shiite principles in the Islamic world are to fight against injustice and unjust governments.

The principle of the contractual freedom in our law has been announced by Article 10 of the civil code. Under this article "private contracts to those who have signed it, if it is not. Contrary to the law is valid" them , except in cases where the law has created an obstacle to in fluency the contract, the will of the people governs the fate of their contracts and free will must be accepted as a "principle".

It can't be claimed that the provisions of this article hasn't historical records in our law and is the innovation of Authors of civil code or the result of imitation of European law, Because Imamate jurists at least in the condition subject, followed this principle and peace contract is a means for providing free will in the contracts. Some commentators and jurists also fulfill all contracts that must not be contrary to morality and religion. However, it seems that the Article 1134 of French civil code has been inspired the writers of civil code.

Limits of free will:

The principle of the contractual freedom has been accepted as a useful social device . so, wherever it is desired , this device can be used and if it doesn't have desirable use , the law restricts it, In Article 10 civil code , the influence of the private contracts is allowable , if it isn't contrary to law and in Article 975 of the same law, it is said . court cant enforce the external laws or the private contracts that is contrary to moral or injures . the feelings of society or is opposite to public order, although the implement tat ion of the mentioned .rules is permissible , European law in this oven should not be denied .

-Rules resulted from the principle of the contractual freedom.

From the principle of the contractual freedom. Two important rules are obtained:

1. Person is free to deal or refrain contract: namely, that no person shall be compelled to be a contractual party, or refrain to deal contract.
2. Person can select his/her contract party and determine the provisions of contract and its commitments.

Limits of collective and additional contracts

From the late nine tenth century, as a result of the completion of transport and the development of international trade, the trade situation is taken before it is unprecedented. Also, the necessity for establishing large capital approaches individual members of each class and converts the individual investment to the collective investment. Mona facture and sellers diagnosed that the best way to provide more interest is to collaborate closely and the transaction conditions must be same and equal for all members of union. For this purpose, each seller must implement laws that has been laid down in the syndicate of other seller and sometimes the contract parties , oblige to not exceed conditions that lab our Unix has been laid down .

The principle of contractual freedom in Iran law

In Iran, the principle of will governance and the principle of contractual freedom have been recognized by approval of first volume. This principle has been common between people before approval of civil law, because this has been existed in jurisprudence and Islamic tough as and people followed it.

The principle of will sovereignty has been expressed in Article 10of civil code, it starter –u the private contracts are in fluently if they don't contradict with the law"

This article suggests two things: first, that the mere existence of the will of the parties for conclusion of the contract is enough.

Limits of principle of will saver eighty and the principle of free will in the contracts:

In Iran law and many countries, the principle of free will in the contract is limited by law, public order and good behavior.

In the other words, where the interests of person and free will in contract were contrary to the mentioned eases, this freedom is limited because of support of the interests of people and society.

These three concepts limiting this principle namely law, good behavior and public order cannot be absolutely separated. Restriction on the principle of free will in the contract by and good behavior.

Article 975 of civil code states ((the court can't enforce the external laws or the private contracts that is contrary to ... good behavior or injures the feelings of the society or is opposite to public order, although the implementation of the mentioned rules is permissible.

As it is seen in this article, legislator didn't permit court to enforce timely the laws opposite to the good behavior and public order. We can conclude that contracts can't be contrary to the good behavior and public order because of support of society.

CONCLUSION

Freedom of contract in our law has been announced by Article 10 of the civil code. Under this article, "private contracts to those who have signed it, if that is not contrary to the law, are valid". That, except in cases where the law has created an obstacle to the influence of the contract, the will of people prevails on the fate of their contracts and free will must be accepted as a "principle".

In the current law, the principle of will sovereignty has lost its former domain and the agreement of two contract parties has not respected like the past times.

The principle of the contractual freedom is taken four main results:

1. People can conclude contract under any title they wish and determine the desired results and effects. the civil code has been predicted in detail the effects and conditions of some contracts that have special moral and economical importance on this occasion, this group is called "certain contracts" like sales contract, peace gift, proxy and debt.

However, one must know that the prediction of the legal institutions does not mean that people are forced to choose one of them for each contract and financial relations. The principle of contractual freedom in certain for the development of the rule will be benefited. Because the main purpose of Article 10 is that in the brief silence of law, the will of two contract parties governs on their and there isn't any difference between certain contracts and other contracts.

2. Contract: occurs with the consent and doesn't have the special procedures and both parties are not forced to apply certain words. Expressed will is a means to achieve their real needs and with every word and movement that is done, it affects, other procedures, such as the presence of a witness or document regulation is not necessary and it is not related to the contract binding force.

3. Two contract parties oblige to observe i. they should respect to their contract and fulfill is commitment. The court, on the pretext of justice and fairness has no right to modify the conditions of the contract or exempt the debtor for his/her responsibility.

4. The effect of contract is limited to those involved in the compromise and others that are not income. Freedom of every person limits freedom of others and no one can restrict the freedom of others or impose an obligation or a right in his/her favor except in exceptional case.

Suggestions:

1. The principle of free will has a broader domain than the principle of contract freedom, therefore it is suggested to principle of contract freedom, and therefore it is suggested to pay attention more to this principle of freedom.

2. The principle of contractual freedom in certain contracts will be used to develop will. Sovereignty.

3. It is recommended. That contract parties conclude under any title they wish and determine its results and effects by their desire.

4. The restriction arising from the private agreements should not bring about free will.

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