THE ROLE AND POSITION OF THE AUTHORITY OF WILL PRINCIPLE ON CONTRACTS FROM THE PESPCTIVE OF GENERAL ECONOMIC RIGHTS

MAHDI HARBI
Graduated in Private law, Department of law and social sciences, Tabriz University, Tabriz, Iran
E-mail: m.harbi.dk@gmail.com

Abstract
The principle of the authoity of will is considered one of the most important and at the same time one of the broadest and deepest legal issues, so that to have a legal effect on any act, in most cases, we need the presence of the will at the time of performing that act, hence, more rules and regulations of law can be applied when the act is done voluntarily. The principle of authoity of will in the field of Iranian contract law, despite many ups and downs, almost as in the past, plays a fundamental role in the principle of concluding a contract, choosing a party to the transaction, and determining the terms and conditions of the contract. For a long time, the validity, scope and effects of the principle of authoity of will in contracts and obligations have been and still are conidred by jurists. In this research, the role and position of the principle of authoity of the will in the law of contracts was investigated with the library method and in an analytical-descriptive way, from the perspective of general economic rights, and as a result, this principle has been accepted conditionally, not absolutely, in the laws of Iran.
Key words*: the principle of authoity of will, contracts, public rights, economy*

1. INTRODUCTION

Undoubtedly, no factor plays the most important role in creating legal acts like will. This is approved by all the lawyers and legislators of the world, so that the supporters of apparent will also acknowledge this. As it is said, the contract is the product of the agreement of two independent and free wills. That is, the principle of the contract is "created" by the voluntary agreement of the parties, its content, conditions and effects are also determined by the will of the parties.

In most of the legal systems, it is undeniable that the will plays an essential role in creating legal obligations and commitments, words and actions alone have no effect in creating legal works and do not create any works, unless the discoverer is from will and internal intention. In other words, in order to create a legal effect, the inner will must exist, and the meaning of the existence of the will is its issuance by a person who has the will and is completely free. It means a will that has an aspect of composition and creativity. Basically, the conclusion, execution and finalization of the contract depends on the independent will of its parties.

The principle of the authority of will as an accepted principle in our laws has its limits and legal effects, which are discussed as limitations and exceptions of the rule of will and the results. Among the limitations of the principle of the authority of will are: imperative laws, public order and good morals, and in addition, due to the increasing interference of the government in the economic affairs and relationships of individuals and the delivery of additional "acceptance" contracts, and especially contracts in which one party is the government and institutions are dependent on the government and the implementation of the regulations of government transactions regarding the procedures for holding tenders and the problems and future problems resulting from it and the system of easy trade through computer networks and counter offices of government services, which contracts completely non-personally and conditions is defined and applied in advance. Among the other exceptions is the principle of authoity of will, which in this context, as discussed in this research, seems to have a legal vacuum and puts people's free will in more trouble.

2. THEORETICAL LITERATURE

2-1 Definition of contract

In the general sense, the contract is synonymous with the contract and includes definite and indefinite contracts, but in the special sense, the contract only includes indefinite contracts, therefore, Article 10 of the Civil Law, which stipulates: "Private contracts are valid for those who have concluded them, if they are not explicitly contrary to the law." He used the word "contract" in its special meaning, i.e. indefinite contracts. And in general, the contract is "the cooperation of the will of two or more people in creating a legal entity".

"The agreement of two wills is the main pillar of the contract, but the concept of the agreement differs according to the theory that is accepted about the role of the contract and the basis of the obligation arising from it. While in the conventional theory among jurists, an agreement is created from the coordination of the real will of both parties. The tendency of a group of writers is to call the collision of apparent wills an agreement. For this reason, the binding force of the contract belongs to the declaration of wills, as a social phenomenon, and it should not be based on their inner will. A person who has expressed his will must also bear the results of this action, even if this result is not the same as his real desire" (Katuzian, 1992). The concept and meaning of the contract in common words and conversations as well as in the specific legal term is the same, and that phrase has the same analytical meaning as mentioned for the contract. It means the cooperation of the will of two or more people in creating a legal entity.

2-2 Verbal and terminological definition of will

"In the word infinitive of verbs from the root "Rood" it means desire, request, request, wish, desire, intention, song and taste, which in the word means the inclination and desire of the soul to do something, and some in the word have also defined the will as a decision, plan, firm determination and decision to do something with a prior intention, in the principles: the will is a queen who wants something to a person through it. (Ansari et al., 2009) The literal meaning of will: it is used from the word "Rood" in the meaning of will and providence. It is also used to mean trying to seek something. Some have interpreted it as the song of doing something and taking control of something (Amid, 1995).

- **The idiomatic meaning of will**: The idiomatic meaning of will is consistent with its literal meaning. Here we mention some of the definitions of jurists.
- **Some people have said in the definition of will**: Will is a strong passion due to which determination and decision is made on a certain thing. (Bajnouri, 1998)

In another definition, it is stated: Will is a warning of the heart, which is obtained forcibly after careful imagination and confirmation, and is compatible with the action of a body part. The aforementioned warning is called internal will as long as it leads to external action, and when it leads to external action, it is called external will (Jafari Langroudi, 2008). And finally, others consider will to be self-assertiveness towards an action after acknowledging its usefulness. One thing can be known from the above definitions, that the will is a sensual act that is the productive power of a person.

2-3 Freedom of concluing a contract (freedom of contracts)

One of the important results of the principle of authoity of will in contracts is freedom of contract, which is one of the manifestations of the principle of freedom of will, and this principle includes, in addition to the freedom of the parties in choosing the type of contract, the freedom to choose the conditions and effects of the contract, as well as the freedom to choose the party to the contract, and based on this principle, every contract is executed by the agreement of two independent and free wills and becomes complete and complete provided that it does not conflict with the mandatory laws, public order and good morals.

And this issue is clear from the explicit text of Article 10 B.C. It is clearly inferred and this principle states that people are free to enter into a contract or not to enter into a contract, determine the conditions, obligations and characteristics of it and the type of contracts they conclude and also choose the parties to the contract. As the freedom of contract is undeniable in the vast majority of contracts in Islamic law, and its basis is crystallized in the contractual freedom of individuals in a

peace contract, therefore, Imamiyyah jurisprudence put all unnamed contracts and indefinite contracts in the form of a peace contract and named it "Seyed Aaoqod".

Therefore, people can conclude a contract in any way they want and desire, and determine certain effects, conditions, and contents on it freely. In fact, the legal effects of contractual obligations are what the parties have requested. In concluding a contract, individual will plays an effective role. A person is free to conclude a contract and not to conclude a contract, and he cannot be forced to enter into a contract. In addition, in principle, people can determine the implied terms of the contract and the content of the contract at will.

This article uses the principle of freedom of will and its authoity in the contract, and this freedom is called contractual freedom, and it is often considered to be an essential part of the principle of the authoity of will, according to this freedom, people can organize their contractual relations in such a way that wants to regulate and they are not obliged to use the templates and examples provided by the law (Safaei, 1994).

Or to include their agreements in terms of conditions. People may sign a contract that is not part of any of the specified contracts provided in the civil law. Of course, as it was said, the parties to the contract cannot agree with each other against the rules of public order, but the public order that limits the principle of authoity of the will has an exceptional aspect, and it can be said according to the rule that the freedom seekers have declared: "Whatever is prohibited is permissible if it is not." The principle of abahah is also useful in Islamic law (Safaei, 1994).

In the same way it was stated before, based on the principle of "abahah" any contract that people make, the principle of its legality and permissibility is that it should be given effect, as well as based on the rule of "Al-Oghud Tabea Lelghosud" and "innama Al-Emal Blbayenat " and "Al-Amal al-Abniyah". " and "Lakal Amr Manavi" have been mentioned that the contract is subject to intention, positive and negative Jinnah. That is, what a person's will belongs to, will be realized, and what the will does not belong to, will not happen (Rafii Moghadam, 2011).

It is clear that the independence and freedom of the rule of individual will does not work in law, specifically and in the field of legal practice, except in the shadow of its maximum freedom, and basically without the existence of freedom and freedom of conduct, it is meaningless and unreasonable to talk about the rule of will. Since the power and creative ability of the human will is inherent, nothing can prevent its emergence and application, and this will is completely free unless it conflicts with another will.

The result is that the authoity of contractual freedom is part of the essence and the essence of the authoity of the will, and the concept of the authoity of the will really includes the concept of absolute freedom or its maximum. It is based on this that many jurists, in the position of expressing the results of the rule of will in civil rights, in addition to the freedom of individuals to perform or not to perform a legal action and to choose and determine its type, content, effects and parties within the framework of the legal rules, are mandated as one of the important consequences of the principle of authoity of will, since most of the legal actions are of the type of contract, they have gathered all the above freedoms under the title of "Principle of Contractual Freedom".

Therefore, it is concluded that individuals have the freedom to negotiate with each other on the terms of the contract and its effects in an equal position, and they have the right to determine the content and subject of any contract by observing the principles of public order and good morals and mandatory rules. And the contracting parties are free to agree in their contracts, contrary to the interpretive and supplementary or substitution rules that do not have a binding aspect.

In some countries, including France, the parties to the contract have the right to choose the law of their choice among the laws of different countries to govern the relations resulting from their contract. The French Court of Justice also believes that the applicable law in contracts, whether in terms of the form of the contract or in terms of its nature, effects and conditions, is the law chosen by the parties. According to Article 968 of the Civil Code of Iran, obligations arising from contracts are subject to the law of the place where the contract was made, unless the contracting parties are foreign nationals and have explicitly and implicitly made it subject to another law. One of the assumptions of the present research, based on the above-mentioned, is: Can the parties to

the contract determine the effects of their obligations and contracts or are they only confined within the framework of the law and its requirements?

In response, it can be said that due to the fact that respect for the contents and effects of contracts resulting from the principle of the authoity of the will of individuals is considered and the judge or government officials cannot change it or assign another meaning to it, therefore it is concluded that only the parties of contracts can change the terms and content of the contract and its effects with consent and agreement, add or dissolve items, or put the same quality and conditions of extension or termination and any legal act (contract and Igha) in relation to it.

Perhaps this issue is justified in the law of contracts under the title of "supplementary addendum" or "supplementary addendum to the main contract" to the main contract, where the parties to the contract, by agreement of two free and independent wills, add conditions or add obligations to the original contract that it is considered an integral part of the main contract, which is considered in the interpretation of the main contract with regard to the supplemental and supplemental part of it, and it is the order of the contractual works.

2-4 Necessity of contracts

2-4-1 Basis of commitment and binding force of the contrac

Another result of the rule of will in contracts is contractual necessity. In this way, after concluding the contract, both parties are required to comply with it. They must respect their agreement and implement the obligation arising from it. Therefore, after concluding the contract, the will of the contracting parties must be respected and public authorities have no right to change the effects of the contract and the obligations of the parties. The judge cannot revise the contract, or give it a different meaning that was not intended by the parties, and the court cannot adjust the terms of the contract or exempt the debtor from what he is responsible for under the pretext of justice (Katuziyan, 1992).

The legislator should also refrain from interfering in this matter as much as possible. Only the parties to the contract can change the effects of the concluded contract by mutual agreement or agree to dissolve it, but this is a new contract that is concluded according to the principle of free will. Obligation to the provisions of the contract is a general rule that exists in mandatory, permissible and optional contracts as well: in both permissible and optional contracts, as long as the contract is not terminated, both parties are bound by its provisions, and the one who has the right to terminate cannot obtain the results that Before breaking the marriage, it is necessary to not admit to yourself: For example, we know that the contract of legal representation is permissible, the client can dismiss the lawyer whenever he wants, but before the notification of this decision, he is obliged to pay the debt that the lawyer has assumed in his name and on his account. The lawyer has the right to obey and pay his salary. The lawyer also has the right to resign, despite this, if he fails to perform the representation, he must pay the resulting damage (Article 666 of the Islamic Law) (Article 612 BC) (Katouzian, 2006).

And another example: one of the interesting examples that show adherence to the provisions of a permissible contract is the legal status of its implicit condition. We have seen that the condition of the permissible contract is also binding as long as the contract is not broken. Therefore, the meaning of the binding force of the contract includes the necessity of the contract in its special meaning in the custom of the wise. The binding force of contracts originates from "will". In our laws, the laws of contracts are entrusted to private agreement and the principle of the rule of will is accepted as a useful social tool, but the government supervises and directs contracts and does not hesitate to violate the principle wherever it is not compatible with social expediency.Article 219 B.C. In this regard, it declares: "A contract concluded according to the law is binding between the parties and their representatives, unless it is terminated by the consent of the parties or due to legal reasons." The provisions of the article clearly show that the binding force of the conditional contract and the law has reserved the right to monitor and interfere, as stated in Article 975 BC. Also more explicitly than Article 219, "the court cannot enforce foreign laws or private contracts that are against good morals, or are considered contrary to public order due to hurting the feelings of the community or for other reasons..." Therefore, it is not an exaggeration to say that a binding

contract is "legitimate" from the point of view of law. Or in other words, the obligation resulting from marriage is a face of social obligation. (Katouzian, 2006).

The basis of the principle of the necessity of contracts is infrred from Article 219 B.C. Because the way of the wise and the wise is to commit to maintaining it during the transaction and to trust the adherence of their party and to organize their social and economic situation on this basis. And this causes the stability and prosperity of trade and relationships of people in the market and business in human societies, and also in terms of customs and ethics, it is also the observance and respect of the honorable covenant. Although according to the first part of Article 219 B.C. The principle of the necessity and stability of the contract is quite clear, and the term "necessity of the subject" contained in that part of the article also confirms and establishes this principle. Therefore, the second part of Article 219 is an exception to the principle of necessity, because if the parties agree, the contract can be terminated or due to legal reasons, for example, the use of options. And if the contract is necessary, if the other party breaks the contract, the contracting party can ask the court to compel him to perform the obligation or to compensate for the damage, which is a requirement for keeping the promise and adhering to the contract without hesitation. And it also entails commitment to the works of the contract. Thus, Article 219 B.C. states the principle of the necessity of contracts and the existence of the principle does not contradict the possibility of violating it in exceptional cases. As in the same article, dismissal and legal cases of termination are excluded from the ruling of the first part.

2-4-2 The legal basis of the necessity of the contract

One of the important evidences that is of great importance and wide application in the jurisprudence of transactions is the honorable verse "Ya Ayohalazina Amano Ofo Beloghud" of Surah Mubaraka Ma'idah, which is the exception of jurists in Islamic law. This Quranic verse commands the believers to fulfill their contracts. The vast majority of jurists believe that this verse indicates the validity of the marriage in an obligatory manner. However, some jurists believe that this verse contains a general ruling and the general requirement of this verse is to sign and approve any rational transaction and any trade based on consensus. As long as there is no reason for its corruption.

And the command to fulfill the covenant is one of the requirements of this noble verse, which emphasizes and confirms the observance and respect of the covenants and agreements concluded, and the subject of the command is to fulfill the covenant, comply with the requirements, implement its provisions, and adhere to and commit to its works. There has been a difference of opinion among jurists for a long time, but it has not yet been definitively answered. Therefore, faithfulness to the contract and its terms and requirements can be inferred from the meaning and concept of the honorable verse "Afwa Bel Aqud" and its necessity. Second, the narration of "Al-Mu'minun And Shorutahom" is one of the authentic prophetic hadiths, which has become an absolute jurisprudential rule in Islamic jurisprudence, and according to which the Shari'ah considers the believers to be bound and adhere to their contractual obligations.

If the term "condition" in this narrative is interpreted as "absolute obligation" whether primary or included in the contract, then it is possible to vote on the authenticity and validity of all rational contracts and transactions and any contract that has the basic conditions of a contract from the point of view of custom and it is lawful, he confirmed. (Tabatabaei, 1945) And there are numerous verses and hadiths in this regard as jurisprudential rules, including the rule of asla al-zum in the confirmation and firmness, necessity and stability of definite and indefinite contracts and contracts in Islamic law, which are consistent with the reasons of custom, ethics and law.

2-4-3 Consensuality of contracts

In terms of form, the contract is not subject to special formalities, except in exceptional cases, and the mere will expressed in some way is sufficient to create a contract. Today, unlike in the past, contracts are freed from formalities and are so-called "consensual". The satisfaction of contracts is a facet of the principle of authoity of the will, and its formality (the need for an official document or other special form) is considered exceptional (Safaei, 2011). The principle of consensuality of a contract means that as soon as the parties agree, its provisions can be put into effect and, unlike

concrete contracts, it does not require other formalities. From Article 190 B.C. according to the principle of consensuality of the transaction, the agreement of two wills is both a necessary and sufficient element for concluding a contract and does not require modifications or formalities. Induction in the laws also confirms this conclusion, because except in rare cases, the contract is concluded by agreement. Therefore, it can be said that in our laws, the principle is that "a contract is concluded by consent, neither formalities are necessary nor the submission of the transaction is effective in the occurrence and influence of the contract, and it can only be one of the effects and functions of the acquisition and execution of the contract." Induction, which is one of the results of the principle of authoity of the will, is called the principle of consent of the transaction, and wherever there is doubt about the necessity of the condition (ceremonies or submission of the transaction), they use it and consider the consent sufficient (Katouzian, 1992).

In articles 190 to 194 of the civil law, the originality of consent and freedom in the form of a valid contract is clearly established, and in articles 195 onwards, it is shown that the inner will of individuals is the final criterion and the principle of authoity of will is accepted (Article 10 of the Civil Code).) Contemporary Iranian jurists also agree on the acceptance of the principle of the authoity of the will and the consent of legal acts as one of the results of this principle. Thus, in Iran's civil law, the statement of legal will does not require the use of a specific form, unless the legislator has prescribed a specific form, which of course has an exceptional aspect (Rafii Moghadam, 2011).

Considering the complete freedom in concluding and executing the contract for the contract signers, apart from their will, no other will and formalities are involved in creating it, and it is only their will that plays a role in concluding and determining the conditions and effects of a contract, and this effect is one of the results. The principle of authority of will is taken from the contract. And the principle of the authoity of the will shows that the will alone is sufficient to create a contract and create obligations and obligations, and the will is free to determine the effects, terms and conditions of the type of contract and even guarantee the implementation of the violation of its conditions. Therefore, the principle is that the mere consent of the parties to the contract is sufficient to create an obligation, without being bound by a specific form of contract or the way of expressing the will of composition or the use of specific words.

In this regard, verse 29 of Surah Al-Nisa says to believers:

«لا تأكلوا اموالكم بينكم بالباطل الاّ ان تكون تجاره عن تراض منكم»

This honorable verse is one of the important evidences that has gained great importance and wide application in the jurisprudence of transactions, and the most important conclusion taken from this verse is that the consent of the parties is necessary for the formation of any contract. It is interesting to note that this noble verse does not rely on any other formal conditions other than agreement and does not determine a specific type of contract. Therefore, many jurists, based on this verse, consider any transaction and contract that according to custom is "tajirah an-traz" ", and it only includes consent, they consider it correct and valid and they believe that any business based on the consent of the parties, provided that the basic conditions of the contract are met, is subject to the signature and approval of the Shari'ah, and the mentioned verse is not specific to specific contracts, but it also includes the indefinite contacts.

Undoubtedly, the consensuality of contracts makes the economic life and financial relations of people easier and reduces the cases of invalidity of transactions. People are no longer forced to spend in vain and waste precious time in order to secure the influence of their agreements, and to be constantly worried lest the elders leave and invalidate what they have asked for, the merchant can, without the suffering of traveling make himself smooth, deal with the residents of distant cities by telephone or post and telegraph. Those who have made a covenant are confident that the law will respect their covenant, and in the relationship between the two parties to the contract, respecting the covenant is one of the most important moral principles, and no one has the right to refuse to fulfill the covenant under the pretext of violating formalities (Katouzian, 2006).

Although there are many examples of formalities in jurisprudence, its general rules are not provided in the law, which can cause problems. Because in many cases it is not possible to obtain

the solution of the partial theorem by itself. Rather, there is a need for more general rules from which the decision of the case can be taken. The question is whether it is possible to obtain more general rulings by examining examples of rituals, so that these scattered examples are included in its coverage? The main goal of this research is to find the answer to this problem (Glin Moghadam, 2010).

From the legal point of view, formalities are said to be something that restricts the freedom of will of individuals to create a legal act. Undoubtedly, rituals are an important part of Imami jurisprudence and our legal system, and today they are very important in people's legal relations. In Imamiyyah jurisprudence, although examples of rituals have been examined, so far an independent title with this name has not been proposed. In law, in addition to the researches that have been done on one of the examples of rituals; In general contracts and contracts, in the discussion of types of contracts and how to express will, the general content in this field has been said, despite being valuable, it does not seem to be enough. There are many examples of rituals in the relevant laws, but no general rule has been provided for it. This causes problems; Because in many cases, it is not possible to obtain the solution of a partial theorem from the theorem itself, but a general rule is needed from which the sentence of the theorem can be derived.

But in Imami jurisprudence, following the Holy Quran and the Sunnah of the Ahl al-Bayt (AS), legal actions are subject to the will, and what is the main criterion for the occurrence of legal actions is the intention of creation. Undoubtedly, the will has a high place in Imami jurisprudence and in general in Islamic law. The rule of "العقود تابعه للقصود " and also the narrations "إنّما الاعمال بالنيّات " and " انما لِكلّ امرءٍ مانوى " and the noble verse "ولا تأكلوا اموالكم بنيكم با لباطل الاّ اَن تكون تجارهٍ عن تراض منكم " fully indicate this. This is the reason why marriages have been considered false by jurists. Because this matter is one of the Islamic jurisprudence. Therefore, the rituals that are foreseen have a secondary role and the main role is with the will.

In Imami jurisprudence, there are three types of ceremonies in the subject of contracts and iqaaat:

a. Saying conjugations for composing contracts and rhythms.
b. The condition of the bill for the fulfillment of some contracts such as endowment, gift, mortgage.
c. The presence of witnesses during the drafting of a legal act (this case is specific to divorce).

Researchers in the country of ancient Rome mention transactions called Mancipation, which were carried out with certain rituals, and by observing these rituals, the transaction was concluded, even though the parties had no intention or their will was defective. These ceremonies were:

- **First**: the presence of the carrier, five witnesses and a person who carried a scale called Libripens, these people should be from Rome, men and adults.
- **Second**, bringing the subject of the transaction to the place of conclusion of the transaction, the reason for that was the condition of the bill in Majlis in Mansipa Siu. In the case of lands, the transfer was done at the place of their occurrence, but later some of the land was brought to the marriage council.
- **Third**, saying special words, these words were fixed and did not change over time

Nowadays, in Imami jurisprudence, there is no need to say concubine, except in divorce. The meaning of the word "concubine" was the special Arabic words that were considered for composing legal acts, for example, the demand for sale should be said with the words "Ba'at" or "Sharit" or "Melkat" and its acceptance with the word is expressed as "purchase" or "possession" or "eligibility" even today, the mere writing does not indicate the intention of writing, but the signature below the writing shows the definite will of a person to write a legal act. And, for not using it, they consider performance guarantee. If there is a contract that has all the conditions except conjugation, from the point of view of jurisprudence, it is called Ma'atat, even possessions that stop on the property, but are not beneficial to the property. That is, as long as the same property remains, the transferor can return it (Mohammed bin Makki, 1981). Therefore, according to the opinion of the famous jurists of this period, saying the concubine is a condition for the validity of the marriage.

According to Mohaghegh Sani and the famous jurists after him until the beginning of the period of jurisprudence, who basically do not consider it obligatory to say concubine, the beneficial use of property is permissible for the transferee and not necessary. In fact, saying the conjugation is a necessary condition for the contract and not its authenticity. This is shown by the fact that the latest evolution in Imami jurisprudence in this field is the negation of the necessity of saying the conjugation or even the absolute word for the composition of contracts and iqaaat, and the means of intention is considered to be possible by any means. This belief has been proposed by a group of jurists such as Feiz, Mohaghegh Ardabili and Fazel Mogdad, and followed by others, because the general and special evidences of the validity and necessity of contracts such as the verses "Ahl Allah al-Ba'i" and "Ofu al-Aqud" and "Latakla Amwalakom Binkam belbatel Ala An Takun Tejaza An Taraz Menkom" "and the estimation of the survival of the effects of the contract, etc., none of them are bound to the verbal composition, and it also includes the Ma'atat, and there is no reliable consensus regarding the validity or necessity of the contract based on the verbal composition.

According to Imami jurisprudence, two male witnesses must be present when the divorce form is drawn up, otherwise the divorce will not take place. As can be seen, this matter is specific to divorce and its main reason is to make the conditions of divorce difficult and to prevent emotional decisions. - Of course, it is recognized within the limits stated in jurisprudence.

In Iranian law, according to Article 191 BC: "A contract is concluded with the intention of composition, provided that it is compatible with something that indicates the intention". It has been considered that the intention of the composition must be accompanied by something that signifies it, but it has not considered any restrictions for it in terms of the way of expression or other aspects. The mentioned article should be considered as a general rule. The position of the issue of formalities in law is firstly the laws, secondly legal texts and thirdly judicial procedure.

In the relevant laws, only examples of formalities and sometimes their executive guarantee are provided, but the general rule in this field has not been established by the legislator. In legal texts, this discussion is raised in two places. First, in the general discussion of contracts, regarding the division of contracts, and also in the discussion of how to express the intention of the second essay, researches are conducted on some examples of rituals. Like the articles written about the role of deed registration in real estate transactions. Despite the valuableness of the work done, since what is said in the general terms of the contracts refers to general cases and what is written about the examples becomes a case-by-case aspect, the work done cannot include all the issues related to the formalities. Judicial procedure refers to cases where a dispute has been brought before the judicial authorities, and the judge has taken the initiative to issue a decision in that context. The job of a judge is to reconcile minor issues with legal rulings and legal principles. But in this adaptation and especially in cases of lack of legal or Shariah ruling, his constructive role is undeniable. Of course, in the subject laws, this should be considered as one of the weaknesses of our laws. Due to the widespread use of formalities, it is necessary to formulate general rules in this field by the legislator. In the laws of some countries, such as the Swiss Obligations Law, general provisions have been established in this field.

Examples of formalities in the following laws: (1) Preparation of an official or normal document: Article 103 of the Commercial Law: "The transfer of the share of the company will not be carried out except by means of an official document"; Articles 46 and 47 of the Real Estate Registration Law; Article 2 of the Insurance Law approved in 1316: "The insurance contract and its conditions must be based on a written document, and the said document will be called an insurance policy. (2) Saying conjugation: Article 834 of the Civil Code: Divorce must take the form of divorce. (3) Using the auction and tender method: Article 114 of the Law on the Execution of Civil Judgments: "The sale of seized property shall be done through auction."

2-5 Ability to refer to the contract

As it was said, the contract is the result of the rule of two independent wills of the parties to the contract, whose contents, conditions, and effects is governed by the law and are relied upon by the parties in the interpretation of the contract. And according to the authoity of the will of the parties, the court interprets the contract in such a way that the contracting parties have explicitly

or implicitly asked for the contract to have the same effects that they asked for. And without any change, the provisions of the contract can be invoked and enforced against the parties of the contract and if an obligation has been concluded and stipulated for the benefit of a third party (Article (231 BC)).

Of course, in justifying the possibility of invoking the contract against others and making this rule compatible with the "relativity of the effect of the contract", various analyzes have been done, and jurists believe that the principle of the relativity of the contract should be separated from the principle of the contract being enforceable against third parties. Article 231 of the Civil Law states: "Transactions and contracts are effective only for the parties involved and their legal representatives, except for Article 196". The clarity of Article 231 B.C in confining the effect of the contract to the parties and their representatives, it is necessary for us to draw a clear line between the "relativity of the effect of the contract" and "its validity against a third party" in order to avoid mixing these two concepts and violating the law. The privilege of creating an obligation from other works of the contract, as claimed, is not a reliable means. Because, not only is it against the provisions of Article 231, which includes all the effects of the contract, it also does not state the reality: can it be claimed that in a contract of sale, ownership is not transferred only to the buyer and all people benefit from it?

These works are all limited to both parties of the marriage and their vicegerents and have no privilege over each other. We know that the reflection of the occurrence of all these contracts reaches others, especially those who have a legal relationship with both parties, and it is effective in their rights and debts, but the whole question boils down to whether this indirect and coercive effect can be legal language called "effect of contract"(Katouzian, 1992)?

Due to the fact that the contract is also one of the social phenomena and the social phenomena are so dependent and influential on each other that it is undeniable in front of everyone about the validity of the contract, especially in the objective rights and supplementary effect of the contract. For example, the lessee of a property can rely on his lease contract with the seller against the buyer. Also, the property buyer has the right to rely on his sales contract with the previous owner to prove his ownership against the claimants. Therefore, the civil law considers the effect of the contract only for the parties involved, but it does not say anything about the occurrence of the transaction in society and cannot negate it. Individuals also have to accept social realities. The occurrence of a transaction means the creation of a binding effect between its two parties, because the law dictates so.

2-6 Relativity of the effects of contracts

The relativity of the effect of the contract is one of the important legal principles in the general rules of contracts. The meaning of the principle of relativity of the contract is that the contract is effective only for the parties and cannot be effective for third parties. The will of the parties by observing the legal regulations and rules can create rights and obligations for them, but in principle, it cannot be effective in the legal status of people who did not participate in the conclusion of the contract and did not consent to it. Undoubtedly, those who are involved in the drafting of the contract and are considered parties to the contract are not third parties, whether their involvement in the contract is direct and indirect, or indirect and through someone who has their position and representation. Therefore, if someone enters into a contract on behalf of another, that other is a party to the contract, not a third party. Apart from the parties to the contract, their legal representative is also considered as a third party and according to Article 196 B.C. The contract is effective for him. A legal deputy is a person who replaces him in the rights and duties of the transaction party, and there are two types: general deputy and special deputy.

In general, anyone who replaces him in all personal rights and duties is the heir of anyone who is his general deputy, and if a person transfers money to another, the transferee is the successor of the transferor regarding the rights and obligations related to that property, and hence he is considered as the special representative. Therefore, the general or special representative of the trader is not considered a third party and the contract is effective for him. However, those who are neither parties to the transaction nor his legal representative should not benefit or suffer from the

contract, and due to the relative principle of the contract, the transaction is not effective for them (Safaei, 1994). The provisions of Article 10 influence and effect of the contract are solely for the rights of the parties and do not create an obligation for the third party. The context of the article is that: private contracts towards those who have concluded it.... Article 213 B.C. also states that: "Transactions and contracts are effective only for the parties involved and their legal representatives, except for the cases of Article 196." Article 196 B.C. says: "The person who makes the transaction is considered to be that person unless he specifies the contrary at the time of the contract or it is proven otherwise. However, it is possible for a person to make a commitment for the benefit of a third party while making a transaction for himself.

It is necessary to explain that in cases where the parties themselves give a commitment in favor of a third party according to the law, this commitment is valid and an exception to the provisions of Articles 10 and 231 of the Civil Code. In Article 768 B.C. We read that "in a peace agreement, one of the parties may undertake to pay a specified alimony every year or every month for a specified period of time in exchange for the peace property that he receives. This obligation may be for the benefit of the parties to the settlement or for the personal benefit of third parties». Also, the obligation for the benefit of the third party is accepted in jurisprudence in the matter of options. Including forgery, it is considered permissible for a third party to cancel the transaction by the seller and the customer. In general, the relativity of contracts, which is caused by the authoity of the will of the parties, Article 10 and 231 BC. is used and from the second part of Article 231 B.C. According to Article 196 of the same law. In addition, the obligation for the benefit of a third party is also permissible and valid (Zakir Salehi, 2009).

2-7 Freedom to choose the contract party:

Individual will plays an effective role in concluding a contract. A person is free in concluding or not concluding a contract, the type of contract, and the choice of the contracting party, and he cannot be forced to conclude a contract. In addition, in principle, people can determine the terms of the contract and the content of the contract at their own will. And they often consider this effect of freedom in choosing the type and party of the contract as an essential part of the principle of the authoity of the will. According to this freedom, people can have their contractual relations as they want and with any person they want and regulate any type of contract that is against law, public order, or good morals, and they are not obliged to use the templates and examples provided by the law, and they are also free to choose the contracting party and are not forced or obligated to conclude a contract with a specific person or person. Or to include their agreements in terms of conditions. It is possible for people to sign a contract that is not part of any of the specified contracts provided in the civil law. Of course, respecting the limits of public order, but the public order that limits the principle of the authoity of the will has an exceptional aspect and it can be said according to the rule declared by the libertarians, "Whatever is not prohibited is permitted". The principle of obscenity in Islamic law is also useful in the same sense (Safaei, 1994).

Therefore, individuals are free to conclude a contract, choosing the type of contract (definite or indefinite) as well as choosing the party to the contract and determining the effects of private contracts are among the contractual freedoms of every person and no one can be forced to accept legal examples (contract or condition) and also forced to conclude a contract with a certain person or persons. Contracts in which two parties first reach an agreement about their rights and obligations through free discussion, and then conclude a contract based on the same agreement, are called open discussion contracts. In this type of contract, which is customary and common, the parties are in almost equal conditions, but in some cases, the examples of which are increasing, the requesting party, due to benefiting from different economic, social and political abilities, anticipates all the terms and effects of the contract and offers them to the public or individuals who have special conditions. The freedom of the other party is limited to reject or accept it. But he cannot talk about the conditions and works set. In other words, the accepting party (requesting addressee) in these contracts is obliged to accept the predetermined conditions without question. This type of contract is called "additional contracts".

In these contracts, the requesting party, having economic power and having a monopoly on goods and services, determines the terms and effects of the contract in advance, and the other party inevitably accepts it due to the urgent need, thus depriving him of the power of bargaining and negotiation. It should be noted that this issue is mostly seen in additional contracts, which is usually a government party (requiring party), including the contracts that are used today for the purpose of using water and electricity, telephone and gas or other public services such as transportation by sea, aviation, railways and insurance are closed with relevant institutions, it is supplementary, and the contracts that government institutions assign to contractors through tenders, often the freedom to choose the contracting party and equal conditions have lost their true meaning and meaning. The inequality of the conditions of the parties to the contract and the imposition of demanding conditions on the other party, which usually puts it in an emergency situation. The principle of the authoity of the will has been questioned and its validity as a contract has been doubted because the holders of exclusive privileges take advantage of these unequal conditions and governments must create measures and regulations to prevent this situation.

And in this regard, although additional contracts have been considered as a combination of an establishment with a legal organization in the contracts, it means that the relationship between the two parties is a contractual relationship regarding the agreement that has been made regarding the rights and obligations of the parties, but compliance with the conditions of the public institution is required for the acceptance party to be useful to the institution and to comply with it on the part of the person in charge of the institution. Therefore, the freedom to choose the party to the contract is one of the results of the principle of the rule of will, and based on the principle of the authority of will and the general rules of contracts and the validity of the rule of will, both parties are free and willing to choose the party to the contract, whether it is an individual contract or a collective one. In principle, no one can be forced to form and conclude a contract and accept its effects with a specific person or persons. Every person with his own will commits to something by choosing the party to the contract and concluding it, and determines its effects and conditions.

3. CONCLUSION

Man regulates an important part of his social relations with others by concluding various contracts. Considering the principle of human freedom and his discretion in concluding a contract, he can compromise with others and make a contract, the contract gradually took on a philosophical, economic and legal form, there fore the individualists recognized the human will as the source of rights and obligations and gave it moral value. They also gave because human beings are equal and whenever they freely enter into a contract with each other, whether in the legal field or in the economic field, it will be fair and lead to economic and commercial prosperity. Although the opinion of individualists who believe in the principle of the authoity of the will and its complete freedom has been severely criticized by the social schools and the originalists, but after the fading of the authoity of the will and the historical progress and many ups and downs, today the principle of the authoity of the will is valued and has maintained its credibility and in terms of social benefits, restrictions and exceptions have been considered on this principle, it has not been accepted absolutely in Iranian law, like all other governments and legal systems, and due to the observance of social benefits and increasing interference in economic and service matters, the government prevents the absolute and complete implementation of the theory of authoity of the will, and significant limitations have been introduced to this principle. Especially in public order, it includes a wide circle that has left the government's hand more open.

However, the principle of freedom of will is an integral part of any type of legal regime that believes in private property and freedom of work. As per Article 10 of the Civil Code of Iran, all the concluded contracts are valid, provided that they do not contradict the law. It is concluded that this article aims to legitimize the contracts concluded between individuals in order to open an arena for the development and expansion of relations and legal practices between individuals and the emergence of various initiatives in the field of construction and development and commercial exchanges, which is considered the basis of the principle of authoity of will in contracts.

The spirit of this principle is in the Constitution of Iran (Nineteenth and Twentieth Principles) and also in Article 754 A.H. It is appreciable like the peace contract, and in Islamic jurisprudence, contemporary jurists are more inclined to accept any reasonable and ethical contract that does not contradict the rules of the Sharia as a source of commitment and commitment, and the scope of the ruling and the rule of fidelity to the contract is "Ofo-Bal-Aqod" and "Al-Mu'monun End Shorutahem" and "Al-Aqud Tabea Lel Maghsud" and "Anama-Al-Amal Balniyyat" have been expanded and the necessity of fulfilling the condition and adhering to the terms of the covenant, treaty and peace should be respected. However, there are limitations to this principle in Iran's laws, which are based on Article 975 of AH. M and Article 6 of the Code of Civil Procedure and the last part of Article 10 of the Civil Procedure Code, as mandatory laws, any contract that is clearly against the mandatory law, public order, and good morals is not valid.

While regarding the supplementary and interpretive laws, the individual's consent and will is permissible to the contrary. Like Madlul Madtin 356 and 357 BC. Therefore, it is concluded that the principle of freedom of contracts is rooted in the principle of the authoity of will, and it relies on the creative power of the will, and the effects of the principle of authoity of will are that according to this principle, people in concluding and determining the terms and conditions and types of contracts that form are also free to choose the terms and conditions of the contract, whether or not to conclude the contract.

The contract is the private law of the parties to the contract and it is binding as the law in a private relationship, the contract is the law between the parties to the contract, and the observance and necessity of fulfilling the contract is respectable and binding (using Article 219 and 231 BC) and contracts in principle based on the wills, "the product of two independent wills" is formed and does not require special formalities, the principle of consent is the principle of consent, sometimes a contract may be concluded in a ceremonial way, such as an insurance contract, as well as the principle of relativity and referability of contracts and The freedom to choose the party to the contract is one of the effects of the principle of authoity of the will (Article 231 BC), except for the last part of Article 231, which refers to Article 196 of the same law, which states that two parties can create an obligation for the other (third party) in the form of a contract or create a right for him.

REFERENCES

The Holy Quran Books

[1] Ansari, Masoud and Taheri, Mohammad Ali, Encyclopaedia of Private Laws, Tehran, Jangal Javadane Publications, Volume 1, 2009.

[2] Bojnordi, Mirza Hasan, Al-Qasas al-Fiqhiyyah, Volume 5, Nasraadi, Qom, 1998

[3] Jafari Langroudi, Legal Terminology, Ganj Danesh Publications, Tehran, 17th edition, 2007.

[4] Khoei, Seyyed Abulqasem, Misbah al-Faqaha, Qom, Wadjani, Bita.

[5] Zakir Salehi, Gholamreza, Basics of Indefinite Contracts, Tehran, Mizan Publishing House, first edition, 2018.

[6] Rafiei Moghadam, Ali, The Consensual Principle of Legal Actions, Tehran, Imam Sadegh University Press, 2011.

[7] Shahidi, Mahdi, formation of contracts and obligations, Tehran, Majd Publications, 7th edition, volume 1, 2018, p. 40.

[8] Safai, Seyed Hossein, General Rules of Contracts, Mizan Publishing, Volume II, Winter 2019, pp. 45 and 46.

[9] Safai, Seyyed Hossein, Family Law, Mizan Publications, 1994.

[10] Amid, Hassan, Farsi Dictionary of Amid, Tehran, Amir Kabir Publications, 6th edition, 1374, p. 100

[11] Katouzian, Nasser, (Legal actions of the contract, Iqaa), Tehran, Bahman Barna Publications, second edition, 2011.

[12] Katouzian, Nasser, Civil Rights Preliminary Course (Legal Acts), Tehran, Publishing Company, 1992, p. 36.

[13] Katouzian, Nasser, General Rules of Contracts, Tehran, Publishing Company, 7th edition, Volume 1, 2015.

[14] Katouzian, Nasser, Philosophy of Law, Tehran, Publishing Company, Volume 1, 2018.

[15] Katouzian, Nasser, Civil Rights, Fixed Contracts of Exchange Transactions, Supplementary Contracts, Volume 1, p. 68.

[16] Shahid Aol, Muhammad Bin Makki, Al-Qasas va Al-Faadi, with the research of Abdul Hadi Hakim, Najaf, Al-Adab Press, 1981 A.H.

[17] *Katouzian, Nasser, Article on Limits of Contractual Freedom, Law Journal, No. 7. 18) Glin Moghadam, Isa, "Jurisprudential and legal examination of the role of formalities in legal practices", Legal Research Journal, 1st year, 2nd issue, 2010.*