



Doctrines of the Judicial Control of Contract (Comparative Approach to Philosophical and Economic Schools)

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Abstract

Today, contracts especially financial contracts are at the center of the legal and economic discussions. Contract law, as the most important part of private law, compiles and regulates the trading relationships of individuals. The importance of this section has always occupied the minds of legislators and lawyers from various aspects. The contract is the law of the parties and their wishes are respected by society and legal rules. The Legal systems respect the sovereignty of the will of the people, the goals of the parties and their expected results from the contract they know in most cases, what people have agreed on and if the prevailing conditions and circumstances do not change at the time of its conclusion, it should be implemented without any interference. But in some cases, we are faced with complex contracts and disputes where the parties' wishes have undergone a transformation. In such cases, the question is, should the provisions of the non-interference contract be adhered to, or should the purpose of the contract be considered? So one of the aspects that has received less attention is the "supervision or control of the judicial authority" on the covenants of individuals in order to create balance in the economic relations of the parties. Apparently, control, supervision or intervention in the contracts is contrary to the principle of autonomy and freedom of individuals, and the principle should be based on non-interference. However, in some cases, signing the agreement of the parties due to the economic imbalance or the situation of the parties to the contract leads to unfair results. However, according to some philosophical doctrines such as Deontology, consequentialism and pragmatism and economic foundations such as the theory of comparative advantage and the theory of uncertainty and risk and especially the common intention of the parties, can consider a constructive role for the judge and the possibility of intervention and control of the contract to regulate the contractual relationship of the parties to balance the contractual situation. The common feature of all bases is, to equalize the relative position of the



parties to the contract in order to lead to the ultimate goal of the contract, which is the fair distribution of wealth. Therefore, by resorting to the above principles, the judge can be given the authority to monitor and control the contract. Contrary to theories that defend autonomy and freedom of will, it is beneficial from the economic point of view and relying on economic efficiency Equality is a reason for determining contractual freedom, and in order to increase welfare and increase social profit, the government can limit the freedom and autonomy of some people for the benefit of the society as a whole. On this basis, one should stand in front of individual autocracy, which may even be obtained by resorting to agreement and contract. In this sense, the judge, as a representative of the government (in the general sense), can monitor or intervene in the contract to resolve the conflict of economic interests of the parties to the contract and with the aim of realizing social order. In criticizing the absolute autonomy, this point is also mentioned that in free contractual relations, some people may become a means of securing the goals of others, and the moral basis and fair equality may be questioned. In such a situation that value the morals of the society tend towards destruction, the defense of the moral foundations of legal principles has also been questioned and cannot be justified. In other words, contracts are formed based on conditions such as the will of the parties and its survival depends on the survival of conventional conditions, and the change of conditions and circumstances change the contract from the concept that was formed at the time of its formation. It was considered by the parties to withdraw make. The possibility of revision on contract has been specified in other legal systems more or less, but no place has been identified in the Iranian legal system. So by knowing the basics, the judge can rely on them to monitor the private contract of individuals as someone who is outside the parties to the contract and possibly interfere in it. In other words, by resorting to some bases, the principle of relativity of contracts in order to attract the social and economic interests of the society is ignored and the judge's hand is considered as the guardian of justice. For this reason, it has been said: The judge's intervention in the agreements of the parties cannot be considered as a violation of the legal privacy of individuals and a violation of their contractual freedom, and as long as the goal of the judge is to serve and help individuals in a defined and legal process, not only the principle of sovereignty of the will has not been violated, but it has been effectively helped to implement it better. Therefore it is necessary to research in this regard, at first its basics should be specified and explained as a road map.

Keywords: control of contract, judicial supervision, economic analysis, philosophy of contract, judicial control.



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