

## Effects of Coercion on Contract in Islamic (Hanafi Jurisprudence) and Civil Code of Afghanistan

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### ABSTRACT

In this research paper, the main question is what are the Effects of coercion on contract in Islamic (Hanafi jurisprudence) and civil code of Afghanistan? the purpose of this study is to examine the nature of coercion in Islamic Sharia (Hanafi Jurisprudence) and Afghan Civil Code and to compare its impact on contract. using descriptive-qualitative methods as well as library resources (documents, books, as well as credible internet sites and articles) it has been proven that these legal systems are the same or have different positions on this issue; as a result, it has been found that the main factors of both legal systems similarities are in the adoption of the Civil Code, mostly the Majalat alahkam aleadlia and the Egyptian Civil Code have been used directly.

**Keywords-** coercion, Islamic Sharia (Hanafi Jurisprudence), Afghanistan civil code, Consent defect.

### I. INTRODUCTION

Coercion is an important defect of consent, which causes corruption in the contract, and the expected results from the contract do not come from contracts. For this reason, the civil code of Afghanistan also considered the defect of consent, and in this regard, civil code of Afghanistan derived it from Hanafi jurisprudence, and described it in detail in the second volume in articles (551) to (561). Civil code in this respect is derived from Hanafi jurisprudence. The Islamic legal system, as a complete legal system, has detailed provisions of Coercion in its main and secondary sources. In this article, coercion is described as an important defect of consent, and details about it have been collected from the reliable books of civil law and Islamic Hanafi jurisprudence. The famous book of Hanafi jurisprudence famous books, which was written by a committee of famous Hanafi scholars during

the Ottoman Caliphate, in an article-by-article manner like the law, also contains details about coercion in this book, which is used in this article. It is clear from this that Hanafi jurisprudence has been used a lot in the structure of Afghanistan's legal system.

### II. METHODOLOGY & MATERIALS

This is library research, in which we have used various other books in addition to Sharia texts, Islamic Hanafi jurisprudence famous books, and national legal documents. In order to make our research standard, systematic and easy and interesting for the readers, the dimensions include the research summary, preface, materials and approaches, as well as the findings, debates and conclusions, so this will be interesting and useful for readers.

As our research paper examines the nature of coercion and its impact on the contract in different areas, in order to examine our common understanding and arrangement, we have examined the research material in the following areas separately:

### 2.1. The definition of Coercion

Coercion is a legal term that we first define according to the dictionary of legal terms:

Coercion, in terms of the rules and principles of contracts, is using of force or intimidation to urge someone to enter into a contract, or coercion is to compel a person to do something. (Amid, 1350.H.S)

This can occur when one party to the contract uses threats, violence, or other forms of coercion to force the other party to agree to the terms of the contract, article 849 of (majalat alahkam aleadlia) the most famous book of Islamic Hanafi jurisprudence defines coercion as follows:(Coercion is forcing someone to do something unlawfully without his consent by (intimidation Committee of Islamic Scholars during the Ottoman Caliphate, 1293 .A.H)

Muhamad bin ahmad bin 'abi sahl shams alayimih alsarukhsii the famous Islamic Hanafi jurisprudence scholar have written on his book (almabsot) that Coercion is Forcing others to do what they do not like and do not choose directly, because it is what a person does to another, so his consent is negated by him, or by him he is removed by choice. (Al sarakhsi, 1993.A.D)

Coercion is a name for an act that a person does without his consent, or by which he spoils his choice, while his capacity remains, also It is a threat to someone who is capable of what threatens him and coerces him into something so that he is not satisfied with it. (Al-Ainy, 2000.A.D)

Definition of coercion, which is to force another to do something that he does not consent to, not of his choice. (afandi, 1993.A.D)

Dr. Hassan Emami says in his book Civil Rights: Coercion is a financial or emotional pressure on a person that forces the person to do an action he does not like. (amami, 1386 .H.S)

In coercion, a party to the contract performs or threatens to perform an act that is not permissible under Islamic jurisprudence and law. Article (552) of the Civil Code of Afghanistan defines coercion as follows: Coercion is forcing a person to do something by force and without consent, which may be material or spiritual. (Afghanistan civil code, 1977.A.D)

From the above definitions, it is clear informed that the Civil Code of Afghanistan has used Hanafi jurisprudence regarding the definition of coercion, all the above definitions, although different in terms of words, but in terms of meaning, they are all the same and there is no special difference between them.

It must be noted that in coercion, it is not necessary that coercion must be practiced by a party to the contract. Further, it is not required that the subject of the coercion has to be the contracting party, i.e. it may be

aimed at against third person, even a stranger, goods, documents or property, It includes a number of menacing activities that violate the free consent of a person, to generate a specific response. These can be blackmail, threat, duress, torture, extortion, unlawful detaining, etc. (Danish, 2014.A.D)

### 2.2. Examples of coercion in the contract

The examples given below explain the agreements induced by coercion:

✓ Ahmad threatens to implicate Mahmood in the false murder case if he denies marrying Ahmad's daughter. Mahmood gets ready to marry Ahmad's daughter out of threat.

✓ Ahmad at the gunpoint orders Mahmood to make a promissory note in his favor, in order to save his life and consequently, Mahmood signs the note.

✓ Maria compels Meena to sign a deed threatening her to harm Lisa (Meena's mother) if Meena does not agrees to sign the deed and due to threat, she signs it.

✓ James threatens Robert, that he will kill his son, if he does not agrees to sell his bungalow to James, for 50 lakhs, whose market price is 5 crores. Further, due to threat Robert signs the deal and sells his house.

✓ Alex threatens Sofia to commit suicide if he refuses to marry her. Alex accepted the offer because of the threat which amounts to coercion. (Abdullah,1393.H.S)

In all the above examples, the aggrieved party can avoid the agreement entered into, due to the absence of free consent, as well as they can enforce the contract if they find it beneficial. This is because the agreement is induced by coercion which is considered as voidable contract. (afandi, 1993.A.D)

Therefore, the party under duress can cancel the contract and not apply it to himself, and if there is consent, he can apply it to himself in the presence of pressure, because Coercion corrupts contract but does not invalid it.

### 2.3. Kinds of coercion

In Article (552) of the Civil Code of Afghanistan coercion is divided into complete and incomplete coercion. (Afghanistan civil code, 1977) in the same way, also majalat alahkam aleadlayh divided the coercion into two types. (afandi, 1993.A.D)

#### 2.3.1. Complete coercion

In Article (553) of the Civil Code, One type of it is the threat of extreme physical or financial danger. This type called complete coercion. (Afghanistan civil code, 1977.A.D) It corrupts authority and destroys satisfaction. (Afghanistan civil code, 1977.A.D)

#### 2.3.2. Incomplete coercion

This type of threat is an incomplete and normal physical or financial risk. This type of coercion is called incomplete coercion. It does not corrupt authority and destroy satisfaction. (Afghanistan civil code, 1977.A.D)

### 2.4. The Provisions of coercion in the sources of Islamic sharia

In this topic, firstly, we examine the Provisions of coercion in the Holy Quran, and in the second step, we

examine the Provisions of coercion in the Prophetic hadiths.

#### 2.4.1. The order of coercion in the Holy Quran

Almighty Allah says {Whoso denies Allah after believing in Him save him who is compelled and his heart is firm in belief, yes whoso becomes infidel with open heart, upon them is the wrath of Allah and for them is the great torment} (Tafsir Kashaf, Holy Qur'an, Surat An-Nahl, 106 verses) so Almighty Allah excuses the oppressed who do not Those who are not under pressure to leave what Almighty Allah has commanded.

The order of coercion can be clearly understood from the above verse, because coercion in religious matters frees a person from responsibility, so it definitely frees a person from responsibility in such matters like contract ...etc.

#### 2.4.2. The order of coercion in hadiths

In the famous book of hadiths, Bukhari Sharif, the Prophet mohammd (peace be upon him) is quoted as saying:

And it was narrated by (Ibn Omar, Ibn Al-Zubayr, Al-Shaabi and Al-Hassan that Prophet mohammd (peace be upon him) said: Actions are only by intention. (Albukhari, 2001.A.D)

On the authority of Ibn Abbas, may Allah be pleased with him, he said: The Prophet mohammd (peace be upon him) said: Almighty Allah forgave my ummah (Muslims) for error and forgetfulness and what they were forced to do. (Moslem bin alhajaj, 1990.A.D)

From the above hadiths, it is also known about the Provisions of coercion, that agreements concluded on the basis of coercion are not valid.

#### 2.5. Conditions for validity of coercion from the point of view of Afghan civil law and Hanafi jurisprudence

- ✓ That the coercion be actual, it means, that it be at the time of the conclusion of the contract, that it be neither before nor after.
- ✓ That coercion will be either material (physical) or spiritual (threat).
- ✓ That the coercion will be illegal, that is, the coercion will be against the law and Sharia, if the pressure or coercion is legal and Sharia, then it is not considered a defect of consent.
- ✓ There is a perception of greater risk of coercion, if there is less risk of coercion; in this case it is not considered a defect of consent, as explained in the previous examples. (Alzohaili, 1996.A.D)

#### 2.6. The effects of coercion on the contract from the point of view of the civil law of Afghanistan

The person making the threat must be able, and the person threatened must think the threat is certain; therefore, in this case, the concluded contract is not valid. (Afghanistan civil code, 1977, article557, 558)

The threatened person can demand from the competent court the termination of the contract concluded as a result of coercion, and if the threatened person passed away, in this case his heirs can demand the termination of

the contract from the court. (Afghanistan civil code, 1977, article, 559)

In two cases, the concluded contract becomes valid and effective again, one is if the threatened person allows the enforcement, and the second is if the expected danger disappears, in these two cases, the contract becomes valid again and is not terminated. (Afghanistan civil code, 1977, article 560, 561)

### III. RESULTS

If we compare and analyze the above information on the nature of corruption in Islamic Sharia, (Hanafi jurisprudence), and Afghan civil code, the following conclusions can be drawn:

- ✓ In the main sources of Islamic legal system, Holy Qur'an and hadiths have stated the rules of coercion in general, but Hanafi jurisprudence has discussed in detail about coercion.
- ✓ Regarding the definition of coercion and its effects on the contract, the provisions of the Civil Code of Afghanistan has similarity with the provisions of Islamic Sharia and specifically with Hanafi jurisprudence.
- ✓ The contract concluded as a result of coercion is corrupt and invalid, and can be terminated, but if the threatened person gives permission, the contract becomes valid.
- ✓ Coercion causes the termination of the contract if it is complete, if it is incomplete, then coercion do not destroy consent.

### IV. DISCUSSION

Considering the findings of this study, it can be argued that in the main sources of Islamic Shari'ah, however, there is no detail about coercion? And in the secondary sources and books of Hanafi jurisprudence, the rules and topics of coercion are described in detail? Arguably, it can be said that: The Holy Quran and Hadiths describe the issues and topics like the Constitution of Afghanistan in general and they are described in detail in the books of Fiqh, It is not possible to describe all the topics in the Qur'an and Hadith.

Therefore, the important question is whether the Afghan civil law has more similarities with the Hanafi jurisprudence of the Islamic Sharia regarding the definition of coercion and its effects on the contract?

It should be noted that in 1977.A.D, when work began on approving the Afghan Civil Code, the Committee of Scholars appointed at that time took many rules directly from the Egyptian Civil Code and the Journal of Legal Rulings.

So, the question is why coercion spoils the contract? And if the threat allowed the execution of the contract, why does the contract become valid again?

The answer to the first part of the question is that the contract is invalid due to coercion, because the threatened person loses his consent and his authority is

corrupted, and based on the provision of Article (505) of the Afghan Civil Code, the most important condition for the validity of the contract is consent of the parties

## V. CONCLUSION

As a result of this research, the following findings are obtained: The rules of Afghanistan's civil code regarding the definition of coercion and its effects on the contract are derived from the Hanafi jurisprudence of Islamic Sharia, According to Afghanistan's civil code and Islamic sharia (Hanafi jurisprudence); an agreement concluded on the basis of coercion is corrupt and voidable, but if the threatened person allows the execution, the contract becomes valid.

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