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Review Article

Ethical and Legal Dimensions of Abusing the Emergency Circumstances of People in Marriage In Iran

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Abstract

Introduction: Article 206 of the Civil Code considers a forced transaction with defective consent valid. However, Article 190 of the Civil Code states that consent is a condition for the validity of a marriage. In addition, the emergency circumstance in jurisprudence led to a series of rulings and duties.
Materials and Methods: This study is descriptive-analytical and uses the library technique.
Conclusion: When one of the parties to the marriage, who is aware of the emergency circumstance of the other party, abuses this circumstance with the motive of profit-seeking and brings the other party into the marriage due to an emergency, the marriage is unfair and legally invalid. Iranian law has several opinions on abusing the emergency circumstance of people and imposing an unfair contract on them, including the theory of validity, non-intrusion, termination, and validity with the condition of adjustment or annulment, out of which the theory of non-interference has been chosen because it is fairer and more compatible with justice and preserves the distressed person's rights. In Iranian law, comparing the general rules of contracts with the marriage contract indicates that exclusiveness does not guarantee invalidity and termination of the marriage contract. On the other hand, the validity theory supports distressed people's rights. Therefore, the latter theory, i.e., non-intrusion, that guarantees fair execution when abusing distressed people and is accepted in the general rules of contracts, can be extended to the marriage contract as well.
Keywords: *Ethics, Justice, Abuse, Abusing emergency circumstance, Marriage.*

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INTRODUCTION

The marriage contract is considered a special credential connection by other institutions because it stems from love and affection, its survival links two hearts, and its spiritual fragrance covers the family arena, preventing any suspicion of profiteering—the parties' consent in the condition for the healthiness of the marriage. In Iran, Article 190 of the Civil Law considers "the parties' willingness and consent" as a condition for the contract's validity such that its absence, depending on the case, will result in nullity or non-intrusion. Accordingly, based on the general rules of contracts, lawyers consider the parties' willingness and consent as a condition of the transactions' validity. In legal books, duress and emergency transactions are considered defects of the will. Therefore, Article 203 of the Civil Code

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regarding duress and Article 206 of Civil law regarding distress state that duress causes the non-intrusion of the contract and emergency does not affect the transaction's validity.

Physical duress accompanied by threats and its other elements is rare in marriage contracts, but applying pressure to conclude this contract without the freedom of one of the parties is possible. A defect of will is an abuse of emergency. Jurists call the contracts in which one party abuses the emergency circumstances of the other party for his benefit the abuse of emergency. This study, concerning its ethical and legal importance, explains the effect of abusing the emergency circumstance of people in marriage in the light of ethical and legal doctrines.

MATERIAL AND METHODS

This research is descriptive-analytical and uses the library technique, i.e., it is based on studying existing legal and jurisprudential books and texts.

DISCUSSION

The concept of emergency abuse

As can be seen, "abuse of emergency" is consisted of two pillars: emergency and abuse. The realization of each of them requires some conditions. Personal dissatisfaction is the condition for realizing the emergency. On the other hand, the unconventionality of the contract, the party's awareness of the emergency circumstance, and finally, the proposal of the contract by the other party are conditions to realize the emergency abuse.

There is no threat in emergency circumstances, but the circumstance is such that a person, regarding the precedent of the circumstance, despite her/his unwillingness or consent but based upon a specific consent and willingness (which is called transactional consent in civil law), conducts a transaction and work. In other words, a minimum of consent is required to make a marriage valid [1]. This definition emphasizes the lack of threat in emergencies, but the distressed person is exposed to threats. A duressed person is subject to threats, pressure, worry, and fear by a third party to agree with a transaction. However, the distressed person is subject to threat, fear, worry, and pressure caused by external unwanted events or circumstances, and he/she is abused or at least unfairly behaved. The distressed and duressed people are subject to threat, pressure, fear, and worry, which is why he/she has accepted some obligations or performed violent actions and behavior [2]. In emergency circumstances, one due to outcomes out of the contract and without any threat by another party to accept the transaction [3].

According to the above explanations, authors consider an emergency as a circumstance caused by external conditions and events in which the distressed person is threatened or pressured by anyone but without inner satisfaction under the influence of existing circumstances and has agreed with a transaction.

The Emergency Roots

The emergency roots are as follows:

1. Duress

Duress is one of the roots of emergency. It is not defined in the Civil Code of Iran, but articles 212 to 216 suggest that it is external material or spiritual pressure imposed on a person to force him/her to do an act. It is illegal coercing a person to do an action without consent and due to fear [1].

Duress is a threatening action by the other party or someone else to realize a legal action (whether act or omission). Duress is an unusual and illegitimate pressure to force someone to commit a certain legal act [4]. It is abnormal and illegitimate pressure to oblige someone to commit a legal act without freedom in decision-making [5]. The authors prefer the latter definition of duress. It is worth mentioning that there is no significant difference between

emergency and duress, as some Iranian law authors say [6], and the similarity of these concepts is evident in their legal works. The only difference between them in duress, the threatening factor is human beings, but in an emergency, it can be factors other than human beings too. In Positive law, duress is threatening and forcing someone to do an action, which is a tool for threatening. Therefore, the realization of duress requires that:

1. The duressor threatens the threatened party to do something that the duressor himself can do.
2. The threatened party should have no choice, e.g., the duressor says, "If you do not divorce your wife, I will kill you or throw you into a well." In such cases, the threatened person has no choice, and the duressor can kill him or throw him into a well.
3. The threatened person is sure or strongly suspects that not fulfilling the duressor's request will endanger him.
4. What the duressor uses to threaten the other party is dangerous or ugly to him, his family, or his relatives. For example, a duressor may say if you do not divorce your wife, I will hurt your father, or I will rob your father's property. It is noteworthy that threats such as murder and injury are similar to all, but financial threats do not have the same effect on the rich and the poor [7].

2. Loss

A condition for an emergency is the existence of actual or imminent harm and danger that a normal person considers serious. In other words, realizing an emergency requires the existence of a danger. The existence of loss or risk can be accepted in non-contractual requirements. However, the loss type here leading to an emergency circumstance and obliging the threatened person to commit a harmful act is important. Jurists believe that an emergency is a circumstance where not committing an illegal act leads to the death of the threatened person [8-10].

3. Necessity

Another emergency root is the need to save life or property or remove the danger from oneself or others. Therefore, despite the existing danger, if intervention by the distress is not necessary, his action is not considered an emergency. Some jurists have defined the necessity as a specific circumstance risen in a person's life due to social and economic conditions or natural events causing committing an action by the person inevitable, e.g., selling a house or a car to pay for treatment or where a person becomes hungry and helpless and inevitably takes another's property without his/her permission. Therefore, the distressed must commit an action due to a necessity [11]. Of course, it is worth mentioning that nowadays, we make deals and contracts in our daily life due to necessities (e.g., we pay higher fees to buy ordinary goods in inflationary conditions or rent a house at a higher price). Therefore, the normal necessities in our social life cannot be considered the cause of the emergency. However, the necessities arising from unusual circumstances to deprive the distressed person's decision-making power are intended. In jurisprudence, necessity is also defined as a strong need, such as eating carrion, pork, or someone else's property, drinking wine, or looking at and touching an innocent. The emergency may be due to a hard circumstance that is usually unbearable. In such circumstances, necessity makes prohibited action permissible [12].

Legal dimensions of abusing emergency in marriage

When one party to the marriage contract abuses the other party's emergency or creates an emergency circumstance for the other party, it is impossible to rule on the contract's validity morally and fairly, which is an integral part of the legal rule. For example, a woman needs money to

treat her mother, and the couple, knowing her need, proposes marriage to her and states that he will also pay the dowry in cash for her mother's treatment. The wife agrees to this marriage. Although the wife has agreed to marry, she has not been consenting, and if she were not in such an emergency, she would reject the marriage. The husband took advantage of his wife's emergency circumstances and encouraged her to marry him; if she were not obliged, she would make another decision. Therefore, the following conditions in a marriage are indications of an emergency:

1. One party is aware of the other party's emergency circumstance: Abuse of emergency occurs when one of the contracting parties is aware of the emergency circumstance of the other party and threatens to do something or refrain from doing something of particular importance to the distressed person. In other words, the emergency is used as a means for illegitimate and unfair contract imposition. However, if the emergency circumstance is not evident to the other party, the emergency will not be realized. In other words, the act of someone, without knowing the emergency circumstance of the other party, offering him a contract, even if it is unfair, cannot be considered abuse [6]. As a result, if one party in the marriage contract is aware of the other party's emergency circumstance and proposes the marriage for the benefit of himself/herself and the distressed party, despite her dissatisfaction, accepts the marriage, the resulting contract can be considered valid.
2. Absence of direct external pressure: There is no direct external pressure to conclude a contract in an emergency. Therefore, the lack of direct external pressure is a condition for the abuse of emergency to be realized. If the pressure is direct and external (e.g., if one of the parties to the marriage tells the other if you do not agree to this marriage, I will drown your brother in the sea, and he can carry out this threat in the real world), the applied pressure will be an example of duress and the marriage will be subject to the duress marriage contracts.
3. Non-observance of justice and fairness in the contract: The unfairness of the contract is one of the basic conditions for the realization of the abuse of emergency. If a fair contract is not concluded with the distress, the element of abuse will certainly not be realized [13]. Some jurists have stated in support of this condition that only in an unfair contract we can say that one of the two parties has taken advantage of the other's emergency [5]. For example, consider a marriage contract in which one party has a large age gap with the other party, has had several marriages and divorces, and has had children from previous marriages and now is aware of the other party's need due to illness for undergoing surgery where she/he cannot pay for treatment. The duressor suggests paying for treatment in exchange for marriage, and the distressed accepts the marriage despite her/his inner desire and dissatisfaction. In this case, the marriage is not valid because of the emergency and unfairness of the contracting parties.
4. The lack of consent of one of the contracting parties: the distress is forced to enter into a contract against his will and consent. Suppose someone makes an even unfair offer to a person in need, but he accepts the offer with inner and true satisfaction. In that case, the abuse of emergency will not be realized, even if other conditions are present. An unfair contract is proposed by one of the contracting parties when abusing an emergency, so there must be an indication that the distressed party lacked consent. As a result, we have to make the other party consent when concluding the contract. However, consent is an inner matter, and it is very difficult to prove that the distress was satisfied when signing the contract.

Examining the validity of emergency marriages

An emergency marriage is undoubtedly correct, especially if the distressed person causes this emergency and is something inner and related to him. The authors suggest that emergency, abuse of emergency, and all the cases discussed in the topic of abuse of emergency in marriage contracts are different. It seems that a marriage based on the abuse of emergency conditions where one party (a husband or a wife) is aware of the emergency and enters into the marriage contract for his profit is not fair and valid. Because defects in the pillars of marriage (i.e., the parties' consent) would undoubtedly deteriorate its future. In Iranian law, theories are expressed about if the distressed emergency circumstance is abused and an unfair contract is imposed on him, including the theory of Validity, non-intrusion, termination, and validity with the condition of adjustment or annulment. Among these theories, the theory of non-intrusion is chosen because it is more compatible with justice and fairness and observes the distressed person's rights, as explained below.

The contract's enforceability theory by distress

Jurists in favor of this theory believe that the abuse of emergency in contracts is equal to the verdict of duress transactions and makes the contract voidable. They emphasize the assumption of the occurrence of threats, and it does not make a difference whether a duressor or external circumstances, social events, cultural events, economic pressures, and so on have created the threat tool. The important point is preventing the threat effects and not preventing its creation. Therefore, if someone uses this circumstance to threaten, he has created the material element of duress, even though he has no role in realizing the emergency circumstance in the real world. In addition, the threat is not required to be done through a positive verb, and refusing to do something can also be considered a threat. As a result, if a doctor who sees that a person's child is sick demands an exorbitant amount of money to perform surgery, it is like the doctor who has threatened to treat the child if she does not sign a contract with that amount [6]. Proponents of this theory state that if a person illegally uses the distressed circumstance to put pressure and force him to accept an exorbitant commitment by threatening to refrain from doing something vital for the distressed person, the material element of duress has been realized [14].

Ethical dimensions of emergency abuse in marriage

Sometimes people get married due to their special conditions. The emergency of one of the parties morally and legally does not affect the Marriage's Validity. However, sometimes the emergency circumstance in which a person is placed is abused, and he is forced into an unfair marriage, and his rights are violated, which in this case, the Marriage is invalid. Taking advantage of the other party's bad conditions for personal gain is a clear example of violating social morality. Therefore, if one of the parties misuses and exploits the emergency circumstance and the distressed helplessness, the existing relationship is questionable. Especially when the emergency circumstance threatens and imposes pressure on the distressed person or when the emergency circumstance created by the same interacting person intends to force the distressed person to enter into a marriage contract. The doubt is that it is not just an emergency here, but on the other side, it is illegitimate and for profit-seeking. There is an unfair and unjust obligation on the burdened party in the contract, and he is not consent but accepts due to necessity and helplessness. What solution can the law provide in these cases so that maintaining the legal principles and social interests does not deviate

from ethics and justice and provides sufficient support to the distressed and helpless people? Unfortunately, this is less examined in Iranian law and jurisprudential background. No clear and decisive solution can be seen except in some legal writings, and even against the justice-seeking spirit of legal laws, some authors in their works cite the appearance of article 206 of the mentioned law in the case where a person with bad intentions creates an emergency circumstance for the person in need, the Marriage has been considered as emergency and valid [15]. The authors believe the abuse of emergency and duress in the marriage contract can be considered a performance guarantee. Because in both cases, the element of consent is defective, which makes invalid the transactions and the contract of duress marriage.

CONCLUSION

This article investigating the abuse of emergency in the marriage contract finds the following conclusions:

1. Abuse of emergency in the marriage contract must have two main elements: emergency and abuse. Realization of these two pillars requires the existence of conditions guaranteeing non-intrusion. Otherwise, an emergency alone, neither in the general rules of contracts nor in the special provisions of the marriage contract, cannot cause a defect in the validity of the contract because it is an emergency as an inner matter is the foundation of all transactions and contracts so that everyone facing a loss in the contract can refuse to enforce it by appealing to the existence of an emergency. These conditions include: one party is aware of the emergency circumstance of the other party, the lack of direct external pressure, non-observance of justice and fairness in the marriage contract, one party's lack of consent, and unfair proposal by one of the parties. These conditions are pillars of abuse of emergency in the marriage contract, and it is obvious that the absence of any of them invalids the contract.

2. Various theories in the general rules of contracts are proposed to guarantee the implementation of emergency abuse in contracts and transactions. The first theory is the contract's validity, the second theory is the absence of influence, the third theory is the validity with modification or revocation, and the fourth theory is the termination of the contract. The theory of the validity of marriage is recognized as valid by referring to the harmless rule, public order, and the Laharij rule. In the marriage contract, if we consider the guarantee of the validity of the contract for the one in need, there is no defense of his rights, such that one of the spouses entered into a joint life with a defective will, and every moment of it will have no result for him except hardship and torment. If the legislator's goal of marriage is to strengthen the foundation of the family, the perfection and excellence of man, and as a result, the growth and prosperity of society, none of these goals will be achieved in the aforementioned marriage. Therefore, the theory of validity is not applicable in this case. The theory of validity along with the modification or the possibility of revocation and rescission of the contract, cannot be extended to the marriage contract because the cases of termination and revocation of this contract are exclusively provided for in the civil law, and the abuse of emergency is not referred to in this law.

3. Among the theories mentioned above, the guarantee of non-intrusion is more consistent with justice and fairness, as observed in the general rules of contracts. This study suggests that the marriage contract, which has special rules, should follow the general rules of contracts. This means that we consider the guarantee of non-intrusion for a marriage where all the elements of abuse have arisen and can be proven. According to the hadith of Rifa, the rule of fairness, the real and apparent ruling, and Imam

Khomeini's view on the abuse of emergency, it was proved that the validity of the marriage contract due to the abuse of emergency is subject to distress consent. Therefore, in this context, the marriage contract is not separate from other contracts, and both should follow the same procedure.

4. Duress marriage based on civil law is invalid, and the contract becomes valid with subsequent enforcement. Therefore, it is necessary to guarantee this performance where an emergency marriage has two components: abuse and emergency. Because the defectiveness of consent, which is one of the conditions for the validity of the marriage contract, is also visible in the emergency marriage. If the emergency of the person and the abuse of the emergency and defective consent is proved, the rules of duress could be applied. The unprecedented inflation, poverty, unemployment, livelihood problems, and so on, with an increase in marriage loans, new plans to prevent the aging of the future generation of society are all available to couples, albeit with limited financial support that may result in marriage under emergency and despite their inner desire, which will not last for long.

5. A consensus among jurists and lawyers on the rulings on the abuse of emergency in the marriage contract and the rulings on forced marriages provides a single enforcement guarantee. The difference in the origin of the pressure, which is in the abuse of emergency marriage (internal) and duress marriage (external), is effective in the ruling and guaranteeing its implementation because both depend on consent. Therefore, jurists are suggested to set or add new articles in abusing emergency to enforce setting legal clauses or adding a single article in the family protection law or other laws. Because a marriage contract that is concluded without the consent of one of the parties not only does not form a warm heart of the family but also leaves destructive and irreparable effects on society, often ending in betrayal and divorce.

ETHICAL CONSIDERATIONS

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy and etc.) have been fully considered by the writers.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interests.

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REFERENCES

1. Jafari Langroudi MJ. (2009). Encyclopedia of civil law and business. Tehran. Amir Kabir Publication. (In Persian).
2. Katouzian N. (2009). Civil rights (general rules of contracts). 1st ed. Iran/Tehran: A Treasure of Knowledge. (In Persian).
3. Safai SH. (2012). General rules and contracts. 3rd ed. Iran/Tehran: Mizan Publication. (In Persian).
4. Ansari A. (2011). Abuse of emergency with special reference to imam khomeini's jurisprudential ideas. Matin Research Journal, 13(53): 25-50. (In Persian).
5. Bariklo AR. (2003). Guarantee of legal enforcement of abuse of the emergency circumstance of the contracting party. Private Law, 1(4): 25-46. (In Persian).
6. Ghasemi E, Behniafar AR, Zolfagare M. (2020). Investigate the legal status of contracts resulting from the abuse of urgency. *Political Sociology of Iran, 2*(4), 1039-1057. doi: 10.30510/psi.2022.333897.3252
7. Mohagheg Damad SM. (1981). Rules of jurisprudence (civil sector). 32nd ed. Iran/Tehran: Islamic Sciences Publishing Center. (In Persian).
8. Tousi MH. (1999). Al-Mabsut fi fiqh al-Umamiyah. 3rd ed. Tehran. Al-Maktab Al-Mortazavyeh
9. Al-Jabai Al-Omili Z. (2003). Translation of the legal topics of Sharh Lam'ah: al-Rawzah al-Bahiyyah in Sharh al-Lamah al-Mashkiyyah. Tehran. Translated by Lotfi A. Majd Press. (In Persian).
10. Bahari Ghazani M, Zare A. (2022). Guarantee the implementation of the abuse of the emergency rule in Iranian and French law. *International Legal Research, 15*(55), 173-191. doi: 10.30495/alr.2022.1954517.2314
11. Rajabzade M, Mazlom Rahni A, Rajabzade Estahbani A. (2023). The role of urgency in civil liability in Iranian and British law. *Political Sociology of Iran, 5*(11), 2992-3003. doi: https://doi.org/10.30510/psi.2022.302249.2220
12. Rashti MH. (1401). Al-Ghaza.1st ed. Iran: Dar-Al-Quran. (In Arabic).
13. Sohrabbeig Z, Kheradmandy S. (2021). The nature and effects of contract for difference in law and its application

to jurisprudence. *Journal of Comparative Law, 8*(1), 223-252. doi: https://doi.org/10.22096/law.2020.108444.1459

14. Abdipoor Y. (1997). Jurisprudential analysis of the effects of emergency in non-contractual liability (comparative study). Legal jurisprudence analysis, 51(14): 77-98. (In Persian). Doi: https://doi.org/10.22034/ijrj.2018.540068
15. Abdipour E. (1997). Examining and adapting the concept and effects of emergency in civil rights. 1st ed. Iran/Tehran: Islamic Propaganda Office Publishing Center. (In Persian).