



Research Paper

Unilateral Will in Creating an Obligation from the Perspective of Comparative Jurisprudence and Iranian Law

Ebrahim Javanmard¹, Seyed Mohammad Razavi^{2*}, Saleh Yamrali³

1. Assistant Professor, Department of Theology, Faculty of Humanities and Sport Sciences, Gonbad Kavous University, Gonbad Kavous, Iran.
2. Assistant Professor, Department of Law, Faculty of Literature and Humanities, University of Birjand, Birjand, Iran.
3. Assistant Professor, Department of Theology, Faculty of Humanities and Sport Sciences, Gonbad Kavous University, Gonbad Kavous, Iran.



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Abstract

The acceptance of unilateral will as one of the sources of commitments in the comparative jurisprudence and the Iranian law is dubitable. According to the renowned majority of the Imami jurists and the Sunni jurisprudential schools, as well as some lawyers, *īqā'* (unilateral legal act), like a contract, cannot generally create a commitment, but is a secondary and exceptional source for commitments. However, as an unpopular opinion, *īqā'* is not limited to the cases foreseen in Shari'a and law, but as a general rule, it can create a commitment against its owner and for the benefit of another. Accordingly, the authors try to examine the jurisprudential and legal foundations of this issue and analyze the opinions regarding it. The data has been collected by library method and then analyzed descriptively and analytically. The results show that, in order for social trust to be established among the members of the society and the legal security of others to remain immune from attack, the expresser of the will must adhere to his commitment and not shy away from this legal commitment.

Keywords:

will, obligation, *īqā'*, commitment, promise.

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Corresponding Author: Seyed Mohammad Razavi

Address: Assistant Professor, Department of Law, Faculty of Literature and Humanities, University of Birjand, Birjand, Iran.

Tell: +989151630515

Email: Razavi1213@birjand.ac.ir



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Extended Abstract

1- Introduction

In many cases, the will of an individual can dissolve the existing obligation, such as termination of the contract. But as to whether unilateral will can cause commitment, there is disagreement as to the contract. In this context, Hanafi, Shafi'i and Hanbali jurists are of the opinion that the obligations resulting from unilateral will are a kind of donation and moral act. Therefore, the commitment from one party is non-binding and evocable. Most Imamiyyah jurists generally do not consider a unilateral obligation to be fulfilled and they consider its binding towards themselves in such a way as to create a legal right for the other party, as an exceptional matter and unique to the cases specified in the Shari'a, such as contract of reward, bequest and endowment. In contrast, Maliki jurists and some Imami jurists believe that unilateral will as a general rule has the ability to create an obligation. Therefore, whoever undertakes to give money to someone or to marry someone else, such an obligation will be binding and the violation of it will provide the possibility of referring to the ruler and obliging. According to the above, the basic question of this research is whether a unilateral will can create an obligation in general, apart from the exceptional and certain cases in the law? What are the reasons for the binding of unilateral will-based obligations?

2- Method

The present article has been written using a descriptive-analytical method to analyze the library studies.

3- Result

The role of unilateral will in creating an obligation is not exceptional and contrary to the rule, but there are many examples of the influence of unilateral will in Islamic jurisprudence and Iranian law, which can

be used to create a general and universal rule.

4- Conclusion

Maliki jurists and some Imami jurists believe that a unilateral will, apart from certain cases in Shari'a and law, can create an obligation in general and is not considered as an exceptional source for creating an obligation. Based on this approach, in the civil law of some Islamic countries such as Algeria, Jordan, UAE, etc., unilateral will is considered as a general principle, the method of creating a binding obligation. In contrast, Hanafi, Shafi'i, Hanbali and the majority of Shi'a jurists believe that an obligation cannot be created against oneself and for the benefit of another person simply by one will. Therefore, one-sided obligations should be limited to the legal cases. By examining the reasons for the supporters and opponents of the unilateral will commitment theory, it was found that there is no important problem in accepting the ability of unilateral will to create commitment and the criticisms of the opponents of this theory are lacking popularity.

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6- Authors' Contribution

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7- Conflict of Interest

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