

# Mutual consent agreements effects and Iran's legal approach

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**Abstract:** Backgrounds of Consent and formalism do not imply historical eminence of Consent prior to post antiquity period (when gradual rise of consent begun) . Conflict of consent and formalism proceeded throughout ages. Modern times marked culmination of consent in legal and social affairs while formalism was gradually waning away. However, current century signals rebirth of formalism and a more moderate trend of legal consent progress. This research applied analytical – descriptive method and benefited from internationally recognized sources to stress importance of “consent” and extent of its implication on contracting parties, Iran judiciary system and legislators’ view. Reference notion is amendable and could be altered. Consent impact on contracts may get to the point that “non-conformity out of free will” (which subsequently does result in a ceremonial contract) would become possible. Mutual consent is guarantor of agreement readoption and its transform to a formal contract. This approach (consent oriented arbitration) could indeed play out into less burdensome method of adjudication in Iranian courts. Issuance of verdict base on existing evidences, special circumstances and Islamic jurisprudential and theological traditions ( this phenomena has Islamic roots) will be less perplexed.

**Key words:** rezai of contract, formalism, the parties, precedent.

## INTRODUCTION

Iran's legal code acknowledges segregation of intent and consent. Consent however has a different connotation here (different than the one generally understood which differentiates between consent and origination) and reference separation seems to be ambivalent. Preordained will (combination of origination and consent) is the newly emerged definition. In other words, restrict interpretation of consent that eschews implication of ceremonious procedures in initiation and corroboration of legal act (act of volition) is indeed accepted by Imami Shiite school of jurisprudence and authenticity of such covenants could not be questioned. Broad base definition of consent in legal terms stresses on noninvolvement of contributory measures (punitive & binding) in implementation and enforcement of legal act (even in imposition and conviction of perpetrators of civil offenses). Broad base and restrict interpretations of formalism are opposed to reference assertion and dispute authenticity of consent.

Prominence of consent (consent in act of volition) is mirrored in Imami School of jurisprudence, legal liberalism and technical and ethical bases of international law which indeed concede to legitimacy and reliability of consent.

Shiite school of jurisprudence attaches great importance to consent and considers it one of the basics of transactions and contracting parties' agreements. Islamic law only recognizes deals reached with mutual consent. Lack of consent is a flaw that results in nullity of accord.

### Consent purport

Most Shiite theologians and Iran's judicial community of experts are favoring the theory that gives recognition to separation of intent and consent. Intention to commit and create an action goes through complex, multistage process to reach the final stage (“creation point” which is equivalent of “potency to invent” and “ability to commit”). Previous phases (including third stage of “enthusiasm and assent”) are preliminary steps toward the deed. However, word consent must be attached to legal acts that perpetuate act of volition. This “consent” does not signify categorized definition of multi stage consent which have been referred to and is about to produce a deed. Will power (will) is the proper definition (sense of consent that combines assent and intention to create (Rsolli,1385).

Imami theologians and Iranian legal experts believe when legal act is based on mutual consent, ensued agreements that did not go through usual formalities are submissive and constant oriented. Application of formalities to initiation of contract is an exception therefore. At the same time, procedures that should be undertaken to verify validity of legal act (and not its production) does not contradict authenticity of consent. Volition

brings about such legalities that need to be proven by procedural format. Such agreements therefore are not ceremonial. Nevertheless, broad base interpretation of formalism suggests otherwise and put emphasis on ceremonial nature of contracts due to indirect effects of verifying procedures and formalities.

In large part, consensus is formed around acceptance of consent authenticity in legal acts among Imami jurisprudential authorities. Virtue of consent based "legal act" is subject to contention (Some scholars consider the act to be practical and objective and some others a derivative of "plenary absoluteness").

Base on "rebuttable presumption principal" and "enacted edicts" existence or reinstatement of an item in contract could be questioned some believe. While some others, see reference questions as uncertainties caused by disorderly sequences of contract effects. However, if questionability of an act persists reinstatement and validity of contract should be presumed (on condition of absence of "suspicious items" in contract and news around it). If uncertainty looms around "ceremonial nature" or "consent oriented essence" of contract, or if doubts are raised from specific terms that were used during mandating the accord, consent oriented nature of contract should be presumed unless evidence proves otherwise and indicates that it is a ceremonial pact (Darab pour -1384).

### **Jurisprudential edicts & mandates**

Some of mandated jurisprudential edicts recognize originality of consent while in force. This is the outline:  
Correctness doctrine:

Consent in contracts is often related to "constructive judgment correctness". Agreements without clear terms that did not go through any formalities (although formed by mutual consent) cause misgiving about their correctness as well as their cancelation. Imami Jurisprudential authorities' reaction to this issue varies and they are divided into two groups. Majority of scholars stress that in case of necessity, breach (or non-conformity with religious commands) needs to be proved and not correctness. Even if complications arising from correctness of contract, (including incapacity of one party or parties) come to light.

Permissibility doctrine:

Applicability of this principal is as follows:

Reached deals are either permissible or admissible and should be treated as per followings.

If we believe in correctness and revocability of contracts, permissibility could as well further endorse fundamental role of consent in contracts. Some scholars however do not accept relevance of permissibility with respect to revisions of accords.

Islamic equivalent of Pacta Sunt Servanda (agreements are based on consent and are binding)

Consensus formed by thinkers to further validate role of consent and importance of fulfillment in transactions with respect to "freedom of agreements" notion. Islamic narrations corroborate to this principle. Agreement is compliant with consent which itself is inspired by nugatory and affirmative trends. Volition transcend our will power and intents materialize into deeds (whatever that is not transpired was not really intended).

Authorities are unanimously attesting to the fact that will power is indeed materializing intents during any process (including reaching an agreement) and without mutual consent and resolute willingness speech figures and oral statements bear no significance. Verbal expressions relevance is evaluated in terms of their applicability in legal act and intentional consent. It is concluded therefore that intent and voluntary adhesion to agreed terms initiate the contract.

Theological authorities give credence to "social acceptance" of "will power base acts" and reiterate that intentions are strongly inspired by contracting party's desires and will, without which no agreement (or legal act driven from it) will take place. Additional formalities bear no relevance and do not contradict with essentiality of consent in agreements and ensued promissory obligations (Vahdati Shobairi-1385).

Ethical rationality behind significance of consent in legal affairs:

Significance of consent in contracts could be studied from an ethical prospect (aspects that could be economical and ethical)

Formation of legal act in our ever changing world requires special attention as well as simplicity and effectiveness that ensure a speedy process of affairs. These are preconditions for any expansion of trade (both local and international) and less reliance on time consuming procedures that are associated with formalism. Susceptibility toward "consent oriented transactions" led to gradual down fall of formalism.

Shifting of cultural trends resulted in rise of consumerism and growth of commercial transactions. Formalism was not able to keep up with the pace of such huge expansion of trade and economic activities. Awkwardness of time consuming procedures associated with formalism hinder further expansion of trade activities and became an obstacle in the way of generating viable contracts. Freedom of legal act could overcome arising difficulties and remove procedural obstacles (Bahram Ahmadi-1381).

Prevailing concept about “freedom of legal act” arose from simplicity and practicability of this notion that significantly reduced costs and time. Popularity of freedom in agreements and legal affairs throughout 18&19 century was equivalent to economic growth and international exchange of goods and services in large scale. Society’s needs would be met and people could (traders in particular) match pace of substantial changes that were taking place.

Some jurists believe “genuine consent” lived up to people expectations with regard to “legal act” and globalized market economy. If it wasn’t because of consent, signing of agreements in absentia and long distance arrangements between contracting parties would become impossible. “Impliedly will” wouldn’t play out without consent and its legal significance would grow jejune (not to mention gradual dullness of economic activities).(Rudijani-1390).

### **Rational and economical significance of consent**

Respecting commitments and allegiance to made pledges is rooted in ethical convictions. School of thoughts, philosophies and devotional lessons revere this notion. Breaking obligations is in stark contrast with nature of humans and religious conducts.

Some jurists consider “freedom of choice” a powerful instrument that accept people’s voluntary selection of legal representation through which their will is stipulated. Ethical relevance of this representation assures continuity of social life. Selection out of free will is the bedrock of collective trust and social conscience. Flaws and shortcomings that are not of significant importance won’t play out into breach of commitments and formalities stay in check. In this case, format does not dictate ethical behavior (or misbehavior) that would result in waste of time and energy or perhaps cancelation of accord.

Contracting parties’ intentions and will is the root cause of conceding to such agreements and neglecting them for the sake of formalities is indeed unjustifiable and wrong. Such non compliances and breaches (superficial and ceremonious) pave the way for dragging disputes and even fights. Authenticity of consent embodies “good will spirit” in transactions and legal affairs. This embodiment has high regard for honest people and provide civil protection for the

m (deceitful characters won’t be able to take advantage of inexperienced people and luring them into measures with ulterior intentions won’t become possible).

Importance of freedom in legal action and affairs (including freedom of selecting a proper format) is such that some Iranian lawyers dismiss the theory that free will is the bedrock of this freedom here in Iran and western countries. They speculate about social proficiency of reference freedom and reject arguments that make acceptance of freedom conditional to admitting precedence of volition.

Freedom of choosing the legal act (or freedom in general) is a dynamic force that could regulate and control financial transactions and contracts are not necessarily binding and in force because of dominance of will (Pir hadi -1392).

### **Contracts correctness and legal approach**

Iran civil code which is inspired by Islamic teachings and code of conducts clearly concede to validity of correctness ( in accordance with Imamii Shiite authorities interpretation of Islamic law).

Our research will be concluded with following examples of Supreme Court rulings adjacent with civil codes articles that influenced verdicts (as a point of reference).

#### **Article 223of code civil**

All transactions and deals should presumably be correct (Islamic Shiite theologian devised this phrase long ago) and free of breaches unless proved to the contrary. Wrong doings should be revealed by claimant party and backed by reliable evidences and testimonies (Adl:24-1342).

Supreme court ruling (1317/6/20-1465) evokes correctness of all agreements and dealings first hand and necessity of provision of solid evidence by objectors to back their claim of wrong doing (not correctness of contract) (Nikfar-1370).

2-Article 10 of civil code stress correctness of signed contracts ( of curse if they are not against the law) and consider them to be legally binding and in force until unlawfulness is solidly backed and proved.

Article 508 – 1332/3/31 of supreme court ruling reaffirm that since defendant concede to the correctness of contract, it is valid according to item 10 of civil code and in force. any claim by defendant that object contract truthfulness and evoke plaintiff’s ineligibility (given to contract not being mandated prior to agreement and therefore is not enforceable) has no legal justification and is not acceptable (Matin 1378).

Supreme Court (4<sup>th</sup> office) ruling 1372/2/15-242 specifies that if parties still in process of preparing a lease agreement have not taken legal assurances of article 698 civil code into account and lessee is not under lessor obligations in devised contract and only article 10 of civil code with regard to lessee was used to safeguard financial obligations of lessee vis-a-vis possessor of plot, agreement is still valid and legally justifiable (Nikfar - 1370).

Supreme court's general board ruling (68/9/21-2674) specifies: Base on recorded accords of defendant's appeal case permission was granted to sell paintings to customers in one of Hotel Laleh rooms (under certain conditions and rules). Reference agreement therefore does not fall into ordinary real state leasing category agreements and with respect of article 10 of civil code is in force and effective.

3- Article 90 of civil code concludes that facilitating correct dealings requires:

1- Mutual consent: fourth office of supreme court: 27/9/14-1447:

If lessee is not bound to legal obligations with regard to leasing to other party, cancellation of first lease does not implicate 2<sup>nd</sup> lease annulment (Matin 17-1378). We observe here that regardless of inadmissibility of release by lessee (banning of leasing the plot to others by him/her) his action does not jeopardize correctness of reference accord to the point that voidance of his own lease does not spell cancellation of second lease. This verdict was issued with respect to "presumption of correctness" concept.

4-Item 206 of civil code specifies that urgency in dealings is not acceptable and dealings base on forcefulness and urgency are considered to be void.

Verdict 21 1366 (67/12/20) of supreme court's 21<sup>st</sup> office specifies that: Plaintiff's attorney's announcement about invalidity and illegality of contract during ongoing lawsuit (64/10/11), court session of 67/6/5 which relate signing (signing of contract) to urgent conditions (signing was forced upon his client because of urgent circumstances, devastation and work place dreadful problems) could not consider to be acceptable. Even if contract signing was a "no choice situation" because of special urgent circumstances, correctness of contract could not be questioned (according to prominent theologians of Shiite religion, article 206 of civil code) and initial intents and consent is still admissible. Therefore, legal interpretation of Tehran's 18<sup>th</sup> branch court that led to assumption of contract correctness is confirmed and case is up for verdict (Bazgir - 1379).

5- According to 3<sup>rd</sup> branch of Supreme Court ruling (71/12/5- verdict:3/799-): defendant reiterated that transfer of portion (half) of real state to Mr.H (Nikfar 1370) with respect to plaintiff statements and minutes (69/10/2) which are reflected in letter of proxy authorization (127094-68/4/26) may have resulted in annulment of the agreement and his claim about concurrent cancellation of other deal (selling other portion of plot to plaintiff by Mrs.M) is not based on evidence and acceptable.

Although mentioned deal (selling by Mrs.M) has occurred and documented (67/12/28 document), agreement does not recognize cancellation right and no reliable evidence has been provided to plaintiff for proceeding with annulations. Reference agreement therefore is legally valid and applicable to parties (with respect to legal code:219-223) unless further documented and reliable proofs pave the way for reconsideration and possible cancellation of accord (Nikfar -1370).

6- Item 218 Of civil code specifies "if contract is devised for evading purposes and with ulterior intentions, it is then annulled. Supreme court unified approach ruling( 294/37/10/25 ) indicates that base on article 218 of civil code (no applicability of reformed transaction with respect to article 28(70/8/14) concludes that making legal commitment in transactions with purpose of evading form one's obligations will result in annulment of deal. obligations toward other party (and subsequent evasion) must be proven and obvious to court (Hosseini -1380). It is clear that as long as solid evidence is not formed about evasion claim (if for example one has two properties that one of them could cover inflicted losses on third party and defendant proceed with its sell) voiding of contract due to "evasion intent" is out of question and assumption of contract's correctness is still valid and accord subsequently is in force.

7- Item 220 of civil code specifies that: In addition to contracts legal obligations, parties involved should take norms, mores and legal repercussions of contract signing into account and avoid violating these criteria. Supreme court ruling(3166) specifies :item 220 of civil code indicate that parties should be bound to all norms, mores and legal repercussions of agreement signing and include all necessary precautions in written text (Article:47,46,22 registration code), however non inclusion of reference items does not take responsibility off these persons and they should consider all necessary requirements with respect to reference criterion (Latifian-1370).

## CONCLUSION

Legal act out of consent" is a "developing" and "replaceable" norm that could turn a contract into a ceremonial document whose provisions could be disregarded. Mutual consent guaranties legitimacy of non conformity with procedures and formalities.

Amendments to and removal of ceremonial contract provisions should take place according to measures that have been initiated at the beginning of process when accord was formulated. This process is called "adoption of formats". Making changes to consent based agreements do not require any special formality or procedure.

Since consent is deep rooted in contracts as a logical phenomenon, interpretations base on mutual intention have prevalence over social and typical interpretations. Therefore, contracts are easily construed from a wide perspective. On the opposite, compulsory nature of ceremonial contracts requires a more restrict, legal and categorized interpretation.

We therefore can conclude that consent in legal act makes long distance contracting, proper usage of new communication instruments and implicit representation possible. Reference criteria are embodied in agreement terms and accepted by contacting patties.

Legal expression and representation of will therefore is exhibited by two methods: traditional(verbal and written expressions ,acts and gestures) and modern (telegram, telephone, post , telex and post modern means such as computer and fax).

Regardless of relevance of speech in expressing one's will from point of view of past Imamii authorities(view that was partially reflected in Iran civil code) , more contemporary jurisprudential figures and Iran legal doctrine are opposed to authenticity of means that express one's will( Just like France). Legal approach and Iranian tribunals verdicts demonstrate significance of constant as a guide for contracting parties and standard of agreement. Imami edicts directly point to essentiality of consent in agreements and sees dissatisfaction of party(es) as justification for termination of accord.

## REFERENCES

- Bahrami Ahmadi, H., 1381, general contracts, and agreements, mizan Publications, First Edition ,tehran  
Bazgir, y.1379, Mirror civil law in Supreme Court opinions , contracts and obligations, Publisher Ferdowsi bookstores, first edition,pp.138,  
Darabpour, M., 1384, The rule against damage ,ghanjeh danesh Publications , first edition , Tehran  
Gyldshty, M., 1375, Asalhalshh and its impact on the law in Iran  
Hosseini, M., supervised by nasrollah.gh 1385, The civil law jurisprudence Majd publication  
Lotfi, H., 1385. Pending Home and its legal nature, the letter of promise and its legal nature, the official Gazette publisher iran, Pp. 25,  
Matin daftari, A., 1378. a collection of jurisprudence, The legal., Supreme Court opinions in 1310 to 1330  
Nickfar, M.,1377, Civil law in Supreme Court opinions", Publisher keyhan Publishing Organization, second edition  
Pirhadi, M., 1392, Different specified civil law contracts, khorsandi Publishing, Tehran  
Rasouli, M., 1385, Public order in international law, Rose Publishing,Tehran  
Rudijani, M.,M., 1390, Obligations fall", Ava Publishing , Tehran  
Vahdati Shobeiri, H., 1385 Principles of contractual civil liability, Islamic Sciences and Culture Academy , Qom