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The Effects of Obliges Psychological Motives in the Quality of Jurisprudential, Legal, and Criminal Judgements and Sentences

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Abstract: *The jurisprudential Fatwas and the judicial orders are focused on the ostensible acts of the obligees, the accused, and the litigants, however, due to the significant effects of the internal and psychological motives of the obligees in the fate of their devotional, legal, and criminal acts, the jurisprudential orders and legal sentences are quite dependent on these factors and motives in terms of quality and howness, as they are changed along with the changes in these motives. There are numerous verses and hadiths about the role of these factors in the punishment and rewards, and validity and invalidity of the acts, and their numerous examples in the fundamental, jurisprudential, and criminal subjects recount the obligatory and substantive orders adherence to those factors, that made the grounds for this study, in order to: firstly, manifest the important position of these factors in issuance of sentences and orders with a brief investigation of the fundamental and jurisprudential subjects, more than ever. Most of the information in the current study are the several examples of those factors in the area of jurisprudence, fundamentals, and law, which are like beads connected to each other through the psychological and internal elements of the obligee. Secondly, to identify or create necessary practical rules and principles, regarding the latency of these factors and motives, and the difficulty of the judging in times of doubt and controversy. Thirdly, to notice the obligees for reformation of their intentions and goals, and the motives and psychological factors (preferred over ostensible acts), with regards to the legislator's efforts and emphasis on the role of these motives and factors (as the central and internal core of the ostensible acts).*

Keywords: *Aim, Motive, Intention, Free Will*

INTRODUCTION

Legal competency (including the maturity, reason, and growth) which in the author's idea, is the reference of this condition to the same condition of intention and free will, since the reason for annulment of these people's marriage is the lapse of statement, which is nothing but non-feasibility of intention from their side. This annulment of marriage means the non-feasibility of the contract confirmation by their parents and legal guardians. Also, their legal acts lack the legal effect and no obligatory and substantive sentences are resulted from them, except for the non-intentional titles and forced cases such as the guaranty due to damages, which can be vindicated from his property, and monetary compensation caused by the pure error crimes which are

upon the Aqele (male kinfolk or family of a legally minor or insane person jointly responsible for paying blood money to the next of kin of a person slain by that minor person), or the low-value contracts by the auditory lapse.

Among the public, there are much controversy about the legal acts and lapse seizures (auditory, non-auditory, or definitive, low-value or valuable, annulled or non-effective).

a) Searching the Psychological Factors in the Area of Jurisprudence

1- Binding Obligations

In one division, the obligations are divided into unchallengeable and connecting. In the binding obligations such as Salat (prayer), Som (fasting), and Hadj, the psychological factor of intention and closeness to Allah, are the basis and main condition of validity and acceptance. In a part of connecting obligations named devotional conditions (including the triple purities, i.e. ablution, Wudu (ritual washing), and Tayammum (dry ablution)), the existence of this psychological basis is necessary. According to Akhond and the late Mozaffar, in the devotional conditions, the intention of closeness is not required. However, the intention of closeness in all the connecting obligations and even the permissible acts, give a closeness look to them and would bring separate rewards for the obligee (Aghaei Nia, 2012).

In other connecting obligations such as the garment sanctification and the corpse ablution, in the view of some of the Osulion (the Shiite Muslims) (attributed to Sheikh Ansari and Saheb Maalaem), the psychological motive of the closeness intention to the condition is required, since basically, the condition for the religious obligation of the preliminary is the psychological factor of the will for connecting to the preliminary.

So, the lack of this intention (such as the case for lack of closeness intention) would lead to the religious anomaly of the preliminary, however according to Akhond and Mozaffar, such an intention is not necessary (Gorgi, 1983). When there is doubts about determination of the type of obligation, in Sheikh and Akhond's point of view, the basis is the devotional quality of the obligation (due to the principle of precaution, and engagement, and the necessity of the 'faraq Yaqbana Zammah') and in late Mozaffar's view (which is accepted by the author) the basis is the non-devotionality of the obligation (due to the practical principle of unconditionality or the minority of the psychological element principle and the positional application) (Ansari, Fawaed al-Usul, vol. 2).

2- Boldness and Obedience

There are two fundamental view on the relationship between the boldness (practical opposition to the separation of the unright to the real) and punishment which affects the jurisprudential sentences (Rashidi, 2011).

The first view is the opinion of the Osulion such as Akhond Khorasani and Saheb Fosul, Ayatollah Nayini, and Ayatollah Khoei who consider the bold person (in addition to blaming and criticism) to be punished and penalized, since they consider the psychological elements of internal will and the inner boldness to be the cause of the punishment merit. In this way, there is no difference between the sinner and the bold person.

Another view is that of Osulion like Sheikh Ansari and Shahid Thani, and Imam Khomeini who believe that the punishment is applied to the act of evil and not the subjective hideousness, so the bold person who has not committed an act of evil should not be punished due to the psychological element of the internal hideousness and the inner evil.

These two view are based on two classes of reasons and narrations about the sin intention and intending. The first class are the narrations that consider the psychological element of intention and former will to be punishable. The other class are that consider the mere intention (for sin) to be forgivable. It seems the Osuli view of Akhond is more accepted is among the lawyers, since the inner motives and intentions are not punishable as long as they are realized or manifested (Gorji, 1986, vol. 1).

In the substantive law, it is asserted in the article 123 of Islamic Penal Code: "the mere intention of the crime commitment is not punishable". The terms such as initiation of the crime and the impossible offence and the

incomplete offence are to a great extent in accordance with the subject of boldness. In the note of the article 122, "the impossibility of the offence" is considered as the initiation of the crime, i.e. if the external acts of the person are not in accordance with the criminal subjects, he would not be punished, even if his intention and act are associated with the criminal bad faith (which is in accordance with Sheikh Ansari's Osuli view).

In terms of the relationship between the obedience (practical agreement with the unright) and the reward, there are agreements that the inner intention and will for obeying the Movalla (a person who is entrusted to the guardianship of others), would be rewarded even if it is not led to the external act.

b) Searching the Internal Factors in the Area of Jurisprudence

1- The Prohibition of the Trade due to Illegality of the Intended Profits

Sheikh Ansari has considered the second type of prohibited trades to be this type of trades. In this type of trades, the jurisprudential sentences (obligatory and substantive) are to a hundred percent based on the psychological factor of prohibited profit intention, which are divided to the following types:

First Type: contracts of sales of 'the worshiped idols' and the impure money, and the golden and silver dishes, and the gambling instruments from which, nothing can be intended but the prohibited acts. However, if they are intended to be broken and use their material, the sentences of prohibition and cancellation change into sanction and valid sentences (there are controversy among the jurists).

Second Type: in cases in which the same specific quality can be used for both Halal and Haram purposes. If the prohibited profit is the parties overall purpose, the contract would definitely be cancelled. However, if it is a part of the parties' intention, it has its own specific interpretation. If it is only the buyer's intention, and the seller is aware of it, most jurists believe that the seller's act is not prohibited (due to benefit statements), and some believe it is prohibited (due to controversial narration and the principle of prevention from participating in sinful acts). Sheikh Ansari believe it is not prohibited and criticize the reasoning of the second group and in this case, consider the prohibition to be specific to the cases in which, the seller's act is the unique reason of the buyer prohibited act, that despite the obligatory prohibition, is still a matter of controversy in terms of the substantive prohibition (Sadeghi, 2001).

In the substantive law, based on the article 217 of Civil Law, the illegal direction would only distort the validity of the contract if it is specified in it, since this state shows the parties' intention for prohibited use of the benefits from the object of sale.

The lawyers have comprehensively discussed the motivational effect of the parties of the contract or its direction, as well as the seller's awareness of the buyer's intention, on the fate of the contract of sale.

Third Case: if the specific quality is flawless in terms of the current contract, but it can be exploited for prohibited acts, such as the case for sale of the weapon to the Muslims' enemies in the peace time, the contract's validity is confirmed (Zeraat, 2005).

2- Obviation of the Prohibition of the Trade due to Psychological Intention and the Motive

Some of the trades that are intrinsically prohibited (such as accepting a position from the cruel ruler), in case they create inner motive and intention (the effort for interest of people and benefiting the faithful, and obviation of the loss them, as well as promoting virtue and preventing vice), not only are Halal, but also, in some cases, become Mustahabb (any of the religiously rewarding acts that are prescribed but are not obligatory) and in some other cases, obligatory (Moqadas Ardabili- Sajjadi, 1983: 270). Therefore, the type of the motive and the intention, and conversion of the inner intention significantly affects the jurisprudential sentences in terms of obligees' acts.

3- The Principle of Prevention from Participating in the Sinful Act (the Subject of Verse 2 of Surah Al-Maeda and Verse 8 of Surah Al-Baqara)

Contribution in sin (in the jurisprudential and criminal sentences) is the authentication of the psychological element of the contributor's intention (or the assistant) on cooperation and assistance of the intendant. That is the contributor's motive is the commitment of prohibited act by the intendant (or the assisted). So, the unison of the criminal act intention between the two of them, is required. But can the psychological element of the seller's awareness of prohibited act commitment by the buyer, such as the case for intention, lead to realization of the contribution? Some jurists, consider the awareness, like the intention, to lead to the realization of the above principle, however, Sheikh Ansari is opposed to this idea, because in this case, the seller's intention is only transference of ownership of the object of sale to the buyer, and this ownership is the condition for realization of the prohibited act and not the very prohibited act, i.e. the seller's awareness of the buyer's welcoming will is for the realization of the condition, and not his current will for the prohibited act. This awareness can be considered as realization of contribution where: firstly, the use and application of the mentioned condition is unique to the realization of the prohibited act, such as selling the weapons to the Muslims' enemies at the times they are fighting Muslims, while such circumscription cannot be realized in the contract of sale of grapes to the wine-maker, and it is possible he use the grapes for Halal purposes. Secondly, the mentioned condition is the exclusive condition of realization of that prohibited act (i.e. realization of the conditioned prohibited act), and it is only possible through the intended contract of sale, and there are no other ways for commitment of prohibited act, except for this contract, such as the case there are no other grape seller except this seller.

In terms of establishment of the principle and rule in cases in which there is doubt whether the seller's act is the example of contribution to sin or not, Sheikh Ansari initially considers the judgement of convention to be basis for judgements, and if the convention is silent, or not strong enough, he believes the seller's intention is the criterion for diagnosis, i.e. if the seller denies the intention of contribution, he would not be judged contributor.

In the author's point of view, the psychological element of the seller's awareness of commitment of prohibited act (welcoming by the buyer), is contribution to the sin, since the positive act of this seller is conventionally considered to be contribution and as a result, there is no difference between the intention and awareness, even if there is difference between the two words, conceptually and lexically. The law scholars and authors have presented comprehensive discussion in terms of contribution to crime and its constituent psychological elements.

Bad Faith and criminal Intention in Criminal Liability

Since the criminal intentional responsibility and its sentences are based on the authentication of the psychological element "intention of criminal act or specific bad faith", the lack of this intention transforms the crime's sentence, as the first degree murder may be changed into quasi-deliberate or definite error. So, in determination of the rule and principle for identification and authentication of the psychological element in cases there are doubts:

Firstly, the consideration for the type of the crime is necessary, since in some acts such as insult or theft, or murder in an especial way, the psychological element of bad faith is understood, and there is no need to prove it separately.

Secondly, in terms of other acts, the existence or lack of bad faith can be authenticated by consideration for conditions, situations, evidence, and the legal and judicial bases. The Islamic Penal Code in the article 144 (217-28) has required the authentication of criminal act intention and awareness of its result or occurrence for sentencing the punishment.

Thirdly, in cases the evidence and bases are not present, the subject can be finalized in favor of the accused based on the principle 'Daraa' (repel), and exonerate him.

The articles 120 to 21 of the Islamic Penal Code deem this principle applicable in the amercements and penalties.

The effects of motive of the crime committer on the jurisprudential and penal sentence have been less discussed in jurisprudential texts, since the committer motive (unlike the criminal intention) is not directly related to the occurrence of criminal act, and it is only the psychological stimulus and inner impellent of the committer of the crime (such as the commitment of murder for stealing the property of the murdered or legal defending of himself or others), however, the authors and scholars of the criminal law have more comprehensively discussed the effect of the psychological factor and motive of the criminal act commitment.

In the legal texts and the criminal rules, the effects of this psychological factor have been differently discussed.

- 1- In some cases, it is effective in determination of the fine and punishment (such as the transference of the property with the intention of evading the debt).
- 2- In some cases, it mitigates the punishment (such as the honorable motive for commitment of the crime).
- 3- In some cases, it leads to impunity or obviates the penal responsibility (such as legal defense or acts of the parents or legal guardians and lunatics with specific conditions).

5-The Psychological Element of Self-Satisfaction and Free will (Option)

The satisfaction and option, like the intention and will, are among the conditions of the contract parties (or the contracts' validity conditions) and even the 'Iqas' (a contract or agreement terminable by only one of the contracting parties) including confession, divorce, and revoke. Opposite to option is reluctance which is caused by the threats by others. The reluctant contract and Iqa are not valid due to the lack of serious latent intent for what is the subject of the contract or implied by it, however, since the other bases of the contract and the parties conditions, especially the intention for authorship are present, the subsequent reluctant agreement can validate the contract, and this validation, based on the narrated reasons, can be used as the contract subject. Sheikh Ansari divides the reluctance into two groups (Ansari, Makasib: 119):

- a) The reluctance that obviates the legislative sentences (contracts) that invalidate the contracts due to lack of free will.
- b) The reluctance obviating the obligatory sentences, which is equal to force and lack of free will, and the permission of commitment to prohibited acts and crimes at certain situations.

Then, Sheikh considers the realization of the reluctance to be the lack of free will, that even with assumption of possibility of Tafassa (getting rid of reluctance), the effect of the reluctance (invalidity of the contract) is still realized. However, he considers the commission of realization of reluctance in the obligatory sentences to be the force and lack of free will, that with assumption of possibility of Tafassa, the reluctance is not realized (except for possibility of Tafassa through equivocation in which there is specific reason for lack of necessity for using it, for the reluctance, so the effects of it can be considered).

There are controversies about the invalidity of reluctant marriage and divorce in Fiqh Al-Mazaheb Ammah.

About the frustrated person who trades under specific conditions (and not due to being threatened by others), the contract would not be distorted since the psychological factor of option is present. Also, the 'Rafa Hadith' (two hadiths from holy prophet), which includes the frustrated person, due to principle of gratefulness, is only applicable for the obligatory sentences (such as lack of prohibition of corpse meat eating in emergencies) and does not include the emergency contracts (legislative sentences).

For establishment of the principle in times of controversy about the fact whether the contractor has been optional to establish it or he was reluctant, since the doubt is about the establishment of contract, regarding the principle of admissibility of an assertion of omission without supporting proof, we deem the contract unrealized. However, in times there is doubt whether the person has been optional in doing the crimes and prohibited acts, or he was forced to do it, the principle is precaution and involvement of liability of option and thus, the reluctance should be proven.

6-The Role of Psychological Elements (Intention and Awareness) in the Acts of Devotion and Obligatory Sentences:

Although the proof of sentences is common among both the unlearned and the learned person, but performing the obligations is only upon the aware and the 'Rafa Al-qalam' hadith is about the removal of the obligation from the unlearned, the reluctant, the minors, and the lunatics. There are several cases in devotional sentences and the Fatwa of the great jurists (religious source of imitations) about the necessity of intention for obligation of the obligatory sentences, which are transformed and changed by the change in intention (Feiz, 2001: 812; 180).

7- The Principle of Contracts Obedience from the Intention

According to the legal and jurisprudential sentences, the intention and will (or inner determination) are among the conditions of parties of contract or validity of it. Thus, contracts established when being drunk, or at times of Anesthesia, Sleep, Joke, Mistake, Negligence and the like, would not be valid and they are not legally or criminally effective.

In different common religions, the 'Hazel Aqd' (a joker's contract or agreement, i.e. one offered jokingly and hence invalid) is invalid and it is only valid for marriage, divorce, and emancipation (according to one narration, that considers their joke to be serious). The Shaaafi jurists consider the joking in all the contracts to be ineffective. They believe it would be effective with the subsequent agreement. The Maleki jurists consider the sentence of being drunk in all three cases to be the same as joking (but no necessary). The Hanafi jurists consider the contracts of the ignorant and sinner persons to be valid.

The conditions of realization of intention include the intention of word, intention of meaning and purport of the word, the intention of composition, seriousness, and application of the proper word in the intended meaning, lack of which leads to failure in realization of the contract.

Moreover, for realization of the contract, the agreement of the intentions of the parties in terms of type and subject of contract is necessary. Therefore, the contract is established in the principle of realization and in both type and subject, revolving around the intention of the parties, and this is the meaning and example of the principle of "the contracts obedience from the intentions".

The question is raised that if a contract is established based on the inner intention and will, while the apparent words imply another contract, which one is really established? Sheikh Ansari, based on the principle "what is intended would not happen, and what happens would not be intended" believes that none of the contracts would be realized.

But those who believe the inner heartily will to be source of legal effects, and consider 'Tariqiat' (satisfaction of one law by means partly of methods in violation of or inconsistent with another law) for the words and implications, sentence to the inner hidden contract, and those who believe the words of mouth and speech to be the source of legal effect, and believe in the originality and subjectivity of the speech, would prefer the external contract.

Most of the Imamiah jurists believe in dominance and preference of the inner will and internal contract and looked for this subject in the discussion of the preference of seal of secret over seal of publicity.

In the legal texts, regarding the fact that cases in which the external will (as opposed to internal will) is rejected (including the formal and dissimulative contracts), are specified, it can be concluded the internal will is preferred, and even in the cases in which the internal will is considered illegal (such as the formal and usurious contracts), both of the contracts (internal and external) would be annulled (Sadr, 1982).

Among the common jurists, both of the theories have cons, however most of Shaaafi and Hanafi jurists have trusted the external will, but existence of former interpretations from "the acts are based on their intentions" and "decisiveness of the meaning and not the words" among the common jurists, shows the acceptance of dominance and credibility of the internal and real will among them (Shahabi, 1956).

In terms of establishment of principle and rule when there are doubts about the intention or its complete conditions, principle of admissibility of an assertion of omission without supporting proof is the necessity for failure of realization of the contract, except for the cases in which the existence of valid intention is proven by the evidence. In terms of identification and dominance of each of the internal and external wills, the separation of three states is worth evaluating.

First State: there is no intention (meaning the serious will for establishment of contract) in one of the parties of contract, as it is to be the case in formal contract. In this case, basically no contract has been established (due to lack of serious intention and will).

Second State: the contractors have two types of intentions, one of which is external and the other internal. In this case:

Firstly, in terms of factuality, the internal will has preference and dominance over the external will, since the external will is only the means of manifestation of the internal will and it has only *Tariqiat*, and not the subjectivity. Therefore, when there are conflicts, the internal will, which is in the parties' intention and heart, is dominant.

Secondly: in terms of proof, the external will is dominant and it is the basis, except for the case in which its opposition, which is the conflicting internal will, can be proven, because it is assumed that external will is consistent with the real will and the contract is also in lines with intention, except for the case that lack of intention in the parties of the contract (such as negligent, the joker, and one who commits mistake) is manifested. In other words, the basis is that the intention from which the contract obey is nothing but external purport of the contract, and this expression has no inconsistencies with the opinion of the respected Sheikh, who believed in failure of realization of the contract, regarding the principle "what is intended would not happen, and what happens would not be intended".

Third State: the intentions of the parties are not consistent and in lines, and each of them intend a specific contract. In this case, due to mistake and inconsistency of the will and intentions, no contracts are realized, since what is apparently realized is not consistent with at least one of the intentions, and what is intended by at least one of the parties, is not externally realized (what is intended would not happen, and what happens would not be intended).

8- Rule of Bona Fide (the Verse 91 of Surah Towba and Verse 6 of Surah Al-rahman)

In the jurisprudential sentences, the psychological principle of 'benefaction intention' is highly regarded for waiving of the benefactor's guaranty, as in case this intention is lacked, the committer must compensate the loss imposed to the others, even if he has achieved an interest benefiting others or deny them a loss, or has done something to the good of public, i.e. the criterion for application of this rule is not the mere act and its result, but it is the act and the mandatory result conditional to the intention of benefaction.

In terms of establishment of the rule, it should be said that: the guaranty principle is always dominant, except for the case in which the benefactor's claim on having the intention of benefaction is proven by the certain conditions or the ruling convention (Mohaqeq-e Damad, vol. 2: 301; Bahrami Ahmadi, 85: 42).

In the legal texts, the benefactor has been cleared from both legal guaranty and punishment based on several articles, especially the article 497, 156, 509, and 510 of the Islamic Penal Code, however, in terms of doctor's clearance from the guaranty, based on the specific texts that requires obtaining the exoneration and satisfaction from the patient or his/her guardian, this principle cannot be relied on, except for the cases in which the exoneration cannot be obtained, and the doctor has cured the patient based on the rules.

Conclusion

As the main objectives, the current study aimed at evaluation of the legislator and lawgiver focus on the innate and psychological factors (including the motive, intention, free will, will, knowledge, awareness, attention, cause, and the like) in the legislative and obligatory sentences, and their significant effects on the obligees' acts as well as these psychological and internal elements' effects on the fate of contracts and religious obligations,

and realization of crimes and punishments, alongside with the results obtained from transformation and change in these factors and their status, accordingly and through examining the several basic, jurisprudential, and legal subjects. Also it was intended to provide the appropriate practical principle and rules in case there are doubts and distortion in identification and exploration of these factors and motives, and the inner, heartily, and psychological intentions.

Moreover, the subsidiary objective of the study was focusing the obligees attention towards the importance of reformation of the intentions and psychological motives for acceptance of the religious obligations (and closeness to Allah and achievement to heavenly rewards), and validity of the contracts and evading the heavenly punishment and penal liability.

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