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Review article

The study of deception and the based decline

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ABSTRACT

Deception is one of the most important elements to dissolve conventions in project that predicted by the legislator. Understanding the principles of foundation deception particularly deceptions that don't have any damage is necessary for confirming their influence and by recognition of foundations prevented to undirected and indiscriminate granting this right parties that in some cases lead to abuse of the right. Therefore, in this paper, the foundation of deceptions and how they have relationship with undamaged rule and also their based decline if decline has gone has been investigated. Also, if damage which is the main basis of deceptions can be resolved in any way, whether there is a right of termination or damage has been removed and then the different opinions and the reasons given and the review has been done and where the selection theory is presented.

1. Introduction

Deception is one of the common empowerment in transactions and this study investigated different aspect of it.There are more or less harmful possibility in many business transactions .The important part of these damages are essential for social life and the struggle for a better life .The other part is a disservice that person act to enter them. But sometimes damages are the result of another error and their victims suffer without any reason. In this assumption that natural and public laws give

their place to exceptionally and secondary order because there shouldn't any harm order in laws and no harm should remain uncompensated.

1.2. Deception

Deception means fraud in the transaction, whether is in the purchase or sell and buy or sell by low price. (Tarihi, 1416 AH, vol 6,, and Qarshi, AH 1412, vol 5,, and Mahyar1410 AH). jurists define deception as: selling something more than the market price (deception customer)or buying anything less than the market price (deception salesman) when signing a transaction despite the ignorance of client or vendor (Sheikh Ansari, 1415 AH, vol 5, and Tabrizi, 1416 AH, vol 4, and Mughniyeh, 1421 AH, vol 3).

In legal terms, deception is optional swindling that law has given to the exchange because of the imbalance in sales price that can cause transaction is terminated or the equally acceptable. (Emami, 1951 AHS, Vol 1, p 496).

1.3. Documentation

The jurists has mentioned to numerous documents for legality of deception such as book, tradition, wise and consensus to adhere to prove deception .Each of them is checked as follows:

1.3.1. Book

No verse of the Holy Quran refer directly to the deception , but some of its verses mentioned it indirectly such as verse 29 of Nessa Sura that God order to get away the believers to having other property without any reason.Jurists by mentioning to the aforementioned and say that someone who get harm from transaction and know it ,of course isn't satisfy about it . (Allameh Helli, BEA, vol 11, and Moghadas Ardabil, 1403 AH, vol 8, and Naraghi, 1415 AH, vol 14and 390, and Isfahan, Sheikh Alshrih, 1398 AH,and also Ameli in 1419 AH, vol 4]).

Referring to holy above verse as one of the deception documents is not correct because from verse appearance its corruption and falsehood is clear ; Because it is assumed that dissatisfaction deceive to the unfolding situation in the transaction. (Isfahani, Shaikh Alshrie h, 1398 AH). It seems that , this verse announced that the devouring of another without consent is prohibited, however it cannot be possible to say that this verse prove deception , in other words, this verse cannot documented for deception.

1.3.2. Narratives

In addition to the above verse, scholars have argued about deception by mentioning to narrative . One of these narratives is Rakban which by proving it ,it would be the most important documentation.

The meaning of Rakban is people welcome to trade trip from outside the city, which provided for the sale of goods or commodities that required to enter their city In order to buy their goods by less price or sailing good more expensive than what they are traded in city; (Helli, Fakhrilmohagheghin, 2006AH, vol 1and Frahidi, 1410 AH, vol 5).

Imam Khomeini also argued that narratives to Rakban has problem for proving deception; (Mousavi Khomeini, Bita, J 4,to 417), as well as Naraghi agree with Imam Khomeini idea . (Najafi, Bita, vol 23, and 42, and Naraghi 1415 AH, vol 14).

1.2.3. No harm rule

Other document for deception which the jurists have invoked is no harm narrative . The most powerful and strong reason that scholars have noted that is mentioning to deception .These narratives prohibited harm to any body .On the other hand there are many narratives about no harm narratives ,for example, the most famous is story by Samareh the son of Jondab. So it seems that no harm narrative is the best and original documentation for deception and other reasons, in addition to the narrative confirm this option.

Sheikh Tusi also pointed out to no harm rule as a documentation for deception .(Sheikh Tusi, 1407 AH, vol 3). Allameh Helli knows no harm rules as one of the special reason for deception.

According to Allame Fesharaki, the major documentation of deception is no harm narrative .He said that believing to Islam doesn't have any harm for anybody

Although scholars know no harm rule as the strongest reason for deception ,some authors criticized about this idea .(Mousavi Khomeini, M., Bita, vol 2). As Langroodi mentioned " no harm rule' is not positive alone and if we use it in some cases ,there should be guidance for it because it cant move alone. (Langroodi, 2002 AHS).

It seems that this speech has problem because there isn't any doubt about the existence of deception in the principle of civil law and as previously mentioned "no harm rule" doesn't lose the necessary of sale and it proves the compensation of harm by person who causes this harm.

Among other narratives that scholars referred to them for deception which forbidden to cheat believer to God. (Klein, 1407, vol 5).

Although some scholars refer to these narratives ,others imported some errors to them such as Sheikh Isfahani says: deception in literary means f fraud not its expressional meaning (it means transaction from finance to finance that is more that same price)

1.2.3. Limitation in no harm rule

In order to prove deception by no harm rule, it would be mention to some points: First: canceling and acting deception shouldn't cause in harming to person in transaction and second deception isn't in free contract such as peace because in this event balance for two sides isn't important.

The idea of civil law: If anybody causes harm in person who had transaction with him/her and say the difference in price, the deception can't prove unless cheated person being satisfy for getting differences in price.

1.3. Consensus

Such other documents that jurists sought to adherence them for proving deception are consensus. Tabatabai Yazdi pointed out in his book that the main matter is consensus that back to its implicit meaning . (Tabatabai Yazdi, AH 1421, vol 2). So, it can be mention that consensus cant be as documentation for deception because there are many conflicts in acceptance or lack of acceptance in deception. Therefore, it is not possible to say that consensus is stable by conflicting among jurists and on the other hand by existing other reasons ,we can't refer to it.

Other documentations for de caption are logical reasons.For example Imam Khomeini said that other reasons for deception are wrong unless logcal reasons that are the strongest reason and it is fair that deception has been proved by this reason but other jurists know it insufficient as one of deceptions' documentation.

Some scholars explained about proving deception by implicit bet theory such as Tabatabai Yazdi and it means that transaction is based on equal sale with certain price and any transaction that doesn't follow it causes deception.

1.4. The based decline in deception

Regarding this matter that the based decline is assumable in deceptions that are related to harm such as deception ,in this part ,there are some views about it like stability in deception that the famous idea by scholars is that removing the basis of deception doesn't have any effect on declining deception ,ie, the compensation of harm after creating deception doesn't have any impact on deception and its losing and deception doesn't fail. Among contemporary scholars Imam Khomeini and Ayatollah Khooei and Ayatollah Sistani and also Seyed Mostafa Khomeini selected this theory. On the other hand , Irans' civil law has been obeyed Imams' idea,so by following the idea of these scholars, it can be say that if anybody who cheated a person who had transaction with him and give him the difference in price ,the deception cant be removed unless cheated person being satisfy in getting these differences.

1.5. Crashing deception

Some scholars who believe the crash in deception by removing its basis, discuss and bring some reasons for this matter such as obeying deception from harm ,it means the identity of deception is preventing two people who have transaction with each other from harm ,so when harm has been lost, the deception also doesn't remain .In other word, harm causes removing deception because deception was for preventing harm and by canceling it ,the deception lose ,too.(Ameli,1419,vol 17).

2.Conclusion

Deception is not defined in law but in terms of grammar ,it is gerund and infinitive and it means mastery and domination. The conditions for deception are two types that lead to proving conditions or crashing.

Generally ,it can be say that wherever a constant basis of deception is preventing from harm , compensation for losses in any way can cause it to crash. Therefore, deception based on the harm has been lost if its basis removed and this is not specially for harm in deception and involved other deceptions ,too .So ,by compensating loss ,it causes the removing of deception. The most conflicts among jurists back to the real basis for deception and deception is not the tool for compensating harm specially about conventions and giving the right of canceling is exceptional matter which shouldn't be ignored.

About deception, the researchers concluded that the strongest documentation is news about no harm ,so by removing harm ,the existence of deception is non problematic for its owner.

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