

JURISPRUDENTIAL AND LEGAL STUDY OF RELUCTANCE CAUSED BY FINANCIAL THREATS

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Abstract

Although the offender's discretion in committing a crime is often considered as an essential component in determining criminal responsibility, the concept of will is usually vague and mixed with ambiguity, so that sometimes instead of will and intention, consent is expressed. One of the things that limits discretion is the category of reluctance which by examining the reluctance and necessity in performing or abandoning an action in terms of the reaction of the person at risk in terms of the degree of risk according to the criteria of a type governing the society as well as personal criteria regarding individual characteristics as well as the type of interest that according to the definitions and concepts of wealth And the property of oneself and the people close to that person in committing crimes that are subject to ta'zir in this article in terms of the justified causes of the crime, or exempting the criminal responsibility, or the non-commitment of the crime in terms of reluctance from the jurisprudential and legal aspects. It has been discussed in order to examine its jurisprudential and legal challenges.

Key words: reluctance, wealth, jurisprudence, rights, law

Introduction

By establishing the criminal responsibility of individuals, the execution of the punishment becomes possible and possible, but sometimes factors arise, despite the fact that a person has committed a crime, but the punishment is not implemented in his case. For example, the first condition of criminal liability is that a person has reached a certain age, if he is younger than that, he is safe from punishment on the premise of committing a crime (according to one opinion). The second condition is tolerance and understanding, and if a person suffers from insanity, he will not be punished. The third condition is the power of will and discretion, and if someone commits a crime due to reluctance and coercion, he is not criminally responsible. In this article, with a jurisprudential and legal approach, we will examine and evaluate the concept, nature, and role of reluctance, as well as the subject of binding property and the effect of reluctance on property and the commission of a crime and the resulting responsibility.

Questions are raised about reluctance, such as what is reluctance and what is the difference between urgency, demand, request, and compulsion? Does the malicious person have no responsibility at all or is he responsible but only exempted from punishment? And also, regarding wealth, there are common questions that what is the definition of wealth and what is the realization of reluctance in wealth? Also, what are the limits and limitations of wealth in relation to the person and his relatives? which is stated in the present article to explain the subject of the contents. The reason for writing this article on the subject of money and also on the issue of reluctance in money in terms of interference and permissiveness of the legislator in Article 151 of the Islamic Penal

Code approved in 1392, in terms of the combination of two completely different words, compulsion and reluctance, and also the absence of a correct standard regarding money and influence. It has been a reluctance for people to commit a proposed criminal act or to abandon a legal act in proportion to the interest they have in their property, which has led to the sharpening of the mind and extensive research on the subject of this article so that a correct standard can be presented. To provide legal society.

Elements of discretion: its first element is a definite act or omission of a definite act, and its first element is that act or omission must be voluntary. It is possible that the verb is of compositional affairs, i.e., contract or performance. It may be related to criminal matters, that is, one of the criminals. It may be of another kind, such as confessing and fulfilling religion, so the range of discretion is considerable. The third element is that the act or omission has a legal title (such as contract, crime, confession, performance). Its fourth element is that an effect of legal effects originates from that act or omission. Therefore, even though the MOKRAH contract is invalid because it does not have the intention of the result of the MOKRAH contract, it is subject to the principle of maintenance of contracts. Therefore, the makara contract is invalid because it does not have the intention of the result of the makara contract, but it is subject to the principle of maintenance of contracts, so the makara contract can be prepared to accept the principle of performance of contracts in the form of a draft contract. Reluctance is not an obstacle to discretion. Therefore:

A) Reluctance in contracts and events does not eliminate the act of acceptance and acceptance (even if makrā does not intend to result), and to this extent the discretion of the MOKRAH is considered.

b) Reluctance to commit a crime does not eliminate the criminal's discretion if he is able to resist the MOKRAH (even if he endures the loss). One point remains, and that is whether this amount of discretion is a crime or not?

c) Reluctance to perform the religion is not the discretion of the performer. (Jaafari Langroudi, vol. 1, p. 171, 2011)

Definition of reluctance: threatening someone's life, wealth, or reputation or those close to him so that he does or abandons an action (Jaafari Langroudi, Al Faraq, General Encyclopaedia of Laws, Volume 1, p. 351, 1391)

In the word, reluctance means doing something against someone's will. (Dehkhoda, p. 145, 1361) Reluctance in jurisprudence means that it is a threatening action by someone towards another in order to realize the legal action (act and omission) desired by the reluctant (Jaafari Langroudi, Legal Terminology No. 568, p. 73, 2012).

duress, which is a threat, may be merely a word or an action, such as taking the property of the evil person or taking her people as hostages. (feminine)

Reluctant texts

A) The Hadith "Removal from the nation of sins and forgetfulness, and we are grateful for the air against them"

b) The hadith "No divorce and no divorce in Ighlaq (O in reluctance)

Surah Aal-Imran: "Afghir deen of Allah, Yabgun, and my peace in the heavens and the earth, willingly and deafly, and I will return to it" (Al-Imran, 83)

The use of the word reluctance in the verses of the Holy Qur'an is a confirmation of the separation of the people of words. In the Holy Qur'an, this word is included in both Fath and Zham, and each of them has the same meaning as the linguists. (Jaafari Langroudi, Al Faraq, General Legal Encyclopaedia, Volume 1, p. 352, 2012)

Comparison of coercion with reluctance

Coercion completely removes the will of the forced and leaves no free will for him. The opposite of reluctance, which limits discretion, is the desire of the reluctant person, who is sealed between action and definite abandonment.

Comparing urgency with reluctance

Emergency is an emotional state in which the threat agent is not involved, and as a result, a person acts or refrains from acting against his will. Emergency is an emotional and unpleasant state that does not require a reason to appear, but is reluctant to threaten someone. It is for his life, property, or his reputation or those close to him to carry out an action or leave it.

Comparing intimidation with reluctance

Reluctance is towards a certain person or persons, as opposed to intimidation, which is general, just like Eid (holiday) is also general and has a general inclusion.

Reluctance elements

First: Threatening someone to commit an act or refrain from a certain act in cases of legitimate defense. This element exists.

Second: The return of harm to the party, which is called MOKRAH, and that harm is a threat to life, property, or the MOKRAH or one of his relatives. Therefore, reluctance to withdraw the right is like reluctance to sell

Third: The threat should not reach the limit of coercion (complete deprivation of will).

Fourth: Believing MOKREH (even if wrongly) that MOKREH has the power to give his promise externally. It doesn't matter if MOKRAH is mature or not, sane or insane, weak or not, sultan or not, government employee or not.

Fifth: MOKRAH does not have the power to repel reluctance, whether it is a specific power or relying on another power, including government forces and so on. (Jaafari Langroudi, p. 352, 1391)

We will explain each one to understand the content.

Reluctance threat

It should be said that if there is no reluctance, reluctance has not occurred. This is because Article 208 BC says: "Mere fear of someone without being threatened by that person is not considered reluctance."

Regarding what should be the malicious person, in most cases, the malicious and threatening person is the beneficiary and the party to the transaction, who benefits from that action by abandoning the action, but it is possible that reluctant and threatening actions are carried out by

another person. It is accepted that Article 203 of the Civil Code stipulates. Reluctance is the reason for the lack of penetration of the transaction, even if it is done by a foreign person other than the parties involved, and it is also stated in Article 151 of the Islamic Penal Code. If someone commits a behavior that is considered a crime due to unbearable reluctance, he will not be punished. In crimes that lead to ta'zir, the person who refuses to do so will be sentenced to the punishment of the perpetrator of the crime. In the case of crimes that cause HADD, retribution is treated according to the relevant regulations.

Regarding the reluctance person, it is not the maturity and wisdom of the partners because the threats can be made by a madman, a teenager, or a drunkard, which together with the recently mentioned conditions can provide the issue of reluctance.

Who should the threat be directed at? Transaction party - a person who is related to the subject of the act or omission, or who has the power to perform that act, or the close relatives of that person, or any other person, or any other thing and object that affects the transaction party or the scheming person. It is happening. Article 202 of the Civil Code states that "the reluctance to do actions that are effective on a conscious person and threaten him with his life, property, or reputation in a way that cannot be considered habitually" Reluctantly, the person's age, personality, morals, male or female should be taken into account" and Article 204 of the Civil Code states that "the threat to the person or life or reputation of his close relatives, such as spouses, fathers and children It causes reluctance. Regarding this article, the closer recognition of the degree for the effectiveness of reluctance depends on the opinion of custom. In most cases, threats against the life, property, or honor of the person who is abominable (the subject of the act or omission) until he performs the current act or omission, but in Article 204 of the Civil Code, threats to the life, life, or honor of his close relatives are Such as wife and husband, fathers and children are considered to be the cause of reluctance, and regarding this article, the degree of closeness for the effectiveness of reluctance depends on the custom opinion (Droudian, Book of Civil Rights 3, 1354).

Threatening and reluctance actions must be effective in the person of the party to the transaction and the criminal, that is, it has an effect on that person (intention) and in other words, there must be a causal relationship between the fear caused by the threat and agreeing to carry out the transaction and the intended act of intimidation. In this way, if the result of the threat did not create fear and terror in him, he would not have committed that act and that crime, which in this regard, Article 205 of the Civil Code states: "When the person who has been threatened knows that the person making the threat cannot carry out his threat." executes it on time or the said person himself is able to overcome his reluctance without difficulty and not to complete the transaction, it is not considered MOKRAH. In relation to ascertaining whether reluctant and threatening actions had an effect or not, and what is the type of regulation? It should be separable because in Article 202 of the Civil Law, two rules are stated which are in conflict with each other. In the first part of the article, a kind of standard is mentioned and it is stated that reluctance to act is achieved which is effective in a conscious person. and threatens him with his life, property, or reputation in a way that cannot be tolerated habitually, which is recognized by custom. In the second part of Article

202 of the Civil Code, a clear rule is stated that regarding reluctant acts A person's age, personality, morals, being a man or a woman should also be taken into consideration.

The illegitimacy of reluctance

The reluctance must be unjust, the civil law in article 207 of the civil law states that obliging a person to enter into a transaction by the order of the legal authorities is not considered reluctance. It is like a threat to obtain a legal summons in order to pay a reluctance sentence, it is legitimate and right when the means and the goal are both legitimate, and the means are legitimate and permissible when a person has the right to use them according to the law. Otherwise, it will not be legitimate, and so to speak, the goal does not justify the means.

The legitimacy of the goal is realized when, as a result of a legitimate threat, an out-of-bounds privilege has not been gained, such as threatening a criminal to hand him over to the police and obtaining a document of responsibility from him, and also for a goal to be considered legitimate, there must be direct communication. There is a right between the right that the reluctant threatens to implement and the obligation that he acquires under the influence of this threat. For example, a person has taken actions against the rules regarding military zones, and the reluctant person understands this issue and the threat. Handing him over to the competent authorities will oblige him to pay money or a debt or other financial document, in this case it is said that reluctance is not legitimate. (Droudian, Civil Rights Booklet 3, 1354)

The types of reluctance in terms of objective and tangible actions on reluctance physical parts or mental and personal violation of family, social or professional situations include material reluctance and spiritual reluctance. Some jurists consider one of the conditions for the realization of reluctance to be an operation where the reluctant person is accompanied by a threat to be reluctant, and some jurists do not consider the word of threat to be enough, but physical action and material operations, injury and other physical harm to They consider it necessary to be accompanied by a threat in the realization of reluctance, but later jurists clearly state that the presence of reluctance with a threat is not a condition for the realization of material reluctance, but it is enough for the reluctant to make sure that the reluctant is in a position and position to carry out the abuse. He has his own opinion and he will not be safe from the harm of that abuse, which follows the same opinion of the legislator in Article 663 of the Islamic Penal Code. "Whoever obliges another person by coercion or by threat of reluctance to give a writing or document, or to sign or seal a writing or document, or to give him a document or writing that is his own or has been deposited. He will be sentenced to imprisonment from two months to two years."

Spiritual reluctance means forcing another person to do the work or leave the current one by threatening to harm the dignity or honor or honor or revealing a series towards the reluctant person or his relatives, such as threatening someone else that if according to his opinion and desire If he does not take action, he will publish his scandalous photos or make them available to competent authorities, so when reluctance is realized through threats, it is called spiritual reluctance, which the legislator follows from the same division in Article 669 of the law. Islamic punishment states that "whenever a person threatens another in two ways to harm his honor and reputation or to reveal a secret to him or his relatives Regardless of whether or not he has requested money or

property, or requested the fulfillment of his current possession or not, he will be sentenced to 74 lashes or imprisonment from two months to two years" (Walidi, p. 267, 1392).

property

Regardless of whether or not he has requested money or property, or requested the fulfillment of his current possession or not, he will be sentenced to 74 lashes or imprisonment from two months to two years" (Walidi, p. 267, 1392).

The lexical and idiomatic meaning of property:

In the terminology of law, it is mentioned below the word "property": "property is originally from the past participle of desire, which means desire, in Persian they also call property, desire" (Jaafari Langroudi, p. 595, 2010). Of course, it can be said that the present is not the root of money, because in Arabic literature, deviation and tilting is called "desire". Basically, property has Greek roots and its Latin word is Malum, which in the term means something that has an economic value and can be converted into money (Jaafari Langroudi, p. 25, 1368). The word "property" has changed a lot over time. And gradually the custom has added new customary examples to it (Yosef Mousavi, p. 197, 1996). Therefore, to define wealth, we must take help from custom, as custom has gradually expanded the meaning of property. There is a public and private relationship between property and object, so that every property is an object, but every object is not property. Like a car, which is both money and an object, but air is an object, but it has no financial value because it has no rational benefit.

In custom, property is used in two material and legal meanings; Its single meaning is limited to objects, such as house and property in the legal and single meaning, which is financial rights that allow the use of objects, such as the right to own and claim from others. From the legal point of view, something is called property that has two basic conditions.

- It is useful and fulfills a need, whether that need is material or spiritual.
- Can be attributed to a specific person or nation.

Therefore, objects such as open seas, air and sun are not considered property because no one can claim exclusive ownership over them.

In cases where property is created as a habit in the future and the context of this creation has value in the eyes of custom, such as "the fruit of a tree and the benefits of living in a house for the future", it should be considered as property or as property (Katouzian, p. 52, 1383).

jurisprudential concept of property

In Islamic texts, wealth has a special place, which has been repeatedly emphasized in verses and traditions on the sanctity of believers' wealth, and it has been recommended not to encroach on other people's financial rights, including verse 188 of Surah Al-Baqarah of the Holy Quran.: Eat people's property (relying on their cruel ruling) as a sin, while you know (the ugliness of your work). And also, the narration: "Ali Al-Alid, we took you even as a pledge." (Nuri, p. 231, 1408) A person who illegally seizes another's property is a guarantor until he returns it. And the sentences extracted from the narration that: "Whoever wastes another's property is a guarantor". (Mousavi Bojnordi, p. 22, 1377).

The word "property" which is the plural of "property" has received less attention from commentators due to its clear meaning. Because according to some commentators, its meaning is clear (Tabarsi, p. 238, 1372), everything that is useful and fulfills one of the human needs has property and is property. Of course, it must have a rational benefit and not be forbidden or haram. The jurists have presented different opinions about the possession of property, including Abu Hanifa, who believes that property must be dependent on the absolute attribute (Audeh, p. 544, 1361). In the Holy Quran, in Surah Kahf, verse 46, money is mentioned as the beauty of the world. And for stealing that crime, the limit has been set.

The community of jurists believe that the interests of money should be legitimate and halal (munafeh mahallah), so alcohol, drugs, obscene CDs, and pork do not belong to you. And buying and selling them is invalid and forbidden (Makki Ameli, p. 203, 1412).

After defining wealth, one of the jurists says: "But according to Sharia, every material thing is halal depending on the existence of interests in it, and if the interests of that object are not halal (such as wine and pork), then it is not property." A number of other jurists in Regarding the meaning of wealth, they say: "The meaning of ownership and property and property and wealth is customary, which does not require an explanation of Sharia and a Sharia reason, but to define them, one must look at custom and vocabulary" (Naraghi, p. 113, 1375). . Imam Khomeini says in the definition of wealth: "Wealth is something that the applicant has and rationally desires" (Khomeini, p. 20, 1415).

According to the definition of wealth from the point of view of jurists, it can be said that from the point of view of all jurists, something has financial value that has two characteristics: 1- Legitimacy 2- Rational benefit.

The concept of property in law:

There is no specific and clear definition of property in the domestic law. In legal articles without defining the word property, it is divided into movable and immovable, and sometimes in the laws related to crimes against property, the word property is used alone and is used in absolute terms, and sometimes, along with this word, the word He has also used others. For example, in Article 267 of the Islamic Republic of Iran, 1, in the position of definition of theft, it has been stipulated: Theft is the theft of property belonging to a non-guardian in relation to fraud and betrayal of trust., bills and others have been used.

Jurisprudence has also expressed a certain direction regarding the concept of "property" and this has caused a difference of opinion in the definition of the concept of this word. (Mansour Abadi, pp. 103-132, 2012)

Properties Attributes

Two types of values are considered for each: 1- consumption value 2- exchange value

"Consumer value" is to directly and actually or potentially provide a need for needs and, in better words, to be useful.

"Exchange value" also means that the product is such that people are willing to pay something for it, and this value is created if, in addition to being useful, it is not so abundant that it is no longer There is no demand for it.

According to the explanation mentioned above, it can be said that the meaning of exchange value is;

First: to satisfy a need. Therefore, threads used in clothes that have been torn and spoiled fruits are not considered property because they are not useful and have no intellectual benefit according to the interpretation of jurists (Ansari, p. 161, 1375).

Secondly: They should not be so much that it is available to everyone without any effort or taking from others. And therefore, air and sunshine, while they provide basic needs and have consumption value, are not ours (except in special circumstances) which are interpreted as "Azza al-Wujud" in jurisprudence books. (Tabatabaei, p. 325, 1371) Some jurists have defined "property" based on the characteristic of being useful, based on this definition, only things that are useful are considered property, and the definition of property is close to the definition of this word in Roman law, which states: "Objects that are not useful for a person in any way are not considered property" (ibid., p. 3).

Therefore, wealth must be useful and satisfy one of the materials (physical and physical) or spiritual (spiritual) needs of a person.

It should be mentioned that the category of usefulness has been criticized by some people and according to them there are some objects which are useful but not considered property, such as blood is useful as long as it is in the body, but it is not considered property (Taghizadeh). Hashemi, p. 15, 2013).

Some jurists have also defined "property" based on "possibility" and believe that objects such as sea, air, and sun are useful for humans, but according to nature, they cannot be assigned to a person or persons (ibid., p. 4). Some other jurists believe that the meaning and concept of "property" can be obtained by combining the two conditions of "usefulness" and "assignability" (Katouzian, p. 11, 1368). Some others have also said by inferring from the basis mentioned in the definition of property: "Property is something that can be traded and there is a demand for it and it can be evaluated in money". (Madani, p. 160, 1390) means that people are willing to pay money or other property in return (Jaafari Langroudi, p. 12, 1368). The criticism raised on this is that it is not clear whether the economic value is relative or absolute. Of course, according to the point of view of jurists and jurists, we can conclude that economic value is relative and is completely different and not the same from one society and culture to another society and culture and from time to time.

In this article, according to the description and change of reluctance and property as the main ideal of the present poem, we come to two human issues, one of which is about the person's reluctance and threats regarding his property, and the second is about his actions that people It is to another's property by committing a criminal act, because Article 151 of the Islamic Penal Code states: If someone commits a behavior that is considered a crime due to unbearable reluctance, he will not be punished. In TAAZIRI crimes, the one who resists is sentenced to the full punishment of the crime. In the crimes that lead to punishment and retribution, it is treated according to the regulations, which, considering this article and also its subsequent articles, mentions things about coercion, reluctance, and urgency, and about the effect and type of criminalization regarding criminal acts and actions carried out in the punishment department. Currently, we are examining

the effect of reluctance in committing a criminal act and the conditions for the realization of reluctance in the matter of the property of the person who is reluctance.

The conditions for realizing the reluctance caused by financial threats from a jurisprudential and legal point of view:

As stated in the previous lines, according to the current laws of the Islamic Republic of Iran, property is not defined, and according to the secondary descriptions of property and its attributes, it is one and completely relative and subject to time and place conditions, because it is possible that property or object is valuable for a person in different places and at different times, and at other times it is not valuable for him or for another person, and he does not have any interest in it, but it is a criterion that can be mentioned at least for it. That object has a rational benefit and is also lawful and should be useless for him from the point of view of custom, if its benefit is greater than its harm, and as a result, it has wealth. In such a criterion that can be described for property and objects, it is to say that it is assignable to a certain person or group in order to express the value of that property to a person, because some jurists also describe it. They have said, "Our wealth gives us our wealth", which is evident in the definition of jurists regarding wealth and its valuation. Some law professors also stated other elements to recognize property, which are 1- Something material and spiritual that is assigned to someone or can be assigned 2- It has a benefit 3- The said benefit is not prohibited by the law 4- It is rational. Benefit 5- It can be transferred independently 6- It can only be calendared. (Jaafari Langroudi, p. 328, 2011)

Now, according to the description of what was mentioned above, we should check how much the psychological effect of financial threats must be for the reluctant person in order to say that the person is reluctant to commit a crime. In this regard, as stated, we observe two types of criteria in the relevant laws, which are quite evident in Article 202 of the Civil Code, because that article contains the words "reluctance to commit acts that are effective" in a conscious person and threaten him with his life or property or his reputation in a way that is not usually bearable. Regarding the reluctance of age, personality, morals, or whether a person is male or female, it should be considered that in this article, two clear and opposite criteria have been presented, one of which is a type of criterion, which is known as an intelligent person. – and the second criterion is a person's code such as age, morals, or being a woman, which is left to the judge's opinion and discretion. As it can be seen, none of the specified criteria have defined its limits and gaps, and only general criteria have been proposed, which depending on the opinion of the investigating judge, referring to custom and personal criteria, he must recognize that the authority is limited. (Caused by reluctance) according to the type of personality and the value of the property for him from different times and places to what extent it was and could have its influence.

An important point about malicious financial threats is that in the criminal rules of al-asul, one should be satisfied with the amount of detection and only regarding the financial threats to the person and the property attributed to him, in the discussion of reluctance, because In Article 202 of the Civil Code, it is stated that reluctance is achieved in actions that are effective on a person with awareness and threaten him with his life, property, or reputation in a way that cannot be tolerated habitually, and in the case of reluctance actions, The combination of age, personality and

morals of a person should be taken into account, and in Article 204 of the Civil Code, it is stated that "threat to the person or life or reputation of the close relatives such as husband and wife, parents and Children cause reluctance Regarding this article, the recognition of the degree of closeness for the effectiveness of reluctance depends on the opinion of the custom, as can be seen in Article 204 of the Civil Code, it is stated about the self or the life or the reputation of the close relatives, but there is no mention of the property of the mentioned persons. It comes to his mind that the issue of reluctance in committing crimes is one of the exceptions, and it should be limited to the extent of certainty, and it should only be taken into account by the person himself, and regarding the property of relatives and threats, in this regard, reluctance is not considered, and it is not an obstacle to criminal liability.

conclusion

In the topic of reluctance in property or life, the legislator has not defined general property, and the amount of its issuance and allowance has not been determined in the law, and it is worth mentioning in this regard that the presentation of typical and personal criteria in relation to the type of interest of the person who is reluctant to It is one's own property that the judges should pay attention to in the hearing, and another point is that regarding reluctance in the property, one should be satisfied with the amount of the deceased, because there is no mention of the property of the mentioned persons in the related laws. Only the issue of property, by examining the place and time and personal interest towards the property and its threats, it should be noted that in the assumption of reluctance, it can be said that in all criminal matters, reluctance is subject to the punishment of reluctance from the obstacles to the execution of the punishment against MOKREH. But in some cases where the type of crime committed is of the news type, due to the defect of reluctance and lack of intention, no action is required, and in other words, no crime is committed, such as the reluctance of a malicious person to testify under the threat of arson. His property should be distinguished in this type of actions.

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