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RESEARCH ARTICLE

Legal and Jurisprudential Foundations of Government Intervention in Employment Contract

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Government intervention in employment contracts is a complex and significant issue. On one hand, freedom of contract and mutual agreement between parties are fundamental principles that support individuals' economic and social independence. On the other hand, a lack of government intervention in these contracts can lead to exploitation of workers, inadequate wages, and social inequality. In determining the optional terms of an employment contract, the principle of freedom of will prevails, allowing parties to agree on specific terms. However, for mandatory terms that are considered imperative rules, the will and agreement of the parties are not valid. Labor laws are the primary factor limiting freedom of contract in employment. Another basis for government intervention in employment contracts is the principle of justice and fairness. This principle ensures that the terms of the contract do not infringe on workers' rights and that they receive fair wages. Additionally, parties to an employment contract must adhere to good morals and religious principles, and any agreement contrary to these is void. To promote social justice, alleviate poverty, and create a balance between workers and employers in determining working conditions, the government, based on the principle of "no harm or causing harm," has enacted laws to protect workers. These laws are mandatory, and any agreement contrary to them is unenforceable. Therefore, the government, as the governing authority, plays a pivotal role in determining certain terms of employment contracts. The necessity of government intervention in setting working conditions is justifiable from both legal and religious perspectives.

Keywords: Employment Contract; Terms of Contract; Government Intervention; Legal Foundations.

Introduction

One type of contract is related to employment, which is an agreement between an employee and an employer, where the employee receives wages in exchange for his/her work. Therefore, an employment contract is a type of legal agreement, in which, the principle of freedom of will

dictates that each party can include its own terms and conditions. In an employment contract, one party is the employee who uses his/her wages to support himself/herself and their family, while the other party is the employer, who is typically in a stronger financial position. Generally, the terms and conditions of contracts are determined by the parties involved, and no one else, except for their legal representatives, can interfere in determining the terms of the contract.

An employment contract, like others, is essentially an agreement between two parties. However, due to its unique characteristics and supplementary nature, differs from other contracts. The freedom of the parties to determine the terms of an employment contract is more limited. Consequently, labor law, which governs the relationship between employers and employees, is considered a part of private law. However, the government's involvement in setting certain terms of employment contracts has shifted it towards public law.

While parties to ordinary contracts are generally free to determine the terms of their agreement, employment contracts are subject to certain limitations. Many terms of an employment contract, such as minimum wage, maximum daily working hours, minimum bonuses, and annual leave, are set by the government. Employers are obligated to adhere to these minimum standards. Government involvement in employment contracts serves both a regulatory and an interventional purpose. The government intervenes in matters such as wages, benefits, and dispute resolution. It also ensures that employment contracts comply with relevant laws and regulations. If a contract is found to be in violation of the law, it can be declared void, and disputes are resolved through legal channels.

Government Intervention in Employment Contracts

While employment contracts are ostensibly private agreements between workers and employers and fall under private law, where contracts are formed based on the mutual consent, the power imbalance and unequal bargaining positions between employers and employees often give employers the upper hand in determining contractual terms. This inequality can lead to the exploitation of workers and violations of their rights. Governments intervene by enacting protective labor laws to mitigate this imbalance and safeguard workers' rights. Beyond protecting workers, government intervention in employment contracts also aims to promote social justice and economic development. Furthermore, workers who are satisfied with fair working conditions are more likely to be productive.

Employment contracts, due to their connection to economic, social, and political issues, are among the most significant contracts for work. One of the key issues in employment contracts is the determination of minimum wages for workers, which has always been a matter of government attention and cannot be left solely to the discretion of the parties involved. Given the impact of employment contracts on the national economy and their connection to social and political issues, the government strives to establish a balance between the parties to the contract

through laws and regulations, while also protecting the rights of workers. This is aimed at reducing the wealth gap in society and improving the living conditions of workers.

Legal Foundations for Government Intervention

The rights of workers and ensure the public good as well as to safeguard the interests of society and promote equitable compensation, the government has set certain terms of employment contracts and the resulting rights, making their enforcement mandatory for employers. The government, based on the powers granted by the Constitution, particularly Articles 3, 29, and 44, as well as numerous provisions of the Labor Law, can make decisions to establish a sound and equitable economy, reduce poverty and deprivation, provide work conditions and opportunities for all, prevent the exploitation of others, and extend insurance to achieve justice, welfare, and poverty alleviation (Clause 12 of Article 3 of the Constitution). Therefore, these actions are in line with the Constitution and the ordinary laws governing it, thus justifying the legal basis for government intervention in determining the terms of employment contracts.

As the sovereign power, the government has a duty to protect the public interest. When employment contracts threaten public welfare, the government can intervene by enacting laws and regulations. The primary reasons for government intervention in employment contracts include:

a) Public Order

One of the main goals of government intervention in employment contracts is to maintain public order. It refers to the body of rules governing society, which everyone is obliged to follow, and violations of which are unjustified. In their social interactions, individuals enter into contracts, which must be governed by the applicable law and ethical principles. Employment contracts are no exception. Parties to an employment contract cannot agree to terms that violate the law or public order.

Given the economic, social, and political implications of employment contracts, the government, out of necessity and for the good of society, intervenes in determining certain mandatory terms of these contracts. Through legislation, the government renders invalid any contractual terms that conflict with the law. These laws are considered mandatory, and the parties cannot waive them, even by mutual agreement. For example, Article 148 of the Labor Law mandates that employers in covered workplaces must insure their employees in accordance with social security laws. Many other provisions of the Labor Law are similarly mandatory and cannot be overridden by contractual agreements.

b) Good Morals

Good morals, as a legal principle, restrict contractual actions that conflict with Islamic values and religious principles. The concept of good morals can vary across different societies. However, in our country, good morals refer to a set of values and norms that are accepted by

society and considered essential to follow. Actions that contravene societal morals are deemed unacceptable.

In employment contracts, terms that violate good morals are null and void and cannot be enforced. For instance, Article 975 of the Civil Code states, "The court cannot enforce foreign laws or private contracts that are contrary to good morals."

Beyond labor laws, good morals can also serve as a limitation on employment contracts. Good morals in employment contracts encompass concepts such as adherence to Islamic laws and principles, respect for the rights of others, privacy, non-discrimination, fair wages, and providing a suitable work environment. Adhering to these principles enhances productivity, fosters a spirit of cooperation, and strengthens the bond between employees and management.

Therefore, the terms and conditions of contracts must comply with good morals and religious principles. Contracts that violate good morals are null and void. Employment contracts are no exception, and their terms must not conflict with applicable laws, Islamic principles, or rulings. Article 9(a) of the Labor Law specifically requires that the subject matter of an employment contract be lawful, and Article 9(c) further stipulates that the parties must not be legally or religiously prohibited from disposing of property or performing the work in question. Consequently, contracts that undermine human dignity and violate good morals are void.

Islamic Foundations of Government Intervention in Employment Contracts

Employment contracts, as one of the most significant social contracts, govern the legal relationship between the worker and the employer. To prevent harm to workers and protect their rights, the government sets certain terms of employment contracts. These terms are considered mandatory and cannot be overridden by agreement. However, due to the power imbalance between the parties and certain market failures, governments often find it necessary to intervene in these contracts to protect workers.

Furthermore, based on Islamic legal principles derived from the Quran and the hadiths of the Infallibles, as well as legal rules such as "la darar wa la dirar fi al-Islam" (no harm or causing harm in Islam), the principle of justice and equity, and the authority of the Islamic ruler, government intervention in employment contracts is justifiable. The primary Islamic justifications for government intervention in employment contracts are as follows:

a) The Principle of No Harm or Hardship in Islam

This is one of the most well-known legal principles in Islamic jurisprudence, with various applications in human life. According to this principle, no Islamic ruling permits harm or hardship. Any ruling that causes harm is rejected. The principle of no harm or hardship not only eliminates harmful rulings but also establishes new ones when the absence of a rule or law causes harm (Mohaqeq Damad, 2002). The principle of no harm is not limited to removing existing rulings; it can also be applied when a legal vacuum causes harm to an individual or society. In such cases, the government can take necessary measures to prevent harm to workers.

If the government does not intervene in employment contracts, it can result in harm to workers, allowing employers to impose unfavorable terms on their employees.

According to the principle of no harm, if one party in a contract abuses their freedom of contract, the governing authority must intervene to prevent such abuse. This can only be achieved by the authority fairly modifying the contract and eliminating its unfair elements (Ahangari and Moemeni, 2021).

The principle of no harm also governs employment contracts. According to this principle, the employer must pay the worker a fair wage for the work performed and provide suitable working conditions. Additionally, the employer must insure the worker with the social security organization and pay their wages and benefits. The right to take leave and have one day off per week is a right of the worker.

Therefore, "a private employment contract, without government intervention, causes harm to the worker, and irreparable harm is rejected in the narrations. This rejection means compensation for the harm, and compensation is achieved through protective laws and government intervention in favor of the worker in employment contracts." (Karimi and Mortezaei, 2019)

In conclusion, the principle of no harm, as a general principle in Islamic jurisprudence, has widespread application in the realm of employment contracts. It serves as a crucial guideline in regulating the relationship between workers and employers, allowing the government to determine certain terms of employment contracts to prevent harm to workers.

b) The Principle of Preserving Public Interest

The term "maslahah" (plural: masalih) refers to what is beneficial and necessary. As Ayatollah Javadi Amoli states, "Every necessary matter is in the public interest" (Abdullah Javadi Amoli, *The Guardianship of the Jurist*, 4th Edition, p. 465). In other words, anything that is beneficial and necessary for society is in the public interest. The public interest should be considered, and the common good should take precedence over individual interests. This means that, in some cases, the government may intervene in matters that cannot be resolved through ordinary means in order to serve the public interest. One such case is government intervention in determining the terms of employment contracts.

As you know, employment contracts are governed by labor law. Although labor law is generally considered a branch of private law, where the principle of freedom of contract prevails, the imbalance in economic conditions between the parties and the need to prevent injustice and exploitation of workers have made it necessary to enact laws and regulations governing labor relations.

In employment contracts, if the determination of contractual terms is left to the parties, the employer may prioritize their own interests at the expense of the worker's rights. Therefore, the Islamic government can, in accordance with the public interest, enact laws to establish

minimum wages, maximum working hours, and minimum employment age. (Farahani Fard, 2002)

This is evident in the multiple revisions that the current labor law underwent in the Iranian Parliament and the Guardian Council since 1985. After several rounds of amendments between these two bodies, a consensus could not be reached until the Expediency Discernment Council was formed. The law was finally approved by the Expediency Discernment Council in 1990, serving as a prime example of this principle.

The government's intervention in determining the terms of employment contracts and overseeing the implementation of labor laws is justifiable. To prevent injustice and inequality and promote the public interest, the government has enacted labor laws through the Expediency Discernment Council (Karimi and Mortezaei, 2019).

c) The Principle of Justice and Equity

One of the fundamental principles of Islamic jurisprudence is justice and equity. According to this principle, anything that is unjust or inequitable has no place in Islamic law. Islam is based on justice and equity, and any form of injustice is rejected. Allah says in Surah An-Nahl, verse 90: "Indeed, Allah orders justice and good conduct (Qur'an).

The concept of justice is also emphasized in the Sunnah. Imam Ali (a.s.) is reported to have said, "Justice is the foundation upon which the world stands (Majlisi, 2024). This means that justice is essential for the stability and well-being of society, and its absence can lead to chaos, lawlessness, and other social problems.

The principle of justice and equity is a fundamental principle of Islamic jurisprudence that can be applied to all contracts, including employment contracts. This principle means that the terms of an employment contract should be structured in a way that fairly protects the interests of both parties, especially the worker, who is typically the weaker party in the contractual relationship.

Based on the principle of justice and equity, the rights and obligations of both the worker and the employer in an employment contract should be determined fairly. The government, as the governing authority, plays a crucial role in this regard and can intervene in determining the terms of employment contracts, considering the economic and social conditions of society. Without government intervention, it would be difficult to ensure that justice and equity are upheld in employment contracts.

Therefore, the principle of justice and equity plays a significant role in balancing the rights and interests of both workers and employers in employment contracts.

The Necessity of Government Intervention

Although employment contracts are entered into between the worker and the employer and are ostensibly part of private law, the economic imbalance between the worker and the employer,

coupled with the worker's need for income to support themselves and their family, makes it highly likely that the employer could impose unfair contract terms on the worker.

The need for government intervention, in compliance with the prevailing laws and regulations, is driven by the desire to establish justice, ensure the public good, and maintain social order. Given the significance of employment contracts and their connection to economic, social, and political issues, the government feels obligated to intervene in these matters. Moreover, from a legal standpoint, the government's intervention in determining the terms of employment contracts and protecting workers' rights is supported by the Constitution and the overall policies of the system. The primary reasons for government intervention in employment contracts include:

a) Establishing Social Justice

Social justice is one of the most important goals of any society, and the government, as the governing body, plays a pivotal role in achieving it (Hashemi, 2006). By implementing social justice, poverty and the gap between social classes can be reduced. Social justice is a complex and long-term process that requires continuous efforts from both the government and the private sector. The government, using various methods and considering the specific conditions of society, can play a significant role in reducing inequality and improving the quality of life for all people.

One of the most important reasons for government intervention in employment contracts is to establish social justice. In employment relationships, due to differences in bargaining power and financial capacity, workers often find themselves in a weaker position compared to employers. By enacting labor laws and regulations, the government seeks to reduce this inequality and protect workers' rights, such as setting minimum wages, maximum working hours, vacation time, and job security.

Social justice, which is one of the goals of the prophets' mission and an ideal of the Islamic Revolution, must be implemented at least in its economic dimension. Without achieving economic justice based on an Islamic economic system, most efforts to achieve other dimensions of social justice will be in vain (Amid Zanjani, 1983).

Therefore, to rectify this situation and achieve social justice, as enshrined in the Constitution of the Islamic Republic of Iran, the government is compelled to intervene in regulating employment contracts. By formulating laws and regulations, the government plays a crucial role in shaping the terms of these contracts and obligating employers to comply.

b) Protecting Workers' Rights

An employment contract is a legal agreement between a worker and an employer. However, this relationship is not solely determined by the will of the two parties. In many cases, the government, as the governing authority, can intervene in employment contracts due to necessity. Governments intervene in determining the terms of employment contracts in favor

of workers to create a balance between the parties, promote justice and the public interest, and comply with international labor standards.

Therefore, employment contracts serve not only a private purpose but also a social one. The government strives to protect workers' rights and prevent any injustice by enacting appropriate laws and regulations and overseeing their enforcement. Workers may be vulnerable to exploitation and abuse by employers within the context of an employment contract. Thus, the government protects workers' rights by enacting laws and regulations and monitoring their implementation.

c) Equitable Distribution of Wealth

One of the reasons for government intervention in employment contracts is to ensure the equitable distribution of wealth. By enacting laws and regulations related to employment contracts, the government can redress the imbalance between workers and employers and promote social justice and equitable distribution of wealth by determining many of the terms of the employment contract (Ansari, 2014).

Consequences of Government Intervention in Employment Contracts

Although government intervention in employment contracts may seem to conflict with the principle of freedom of contract, it is justifiable from a legal standpoint due to the economic power imbalance between workers and employers and the need to protect the public interest. The government, in pursuit of equitable exchange, determines certain terms of employment contracts and the resulting rights and obligations, making their enforcement by employers mandatory. Based on the powers granted by the Constitution, particularly Articles 3, 29, and 44, as well as numerous provisions of the Labor Law, the government is obligated to intervene in order to establish a sound and equitable economy, reduce poverty and deprivation, provide work conditions and opportunities for all, prevent the exploitation of others, and expand insurance coverage to promote justice, welfare, and eliminate poverty (Clause 12 of Article 3 of the Constitution).

As the governing authority, the government is obligated to protect the public interest. In cases where unfair employment contracts threaten the public interest, the government can intervene by enacting laws and regulations to determine the terms of such contracts. The reasons for government intervention in employment contracts are significant from a social, economic, and political perspective, which will be discussed below.

a) From Social Perspective

An employment contract is an agreement between a worker and an employer that, in addition to its legal dimensions, has far-reaching social implications. Some of the most important social impacts of employment contracts include creating order and stability in the workplace, ensuring a minimum standard of living for workers, reducing social inequality, and increasing workers'

social participation. Employment contracts play a significant role in shaping workers' social identity. Moreover, a worker's job and position reflect their social status.

Through an employment contract, a worker receives wages in exchange for their labor. Wages, as compensation for work performed, are not only a means of providing for basic necessities but also influence many aspects of a worker's personal and social life.

Therefore, paying fair wages that are commensurate with the cost of living, while encouraging social participation, gives workers a sense of economic security and motivates them to work hard. Conversely, low and inadequate wages can lead to social discontent and ultimately contribute to social tensions and conflicts.

Furthermore, workers' wages play a significant role in the distribution of income and wealth in society. Paying fair wages based on social justice can reduce social inequality. On the other hand, paying unfair wages can increase the gap between social classes.

b) From Economic Perspective

An employment contract is a bilateral agreement where the worker receives wages and benefits in exchange for their labor. These wages and benefits are part of the cost of producing goods or services and are added to the final price. Therefore, "wages are one of the costs of production and the consideration for work (Ranjbar, 2019). This means that an increase in wages will lead to an increase in the price of goods, consequently reducing the purchasing power of the general public. On the other hand, low wages can reduce workers' motivation and purchasing power. Thus, "reducing wages will lead to a market slowdown and a decrease in product prices (Ranjbar, 2019).

Government intervention in employment contracts is a complex and multifaceted issue that is directly linked to a society's economy. On the one hand, the government, by enacting laws and regulations regarding minimum wages, working hours, vacations, unemployment insurance, and other employee benefits, seeks to balance labor relations and protect workers' rights. On the other hand, excessive government intervention in employment contracts can increase production costs for employers, ultimately leading to reduced investment and employment.

Therefore, while increasing the minimum wage can improve workers' living standards and reduce inequality, it may also lead to decreased employment and increased production costs. Consequently, employment contracts are closely intertwined with the economy. (In the Islamic economic system, in addition to providing for the public welfare and eradicating poverty from society, achieving economic power and independence also requires a prosperous and growing economy. p. 307) (Farahani Fard, 2002)

c) From Political Perspective

Just as paying fair wages can motivate and encourage workers, failing to pay fair wages can lead to worker dissatisfaction and, consequently, to "worker discontent, strikes, crippling

demonstrations, and street riots..." (Ranjbar, 2019). A worker strike is a collective action in which workers consciously and coordinatedly stop working to achieve their demands. These demands may include wage increases, improved working conditions, protests against management policies, or the defense of labor rights. Strikes are usually considered the last resort for workers to achieve their demands and occur when negotiations with employers fail.

However, strikes often meet with various reactions from employers and governments, and can lead to tensions and conflicts. Article 142 of the Labor Law implicitly refers to the issue of strikes (In the event that a disagreement regarding the various articles of this law, or previous agreements, or any of the subjects requested by the parties for the conclusion of a new agreement, leads to a work stoppage while the worker is present at the workplace, or a deliberate reduction in production by the workers) According to this article, a work stoppage with the worker's presence at the workplace is considered a labor strike.

Labor strikes typically occur when workers feel that their rights and interests are not being adequately met or when their working conditions are unsatisfactory. Various factors can contribute to these strikes.

One of the primary reasons for strikes is dissatisfaction with wage levels. When wage increases do not keep pace with inflation and the rising cost of living, workers feel that their purchasing power has decreased and they are struggling to meet their needs. Also, a significant difference between the wages of managers and workers can lead to worker dissatisfaction and protests.

Unsatisfactory working conditions such as long working hours, job insecurity, a poor work environment, and non-compliance with labor laws are also major causes of labor strikes. In addition, disregard for workers' union demands can also fuel strikes. In some cases, protests against the general policies of the government or economic enterprises can also be a reason for strikes. In summary, labor strikes are often the result of an accumulation of grievances that build up over time in the workplace. To prevent strikes, employers and governments must pay attention to workers' demands and strive to provide them with fair and suitable working conditions.

Methods of Government Intervention

At first glance, it may seem that an employment contract, being a private agreement between an employer and an employee, is not subject to government intervention. However, to protect workers' rights, promote social justice, prevent income inequality and the problems associated with unemployment, and consider issues such as employment and economic growth, the government has devised various methods to intervene in employment contracts.

Although government intervention in employment contracts is necessary to protect workers' rights, promote social justice, and maintain public order, it must be carried out in accordance with relevant laws and regulations in a manner that does not completely eliminate freedom of

contract. These interventions take various forms, such as legislation, oversight, and dispute resolution.

a) Legislative Methods

Law, in a broad sense, is a collection of laws, rules, and regulations enacted by the three branches of government – legislative, executive, and judicial – and their affiliated institutions and agencies. These laws are designed to ensure justice, maintain order and security in society, guarantee individual rights, and regulate social behavior. Laws can take the form of constitutions, ordinary laws, regulations, decrees, circulars, and guidelines.

Law, in a specific sense, refers to regulations enacted by a legislative body such as the Islamic Consultative Assembly. These laws are enacted to regulate social relations, maintain order, and establish justice in society, and compliance is mandatory for all members of society.

The legislative aspect of employment contracts refers to the set of laws, regulations, and rules enacted by the government in a broad sense that govern the relationship between employers and employees. One such law is the current Labor Law, approved in 1990 by the Expediency Discernment Council, which specifically legislates in the field of labor relations and employment. In addition, other laws such as the Social Security Law, the Unemployment Insurance Law, the Law on the Protection of the Family and the Young Population, and the Law on the Implementation of the Job Classification Plan have been approved in relation to the subject matter of this article.

An Islamic government can, using its Islamic authority, intervene in employment contracts to protect workers from oppression and exploitation and address other related issues, thereby improving the working conditions, wages, and benefits of workers (Karimi and Mortezaei, 2019).

Therefore, the government, by enacting labor laws, social security laws, and related regulations, specifies the rights and duties of both the worker and the employer in employment contracts and determines many of the terms of the employment contract, such as minimum wages, benefits, and worker welfare.

b) Executive and Supervisory Methods

To enforce the Labor Law, the legislator has established the Ministry of Cooperatives, Labor, and Social Welfare, as well as provincial and district offices under this ministry, to oversee the accurate implementation of the law. The employment contract is one of the subjects of the Labor Law. Therefore, to ensure compliance with the Labor Law and the minimum standards set forth in this law, Clause 1 of Article 10 of the Labor Law, enacted in 1990, explicitly states: "In cases where the employment contract is in writing, the contract shall be drawn up in four copies, one of which shall be given to the local labor office, one to the worker, one to the employer, and the other to the Islamic Labor Council, and in workshops without a council, to the worker's

representative." The legislator's intention with this clause was to enable the aforementioned office to oversee the terms of the employment contract.

In addition, the government employs various methods to oversee labor relations. These include administrative and trade union oversight.

In administrative oversight, experts and inspectors from the Ministry of Cooperatives, Labor, and Social Welfare monitor the terms of employment contracts to ensure that they do not violate the law. If the terms of the employment contract conflict with the law and provide the worker with fewer benefits than those stipulated by law, the government will deem those terms null and void. (Article 8 of the Labor Law) Furthermore, based on the provisions of Chapter Eleven of this law, which deals with crimes and penalties, employers who violate the law will face legal consequences. (Chapter Eleven of the Labor Law)

Moreover, the aforementioned clause states that a copy of the employment contract is to be given to the Islamic Labor Council or the worker's representative. It seems that the legislator's intention with this clause is to allow the aforementioned organization to be informed of the terms and conditions of the employment contract. Thus, another type of oversight is trade union oversight, which can be exercised through labor unions. Given the importance of the Islamic Labor Council or the worker's representative in workplaces and their connection to the provincial Coordination Council of Islamic Labor Councils and the Supreme Coordination Council of Islamic Labor Councils across the country, they can report violations of workers' rights by employers to higher-level organizations. Therefore, these organizations are a suitable lever for overseeing employment contracts.

c) Judicial Methods

Another method of government intervention in the terms of an employment contract is through legal action against the employer. This type of intervention is initiated when a dispute arises between the worker and the employer regarding the terms of the employment contract. To resolve disputes between workers and employers, the government has established dispute resolution bodies, as outlined in Chapter Nine of the Labor Law, to handle such cases. Article 157 of the Labor Law states, "In the event of a dispute between an employer and a worker or trainee arising from the implementation of the Labor Law (firstly, through direct conciliation between the employer and the worker or trainee or their representatives, and in the absence of conciliation, through the boards of determination and dispute resolution (Article 157 of the Labor Law)).

These boards are quasi-judicial bodies, and a case is filed by the worker through the comprehensive labor relations system. The hearing of these boards is held in the presence of representatives of the worker and the employer, as well as the parties to the dispute.

According to Article 8 of the Labor Law, which stipulates that "the terms specified in the employment contract or subsequent changes thereto shall be valid only if they do not provide the worker with benefits less than those stipulated in this law," pursuant to this legal provision,

if the terms and benefits in the employment contract are less than those specified by law, they will not be considered valid or enforceable by the aforementioned boards. These boards will consider the legal minimums for the worker in such cases and will calculate them in their ruling. The rulings issued by the dispute resolution bodies are enforced by the judiciary pursuant to Article 166 of the Labor Law. In addition, rulings issued by the dispute resolution bodies can be appealed to and re-examined by the Administrative Justice Court within the specified time limit.

Examples of Government Intervention from Legal Perspective

Government intervention in determining the terms of employment contracts and protecting workers is necessary. This is because, due to their financial situation, workers do not have the same bargaining power as employers, and it is not unrealistic for employers to impose terms on employment contracts. Therefore, the government intervenes in employment contracts in favor of workers. Examples of such interventions include setting minimum wages, maximum working hours, minimum annual leave, bonuses, seniority pay, social security contributions, housing allowances, family allowances, and child allowances, as well as determining the value of food coupons and protecting wages.

Conclusion

Employment contracts are among the most complex types of contracts due to the nature of the governing rules. Unlike many other contracts, the agreement of wills is only free regarding some of the contract's conditions, and the parties' freedom of action is limited by rules such as compliance with mandatory rules, maintaining public order, good morals, and so on. On the other hand, for some of the most important elements of the contract, such as wages, dispute resolution, holidays, seniority, insurance, bonuses, etc., it is entirely subject to conditions in which the government has direct intervention. In other words, the parties themselves cannot determine the minimum wage unless their agreement is for a wage higher than the minimum. Moreover, the government is both necessary and obligated to intervene in employment contracts because employment contracts have economic, social, and political aspects, which are areas that fall within the scope of government action. Therefore, in order to be able to control various aspects of society, the government is obliged to intervene in the terms of employment contracts, sometimes actively and sometimes passively. However, government intervention cannot go so far as to deprive the parties to the contract of their will.

References

- [1] Majlisi, SMB., (2024). *Bahar al-Anwar*. Vol 78., P. 83, Estal al-Wafa.]
- [2] Karimi, M & Mortazavi, SS., (2018). "Essay on Jurisprudential Foundations of Government Intervention in Labor Contract in the Economic System of Islam". *Quarterly Scientific Research Journals of Islamic Economic Studies*, Spring and Summer 2018.
- [3] Iran, A., (1980). *Constitution of the Islamic Republic of Iran*.

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- [4] Iran, A., (1980). *The Labor Law*, (approved in 1990).
- [5] Iran, A., (1975). *The Social Security Law*.
- [6] Mohaghegh, SM., (2013). *Principles of Jurisprudence*. 43th Edition, p. 153). Islamic Sciences Publishing Center.
- [7] Ranjbari, A., (2017) *Labor Laws*. (17th Ed , p. 80). Majd Publication.
- [8] *The Holy Quran*, Surah Al-Nahl, Verse 90,
- [9] *The Civil Code*, approved in 1928.
- [10] Mohaqeq Damad, Mohammad, (2002). *Civil Law Principles*, SAMT, 5th Edition, p. 227.
- [11] Ahangari, Ehsan, Abedin Moemeni, Jafari (2021). *Scientific Research Journal of Islamic Law*, Vol. 22, No. 2, Autumn and Winter, p. 313.
- [12] Karimi, Mahmoud, Mortezaei, Seyed Salman, (2019). *Scientific Research Journal of Islamic Economic Studies*, Vol. 11, No. 2, Spring and Summer, p. 352.
- [13] Farahani Fard, Saeed, (2002). *The Role of Government in the Economy*, 1st Edition, Center for Publishing Works of the Research Institute for Islamic Culture and Thought, p. 189.
- [14] Karimi, Mahmoud, Mortezaei, Seyed Soleiman, (2019). "The Islamic Legal Foundations of Government Intervention in Employment Contracts in the Islamic Economic System", *Scientific Research Journal of Islamic Economic Studies*, Year 11, Spring and Summer.
- [15] Hashemi, Seyed Mohammad, (2006). *Constitutional Law, Principles and General Foundations of the System*, Vol. 1, 7th Edition.
- [16] Amid Zanjani, Ayatollah Abbasali, (1983). *The Book of the Islamic Legal Foundations of the Constitution of the Islamic Republic of Iran*, Jihad University Press.
- [17] Ansari, Mehdi, (2014). "In the general economic order, the government seeks to lead the economy and oversee private contracts as a means of distributing wealth". *Economic Analysis of Contract Law*, Jaavedaneh Jungle Publications, 2nd Edition.



مبانی فقهی و حقوقی مداخله دولت در شرایط قرار داد کار

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چکیده

دخالت دولت در قراردادهای کار، موضوع با اهمیت و پیچیده ای است. از یک سو، آزادی قراردادی و توافق طرفین در قراردادهای کار، اصل مهمی است که به لحاظ استقلال اقتصادی و اجتماعی افراد منعقد می شود، قرار دارد. از سوی دیگر، عدم مداخله دولت بر این قراردادها می تواند به اجحاف در حق کارگران، عدم پرداخت حقوق مناسب، سوءاستفاده از کارگران و بروز نا برابری های اجتماعی منجر شود. در تعیین شرایط اختیاری قرارداد کار اصل آزادی اراده حاکم است و طرفین می توانند در آن بخش از قرارداد با هم توافق نمایند. لیکن در تعیین برخی از شرایط قرارداد کار که جنبه الزامی دارد و جزء قواعد آمره است، اراده و توافق طرفین معتبر نخواهد بود. قوانین کار به عنوان مهم ترین عامل ایجاد محدودیت در آزادی اراده قرارداد کار است. از دیگر مبانی دخالت دولت در قرارداد کار رعایت قاعده عدالت و انصاف است. این قاعده به معنای آن است که شرایط قرارداد کار باید به گونه ای تنظیم شود که حقوق مورد تضییع واقع نشود و مزد مناسب و عادلانه ای به کارگر لحاظ گردد. همچنین رعایت اخلاق حسنه و موازین شرعی نیز از سوی طرفین قرارداد کار الزامی بوده و هرگونه توافق بر خلاف آن باطل می باشد. دولت در راستای عدالت اجتماعی و رفع فقر و محرومیت از قشر کارگر و ایجاد توازن بین کارگر و کارفرما در تعیین شرایط کار، به استناد قاعده لاضرر و لا ضرار فی الاسلام قوانین و مقرراتی در حمایت از کارگر وضع نموده و این قوانین جنبه الزامی دارد و توافق بر خلاف آن نافذ نمی باشد. بنابراین دولت به عنوان حاکمیت در تعیین برخی از شرایط قرارداد کار نقش محوری دارد و لزوم مداخله آن در تعیین شرایط کار از دیدگاه فقهی و حقوقی قابل توجیه است.

کلیدواژگان: قرارداد کار، شرایط قرارداد کار، دولت و قرارداد کار، دخالت دولت در قرارداد

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