The Impact of Fundamental Rights on the Adjustment of Private Contracts

1. Mehrdad Jamalifar: Department of Private Law, Isf.C., Islamic Azad University, Isfahan, Iran
2. Seyyed Mehdi Allameh*: Department of Private Law, Isf.C., Islamic Azad University, Isfahan, Iran
3. Mojtaba Nikdoosti: Department of Private Law, Isf.C., Islamic Azad University, Isfahan, Iran

*Correspondence: seyyedmehdi.allameh@iau.ac.ir

Abstract

In today's world, fundamental human rights play a vital role in the realm of contract law, to the extent that the content of contracts must conform to this category of rights. In this study, the author aims to clarify the necessity of the influence and penetration of fundamental rights in the domain of private law, especially in contracts between individuals. The objective is to emphasize that these rights are not only binding upon public authorities to safeguard citizens' rights, but they are also mandatory for private contracting parties. This remains true even though, under the principle of freedom of contract, such parties are free to mutually agree upon contractual terms. Attention to the underlying values and principles of contracts—particularly the tension between the autonomy of contracting parties and the protection of the weaker party's rights, as well as the promotion of distributive justice—is both significant and worthy of examination. More importantly, considering the discourse on fundamental rights, the freedom of contract, private relationships, and the jurisdiction of courts to intervene, it becomes essential to determine where, how, and when the judiciary intervenes to strike a balance between the protection of fundamental rights and respect for the autonomy of the parties. In other words, private contracts must not violate fundamental rights, whether in their core principles or subsidiary components. Accordingly, the purpose of this paper is to explore the concept of fundamental rights and their impact on contract law and the principle of freedom of contract, and consequently, to uphold the essential societal values recognized by laws and conventions. The paper also examines the position of contractual adjustment in private agreements based on this foundation.

Keywords: fundamental human rights, private contracts, direct effect, indirect effect.

Received: 29 January 2025
Revised: 12 March 2025
Accepted: 24 March 2025
Published: 02 April 2025

Citation: Jamalifar, M., Allameh, S. M., & Nikdoosti, M. (2025). The Impact of Fundamental Rights on the Adjustment of Private Contracts. *Legal Studies in Digital Age,* 4(2), 1-10.

1. Introduction

Undoubtedly, due to social necessities and the development of commercial relations among individuals, as well as the needs of people within society, we are witnessing an increasing number of interactions today, including exchanges, transactions, and consequently, the formation of private contracts between individuals. In addressing personal and societal needs and facilitating commercial relations—and considering the reliance of private contracts on the principle of autonomy and freedom of will, as well as the fact that the legislature, particularly in Article 10 of the Civil Code, has permitted parties to determine the effects of their agreements—such contracts have been granted high legal value and credibility. This has led to a situation in which

contracts are being concluded in an unrestrained manner, often based solely on the will and mutual agreements of the parties, whereby some fundamental and essential rights—rights which are primary and superior—may be ignored, undermined, or suspended.

Fundamental human rights are those rights whose existence constitutes the foundation of human dignity, and whose absence leads to the erosion of individual personality. Fundamental rights are the genuine translation of a set of moral, political, and philosophical norms nourished by the ideals of freedom, equality, democracy, and a rule-of-law state (Gorji, 2020). Fundamental rights are distinct from constitutional rights. Fundamental rights hold a higher rank than constitutional rights. In other words, all fundamental rights are constitutional rights, but not all constitutional rights are fundamental. For example, the right to life is both a constitutional and fundamental right, whereas the right to welfare may be a constitutional right, but not a fundamental one.

The impact of fundamental human rights on the public aspects of private law, and consequently on contract law, has been the subject of extensive academic discourse since the implementation of European constitutional laws and the conclusion of international human rights treaties after World War II. The reconstruction of cities, economic systems, and destroyed social structures coincided with political and legal initiatives aimed at protecting citizens' rights—rights that had endured severe and irreparable damage during the war. Within a relatively short period, several major international instruments addressing fundamental human rights were developed. There are two primary approaches to understanding why a right is considered fundamental:

1. According to the essentialist view, all rights and freedoms whose existence ensures human integrity and whose absence results in the disintegration of individual identity can be considered fundamental (Gorji, 2004).
2. In contrast, another approach considers only those rights and freedoms that are formally guaranteed by the constitution (or equivalent legal norms) to be fundamental (Shahbazi, 2017).

Between these two approaches, it is important to note that adopting the second view—reminiscent of the ideas of legal positivists—is not fully compatible with the underlying philosophy of recognizing these rights, which primarily aims to limit the power of rulers. The fundamental nature of these rights does not stem from their inclusion in constitutional documents, but rather from the fact that they express values that shape the entire legal order, encompassing both public and private spheres (Tahmasbi, 2012).

Historically, fundamental human rights were regarded as a tool to resist state violations of citizens' rights (the vertical effect of fundamental rights). However, since the mid-20th century, a new trend has emerged in the legal systems of some countries, whereby fundamental rights are also applied to relationships between private individuals (the horizontal effect of fundamental rights).

While initially conceived as a defense mechanism against state overreach, fundamental human rights are now understood as requiring affirmative protection by the state—including all its organs, such as civil courts (Gorji, 2004). For instance, in German law, the state is obliged to safeguard the fundamental human rights of individuals against violations by other private individuals.

2. Fundamental Human Rights

Human rights constitute the most essential category of fundamental rights for individuals and pertain primarily to the relationship between individuals and government authority, particularly the state. Human rights define the limits of state power and, simultaneously, underscore the necessity of state action in affirming and protecting those rights. Up until approximately 250 years ago, history was largely marked by struggles for domination and the oppression of people. However, with the advent of human rights in the 18th century during the French and American revolutions, these movements became a source of inspiration for various popular uprisings aimed at curbing the unchecked power of authoritarian governments (Foster & Sule, 2016). Today, states and international organizations are committed to respecting, protecting, and fulfilling human rights. These rights serve as the foundation for determining legal entitlements and as remedies for violations and inefficiencies. Legally, human rights can be defined as a set of individual and collective rights recognized by states and enshrined in constitutions and international law. Following the conclusion of the world wars, human rights were codified at international and regional levels,

ratified by many national governments, and continue to be regarded as the only globally recognized normative system (Qari Seyyed Fatemi, 2020).

In contrast, fundamental human rights are a set of entitlements inherently belonging to individuals by virtue of their humanity (Hashemi, 2020). These rights are a true manifestation of moral, political, and philosophical norms rooted in equality, freedom, democracy, and a legal state (Gorji, 2020). From a substantive standpoint, it can be argued that the fundamental nature of certain rights stems from the fact that their existence preserves human dignity, while their absence leads to the degradation of personality and self-worth (Gorji, 2004).

Legal doctrine, when confronted with the question of the content and implications of fundamental rights, is divided into several schools of thought. Various criteria have been proposed to identify the nature of a fundamental right. One key distinction lies in differentiating between the formal and substantive definitions of fundamental rights (Quint, 1989).

The formal definition views fundamental rights as a catalog established in constitutional and international legal instruments (Bamforth, 2001). According to this criterion, fundamental rights are those that have been incorporated into positive law and recognized by constitutional, statutory, or international documents (Moulai, 2018). In German law, this criterion is widely applied. Under this view, fundamental rights are part of the positive legal framework (enacted and enforceable by the state), functioning as foundational legal principles. They also form part of national constitutions and international human rights treaties. Articles 1 through 19 of the German Basic Law are devoted to these rights (Yathribi & Arian, 2021).

3. Contract Adjustment

The privilege of contract adjustment is one of the significant characteristics of contracts, whereby the administration, during the implementation phase of a project, holds the authority to delegate greater powers or impose limitations. The impact of accepting the theory of unforeseen circumstances on a contract is a revision of its terms—in other words, contract adjustment—which can occur in various ways. Contract adjustment may be based on mutual agreement between the parties, at the request of one party and by court decision, or by force of law. These are respectively referred to as "contractual adjustment," "judicial adjustment," and "statutory adjustment." The purpose of contract adjustment is twofold: on one hand, it prevents excessive harm or loss to the obligor, allowing for compensation of additional costs imposed due to unforeseen events; on the other hand, it ensures that contract execution proceeds in accordance with justice and fairness.

3.1. Contractual Adjustment

Contractual adjustment refers to situations where the parties have anticipated the possibility of contract adjustment in the event of imbalance in obligations, either by including such provisions in the contract or by mutually agreeing to adjust the contract after its conclusion and the emergence of such imbalance. Thus, contractual adjustment can occur in two forms. First, the parties may foresee and agree during contract formation that, should new conditions arise, the contract will be subject to adjustment. In such cases, specific clauses are included for the purpose of adjustment, commonly referred to as "adjustment clauses." These clauses may relate to changes in currency value or fluctuations in contractual prices. In case of dispute regarding the intended adjustment, the parties may designate a trusted individual as arbitrator or grant the requesting party the right to seek judicial review and expert opinion.

The second form of contractual adjustment arises when, during contract execution, the parties realize that continuing the work under the initially agreed rates is not feasible. Accordingly, they may, by mutual agreement, either reduce the scope of work and obligations or increase the price of goods and services involved, thereby restoring the original balance under the new circumstances.

3.2. Statutory Adjustment

Statutory adjustment refers to cases where the law, either directly or indirectly, alters a clause or condition contained within a contract executed by the parties. In other words, the legislature has considered compensation for damages caused by economic factors and has codified the basis for such adjustment into law. To justify this form of adjustment, it must be noted that although

maintaining the balance of contracts and respecting the parties' initial expectations require that contracts remain subject to the legal framework in effect at the time of their formation, and that new laws not apply retroactively, the legislature may, when public interest demands, impose new legal provisions on pre-existing contracts.

For example, the Law on Landlord-Tenant Relations (enacted on October 24, 1977) states: “Any property rented for residential, occupational, or commercial purposes, or for any other purpose, shall be subject to the provisions of this law.” Two years later, the Single Article on Rent Reduction for Residential Units (enacted on October 29, 1979) decreed: “All rent payments for residential properties rented for housing purposes shall be reduced by 20% effective November 22, 1979.” Additionally, Article 4 of the same 1977 law stipulates: “The landlord or tenant may request a revision of the rent amount based on inflation or deflation in living expenses, provided that the lease has not yet expired and at least three full years have passed since the tenant began residing in the property or since the date of a final judgment determining or adjusting the rent. The court shall, with expert consultation, revise the rent according to the prevailing fair market rate.”

A second type of statutory adjustment does not derive from subsequent legislation but is instead anticipated within the original legal framework governing the contract to benefit the disadvantaged party and empowers or obligates the court to adjust the contract accordingly. The source of such adjustment lies in the law, while its interpretation and enforcement fall within the court's jurisdiction. For example, Article 227 of the Civil Code states: “The judge may, considering the debtor’s condition, grant a reasonable deadline or order installment payments.” Likewise, Article 652 of the same code reads: “Upon claim, the judge may, according to the circumstances, allow the borrower a deadline or installment payment arrangement.”

Statutory adjustment is also recognized in the standard general conditions of public contracts. As is well known, the execution period for public contracts is typically long, and reliance on existing national economic conditions often proves detrimental for contractors, who must constantly deal with fluctuations in the prices of raw materials, labor, and other inputs. For this reason, Article 37 of the General Conditions of Public Contracts allows for unit price adjustments in applicable contracts. Therefore, in cases of dispute between employers and contractors, courts may, based on evidence, documentation, and expert opinion, issue judgments to adjust unit prices.

The mechanisms for unit price adjustment in administrative contracts in Iran have, over the years, been subject to abuse by some contractors, leading to considerable financial gains for them. The elimination or minimal implementation of adjustment regulations will not resolve contractors’ problems; rather, it will lead to further delays in contract execution and legal complications for the government and public interests. Therefore, any adjustment mechanism must incorporate procedures that, while safeguarding public interest, also address contractors’ legitimate concerns.

3.3. Judicial Adjustment

Judicial adjustment refers to the modification of a contract by the ruling of a judge in order to establish financial balance within the contract. This type of adjustment is neither foreseen in the contract nor explicitly legislated, but rather, the legislator provides general conditions for permitting contractual adjustment and allows the judge discretion in determining whether the specific case warrants such an adjustment. One jurist has defined judicial adjustment as follows:

"Judicial adjustment, which is highly debatable, refers to instances where the judge, relying on implicit conditions or in order to prevent injustice and harm to one of the parties, modifies the terms of the contract to make them proportionate to current circumstances."

This definition can be criticized on two grounds: first, it bases judicial adjustment on implicit contractual terms, while there are alternative foundations for adjustment. Second, the notion of an implicit condition assumes that the parties, at the time of contract formation, had a mutual understanding of relative balance and implicitly agreed that the contract could be modified in case of changing circumstances. If this view is accepted as a justification for revising the contract, then such an adjustment falls under contractual—not judicial—adjustment, since parties who anticipate changes at the time of contract formation engage in a contractual adjustment.

Given these criticisms, the definition offered by another jurist appears more appropriate:

"Judicial adjustment refers to the situation where the judge, based on a general legal provision that grants such authority, or by interpreting various legal articles or recognized legal doctrines, revises and modifies the terms of a contract concluded between individuals after their obligations have become imbalanced due to unforeseeable events."

It should be noted that when the term "judicial" is used in contrast to "statutory," it implies a unique power granted to the judiciary—one not explicitly prescribed or narrowly defined by law. Judicial adjustment, like statutory adjustment, derives its legitimacy from the law. Whenever the legislature enacts general legislation without specifying particular cases and leaves the determination of details and the realization of the issue to the judiciary—or even without enacting specific provisions—judges may infer special rulings from the broader legal framework. These scenarios fall under judicial adjustment.

In such cases, the judge cannot merely be considered an executor of the legislature's will. Rather, the judge exercises discretion in determining the appropriateness of adjustment and the fairness of legislative intent in each specific case, thereby partially stepping into the legislator's domain. However, the court must not place the burden caused by unforeseen events solely on one party.

So far, Iran's judicial practice has remained silent on the issue of judicial adjustment. In Iran, adjustment was initially accepted in contractual and statutory forms and then introduced into court proceedings. In contrast, France first recognized judicial adjustment through a ruling of the Conseil d'État in the famous "Bordeaux Gas Company" case, which was later codified into law.

In the French legal system, judicial adjustment is still treated as an exceptional measure. Clearly, an administrative contract cannot be unilaterally imposed or modified without the consent of a party, except in specific cases. In one French case, a private company was granted a concession contract to manage certain swimming pools. Due to a miscalculation, it was later revealed that the agreed fee merely covered the company's incurred losses. The company sought to adjust the price and reduce its payments. The Conseil d'État rejected the request, stating:

"It is unacceptable for judges to modify contractual terms that both parties have freely accepted. In the absence of a clause allowing revision of payable rates, the contractor does not have the right to alter fixed terms of the contract simply to escape hardship."

This rule applies equally to both parties (i.e., the administration acting in the public interest and the contractor), and neither party may seek to alter a previously concluded contract. However, the administration may, in the first instance, impose certain conditions on the contractor.

4. The Relationship Between Fundamental Human Rights and Private Contract Law

The method initially used to apply fundamental human rights to private contracts sparked academic controversies that persist today. Given the ongoing debates about the horizontal effect of fundamental rights in private contracts, it may be inferred that fundamental rights and private contract law represent two logically independent systems. By "independent," it is meant that each system can be understood separately from the other. The hypothesis of logical independence arises from the abundance of unanswered questions surrounding the horizontal effect of fundamental rights in private contract law (Gunter, 1956).

This issue leads to a clear conceptual division: on one side are fundamental rights, applied in relationships between citizens and the state, and on the other side is private contract law, applied in relationships between citizens themselves (Gunter, 1956). In principle, each of these systems is autonomous. This raises the critical question: should the boundary between fundamental rights and private contract law be shifted by the horizontal effect? Only a constitution can provide an authoritative answer to this question.

4.1. The Logical Primacy of Fundamental Human Rights over Private Contract Law

It is evident that the idea of a logical independence between fundamental human rights and private contract law is flawed. These two systems are logically interdependent, with one being conceptually grounded in the other. There are two possibilities: either the system of fundamental rights forms the basis of private contract law, or vice versa.

According to the first view, human rights pertain to fundamental rights only if private contract law is aligned with and equated to fundamental rights. Consequently, the process of legislation in private contract law is considered subject to fundamental human rights (Kumm, 2006).

At a minimum, this perspective creates tension between past scholarship and current efforts to conceptualize the normative foundations of private contract law. Specifically, it challenges preexisting assumptions in domains such as property, contracts,

and torts. For example, one may ask: why are contract principles such as offer and acceptance, price (thaman), or fairness considered default norms? Theories responding to such questions argue that ownership leads to rights associated with property, which are transferable and delegable through contracts (Benson, 2001).

The claim of logical primacy of fundamental human rights suggests that the normative content of private contract law is a byproduct of the balancing functions of fundamental rights. However, such balancing efforts are often seen as outdated or conceptually inadequate in current legal theory. It may be argued, though, that the logical primacy of fundamental human rights must be preserved and that balancing measures serve merely interpretive purposes. This interpretation is correct and implies that what occurs within the framework of fundamental rights balancing cannot replace the historical foundations of private law (Benson, 2001).

4.2. The Logical Primacy of Private Contract Law Over Fundamental Human Rights

When viewed from another perspective, private contract law serves as the foundation for fundamental human rights. This conclusion stems from the fact that fundamental human rights occasionally manifest within private law: for example, the guarantees related to property rights, inheritance, or even family and marriage law. In such cases, it becomes evident that fundamental human rights cannot be defined or explained without invoking concepts derived from private contract law. For instance, we cannot effectively understand the concept of "property rights" unless we first acknowledge that under private contract law, a property owner has the right to transfer their property or to prohibit others from using it. The relevant rule in private contract law does not define the right to property per se; rather, it clarifies its legal nature. This is made possible within private law by virtue of fundamental rights, and, logically, a general fundamental right is inherently embedded within private law.

The concept of logical primacy is only affirmed when it applies to all other fundamental rights that have no direct connection to private law. This primacy is grounded in the fact that fundamental human rights inherently include a presupposition of individual autonomy. For instance, freedom of expression, which is a right held by individuals vis-à-vis the state, by default implies freedom of expression in the social realm as well. In social environments, freedom of expression is, in fact, first realized through private law: legal equality and the protection of physical integrity ensure that no individual may prevent another from expressing an opinion or compel someone to adopt a particular belief. In other words, fundamental human rights inherently encompass private rights. At a minimum, individual autonomy—whether in its general sense or in specific institutions of private law, such as contracts or property—must preexist for the concept of individual fundamental rights to be comprehensible.

5. The Effect of Fundamental Rights on Private Contract Law

One of the most frequently debated issues regarding the potential impact of fundamental rights on private contract law is whether such rights should be directly applied within contract law. Direct effect essentially means that fundamental rights are invoked in private contract relationships in the same way as they are in state–citizen relations. In other words, these rights are applied in private contractual relationships in accordance with their constitutional recognition. An alternative approach rejects any direct effect of fundamental rights in private law relations, opting instead for their indirect application as interpretive tools used to guide the application and development of contractual norms. This section briefly discusses the theoretical frameworks that distinguish between the direct and indirect effects of fundamental rights.

5.1. The Theory of Direct Effect

The theory of direct effect was first introduced in German law by Hans Nipperdey. In the 1950s and early 1960s, he served as the first president of the German Federal Labor Court. During the 1950s, he published a series of writings on fundamental rights and private law, advocating for equal pay between men and women. Nipperdey rejected the prevailing interpretation of Article 3(1) of the Basic Law, which asserted that private parties were not bound by fundamental rights—specifically, the principle of equality. He argued that this interpretation was insufficient for fulfilling the aims and requirements of constitutional law in modern democracies. According to Nipperdey, fundamental rights would evolve into binding legal norms, no longer remaining as aspirational goals or policy guidelines. He also stressed that fundamental rights would only be fully guaranteed

when not only legislators but also executive authorities, judges, and citizens themselves were bound by them (Foster & Sule, 2016).

Nipperdey's theory of direct effect gained widespread support among German legal scholars, including Liesner, Ramm, Blackmann, and Hager. Their arguments centered around the idea that all areas of law ultimately rest on the values enshrined in the constitution—values that must be applied universally. Thus, private contracting parties are also bound by fundamental rights. According to the German Constitutional Court, the fundamental rights of private parties must be protected vis-à-vis one another, and this protection is enforced through both legislative action and judicial precedent (Moulai, 2018; Moulai & Shoariyan, 2014).

The primary criticism of this approach is that it undermines the autonomy of private law in relation to public law. Once this theory is adopted and applied, private law is no longer the sole domain governing relationships between individuals; public law becomes involved as well. Consequently, the independence of private law from public law becomes diminished or even eliminated (Asadi, 2017).

5.2. The Theory of Indirect Effect

An alternative to the direct effect theory is the theory that limits the role of fundamental rights in contract law. According to this theory, fundamental rights serve as interpretive tools for statutory provisions. Under this approach, human rights—viewed as objective values—affect private contractual relations only through established private law mechanisms, such as public order, good morals, or specific legislation. Individuals cannot directly compel one another to observe these rights, nor can they base a legal claim solely on a violation of such rights (Mohammadi et al., 2020). In this framework, fundamental rights do not nullify the rules of private law but are used solely as guiding principles (Tahmasbi, 2012).

According to proponents of the indirect effect doctrine, citizens are not the direct addressees of fundamental rights and thus are not directly bound by them. Scholars supporting this view emphasize the importance of distinguishing between the public and private spheres: fundamental rights were designed for use in the public realm—to protect citizens from the state—and cannot be applied directly to private relations.

For instance, Dürig acknowledges that while civil courts, as state institutions, are bound by constitutional rights, this does not imply that the rights enshrined in the constitution directly govern private law. Because relationships between private individuals are categorically different from those between individuals and the state, fundamental rights—which were originally developed to serve public interests—cannot be applied in the same way to private contract law. Instead, they should be treated as indirect influences and, more specifically, as tools to fill the open-textured norms of private law (Beale & Pittam, 2001).

6. Contract Adjustment in Germany (The Current Approach to Financially Capable Guarantors)

In the context of bank guarantee contracts, if the guaranteed amount is not grossly disproportionate to the guarantor's financial capacity, there is no presumption that the creditor has exploited the emotional relationship between the guarantor and the principal debtor. This means that if the guarantor possesses the financial means to fulfill the contractual obligation, the special protections developed by the Federal Court of Justice (Bundesgerichtshof) to shield guarantors from excessively burdensome commitments do not apply. Moreover, these protections are not triggered even if fulfilling the guarantee would significantly impair the guarantor's standard of living—such as losing a family home.

The critical question here is whether the welfare and well-being of guarantors are protected under German law, and if so, to what extent. Under current customary law, the most relevant statutory provision for reasonable family guarantees is the doctrine of immorality (Sittenwidrigkeit) under Section 138(1) of the German Civil Code (BGB). At present, a similar legal foundation is used to protect guarantors who lack sufficient financial capacity to fulfill their obligations. However, for guarantors who *do* possess such capacity, Section 138(1) is applied differently. Even when the guaranteed amount is disproportionate to the guarantor's income and assets, the guarantee contract is only deemed immoral if the lender has created circumstances that impair the guarantor's ability to make a free and responsible decision.

Primarily, a guarantee contract may be considered immoral if the creditor downplayed the associated risks. For example, if a bank or financial institution representative stated during pre-contract discussions that "this signature is merely for the file,"

"there is no significant risk," or "this is just a formality," such representations could, in principle, lead to the invalidation of the guarantee contract.

Conversely, the creditor's silence regarding the risks of a guarantee does not necessarily release the guarantor from liability. In such cases, the Federal Court of Justice has adopted a relatively restrictive approach regarding the creditor's duty to inform and advise. The court held that, generally, a credit provider is not obligated to inform or advise the guarantor—even if the guarantor is a spouse, close relative of the principal debtor, or a foreign national unfamiliar with German guarantee law. According to the court, and as a matter of legal principle, any type of guarantor is presumed to be an adult capable of understanding the scope, content, and implications of the guarantee contract. Thus, it is generally not the creditor's duty to inform the potential guarantor of the risks and disadvantages involved.

In several guarantee cases where there was no gross disproportion between the guarantor's obligations and financial capacity, the Federal Court explicitly noted that the risks associated with signing a guarantee are generally well known and are clearly identified in light of the requirement under Section 766 BGB for written form. Exceptions to this rule are very rare. The creditor's duty to inform arises only when the creditor is, or should be, aware of specific circumstances—such as the principal debtor's financial instability or extraordinary investment risks unknown to the guarantor.

Under German law, failure to fulfill the duty to inform may simultaneously give rise to two legal consequences: a breach of pre-contractual duty of care under Section 254 BGB and a basis for immorality under Section 138 BGB. The distinction lies in their legal consequences: proving immorality results in the invalidation of the contract from inception, whereas pre-contractual liability allows for modification and adjustment of the contract and does not necessarily free the guarantor from all obligations.

Currently, the Federal Court strongly supports considering family guarantee contracts as immoral in appropriate circumstances. Another ground for deeming a family guarantee immoral under Section 138(1) BGB is the exploitation of the contracting party's inexperience. In practice, this condition is usually met when the guarantor is a housewife, a student child, or an elderly parent of the principal debtor. If the creditor has exerted undue pressure on the guarantor, even a contract without gross disproportionality may be considered contrary to good morals. Such undue influence is subject to judicial assessment by the Federal Court.

For instance, a bank, knowing that a security is required for the loan, disburses credit without obtaining collateral and then pressures the principal debtor with threats of contract termination to find a guarantor. If the debtor then persuades someone to sign the guarantee through emotional pressure—by appealing to concepts like love or solidarity—this can render the guarantee immoral. In the case of children acting as guarantors, a student who signs due to emotional ties to their parents is particularly vulnerable, and a creditor who disregards this is considered to have exploited the parent–child emotional relationship.

Conversely, when parents with evident inexperience in commercial matters act as guarantors for their child's debts, there is a clear abuse of the emotional relationship by the creditor. When the guarantor's contractual obligations are not grossly disproportionate to their financial means, another obstacle arises: the guarantor bears the burden of proof for all conditions rendering the contract immoral, while the creditor is under no obligation to prove anything.

This protection of financially capable guarantors—together with the emphasis on the guarantor's free will at the time of contract conclusion—stands in clear contrast to the court's approach to excessive and disproportionate obligations, where the guarantor's impaired ability to make free and responsible decisions is less significant, and the burden of proof (e.g., on economic benefit to the guarantor) lies with the creditor.

Therefore, financially capable guarantors—those who have at least limited means to satisfy the principal debtor's obligations under a guarantee contract—can be released from their contractual obligations if they can prove that their ability to make a free and responsible decision was impaired by the creditor. This condition is met when the creditor downplayed the risks of the guarantee, exploited the guarantor's commercial inexperience, exerted undue pressure, or was aware of undue emotional pressure applied by the principal debtor and failed to intervene.

In principle, creditors bear no responsibility toward financially capable guarantors and are not obligated to inform them about the nature of the guarantee contract or the associated risks. With few exceptions, it is the guarantor's duty to be informed in such matters.

7. Conclusion

Following the end of World War II, the application of fundamental rights within the realm of private interpersonal relationships began to emerge. Gradually, the belief strengthened that the enforcement of fundamental human rights was not limited to legal relations between individuals and the state. Accordingly, their introduction into the field of private law—particularly in the domain of contracts—was accepted within the legislation and jurisprudence of European countries. Over time, states undertook the process of constitutionalizing fundamental human rights, and their responsibilities extended beyond mere non-interference and respect for these rights to include the active protection of citizens in their interactions with the state.

When fundamental rights are invoked directly as the basis of claims or defenses in private disputes and determine the outcome of the case, the *direct horizontal effect* is applied. Conversely, when general terms of private law are interpreted in light of these rights, the *indirect horizontal effect* is employed. Fundamental human rights thus transcended their traditional scope—defined by the vertical relationship between the individual and the state—and entered the domain of horizontal relationships. Consequently, two prevailing methods of applying fundamental rights in contracts were adopted: direct and indirect application.

Under the method of *direct application* of fundamental rights in contracts, human rights offer protection not only against the state but also against private individuals. A notable example is Article 40 of the Constitution of the Islamic Republic of Iran, which facilitates the direct application of fundamental rights. However, under the *indirect application* of fundamental rights in private relations, there is no need to devise new legal structures. Given the precedence of private law rules over human rights, fundamental rights should not be allowed to displace the doctrines and principles of private law. Indeed, highly effective outcomes can be achieved using the same traditional standards and frameworks.

Overall, in modern legal systems, the concept of restoration and remedial function is expanding as part of the enforcement mechanisms in civil law. This is evidenced by the growing role of legal, contractual, and judicial adjustments in private law, as well as by the evolving interpretations of the *fundamental change of circumstances* rule in international law. This rule—according to which significant changes in circumstances may result in the suspension of a treaty or the reduction of its binding force—can, in some cases, lead to contract renegotiation.

Nevertheless, some legal scholars, in support of judicial restraint, have referred to the traditional doctrine that courts cannot draft contracts on behalf of the parties, grounding this limitation in principles such as freedom of contract and the sanctity of agreements. It appears that this traditional interpretation is specific to private law and private contracts between individuals. In contrast, the rationale governing public law allows for transformation in the principles of modern contracts and thus grants administrative judges the authority to implement judicial adjustment. However, even in private law, it has been argued that rigid enforcement of obligations, despite changing economic conditions, does not represent a rational standard. While performance of contracts is logical and ethical, it cannot be considered fair—or even moral—if it imposes unbearable hardship on one of the parties.

Yet, if contractual or statutory forms of adjustment have been anticipated in the agreement, can a court nevertheless impose judicial adjustment? The answer is that even when contractual or legal adjustment has occurred, if the ultimate goal of adjustment—namely, preventing disproportionate harm to one party while ensuring a reasonable benefit to the other—is not achieved, there is no barrier to the court implementing judicial adjustment.

In conclusion, one of the key components in realizing fundamental human rights is recognizing and upholding the principle of *adjustment* in private contracts.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

Acknowledgments

Authors thank all participants who participate in this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

References

Asadi, A. (2017). *The impact of constitutional law on contract law* (Doctoral dissertation, Tarbiat Modares University)].
Bamforth, N. (2001). The True 'Horizontal Effect' of the Human Rights Act 1998.
Beale, H., & Pittam, N. (2001). *The Impact of the Human Rights Act 1998 on English Tort and Contract Law*. Oxford/Portland Oregon: Hart Publishing.
Benson, P. (2001). *The Unity of Contract Law*.
Foster, N., & Sule, S. (2016). *German Legal System and Laws*. Oxford: Oxford University Press.
Gorji, A. A. (2004). The basis and concept of fundamental rights. *Quarterly Journal of Constitutional Law*(2).
Gorji, A. A. (2020). *In pursuit of constitutional law*. Tehran: Jungle Publishing.
Gunter, D. (1956). *Fundamental Rights and Adjudication*.
Hashemi, S. M. (2020). *Human rights and fundamental freedoms*. Tehran: Mizan Publishing.
Kumm, M. (2006). Who is Afraid of the Total Constitution. *German Law Journal*, *7*, 341-359. https://doi.org/https://doi.org/10.1017/S2071832200004727
Mohammadi, Z., Mohaghegh Damad, S. M., & Habibi Majandeh, M. (2020). The impact of human rights on contracts in the laws of Germany, England, and Iran. *Quarterly Journal of Islamic Law*, *17*(65).
Moulai, Y. (2018). The theoretical foundations of fundamental rights in contract law. *Journal of Comparative Law Studies*, *9*(1).
Moulai, Y., & Shoariyan, E. (2014). The influence of human rights on contract law in light of European judicial practices. *Quarterly Journal of Public Law Research*, *15*(42).
Qari Seyyed Fatemi, S. M. (2020). *Human rights in the contemporary world* (Vol. 1). Tehran: Shahr Danesh Publishing.
Quint, P. E. (1989). Free Speech and Private Law in German Constitutional Theory. *Maritime Law Review*, *48*, 247.
Shahbazi, H. (2017). Human rights in private law. *Quarterly Journal of Private Law Research*(19).
Tahmasbi, A. (2012). The excessiveness of fundamental rights: An introduction to the constitutionalization of private law. *Quarterly Journal of Comparative Law Research*, *16*(3).
Yathribi, S. M. A., & Arian, M. (2021). Government intervention in private contracts based on the theory of the impact of fundamental rights on contracts. *Quarterly Journal of Law Research*, *18*(68).