




The Influence of Private Law by Fundamental Human Rights

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In today's world, fundamental human rights play a crucial role in private law, particularly in contract law, to the extent that the content of contracts must comply with these rights. The impact of fundamental human rights on private contracts occurs both directly and indirectly. In the direct effect approach, fundamental human rights directly influence contractual relationships. The primary criticism of this approach is that it undermines the independence of private law. In contrast, the indirect effect of fundamental human rights manifests through the interpretation of contractual rules. A key advantage of this approach is the preservation of the autonomy of private law as a distinct legal discipline, which is favored by positivists. In this article, the author adopts a descriptive-analytical method to elucidate the concepts related to the proposed models, critique each approach, and briefly examine Iran's judicial practice in this regard.

Keywords: Fundamental human rights, private contracts, direct effect, indirect effect

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1. Introduction

The effects of fundamental rights on the public aspects of private law and, consequently, on contract law have been the subject of numerous academic discussions since the implementation of European constitutional laws and the conclusion of international human rights treaties after the end of World War II. The reconstruction of cities, economic systems, and devastated social structures at that time coincided with political and legal initiatives aimed at protecting citizens' rights, which had suffered severe and irreparable harm during the war. Within a relatively short period, several significant international documents on fundamental rights were drafted, including the Universal Declaration of Human Rights (1948), the

European Convention on Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social, and Cultural Rights (1966). In post-war Europe, the number of constitutions increased due to the drafting of the Basic Law for the Federal Republic of Germany (1949), the Constitution of the Italian Republic (1948), and the Constitution of the Fifth French Republic (1958), which was based on the constitutional principles of the Fourth French Republic (1946).

It did not take long for the question to arise as to whether international law and the aforementioned legal provisions, which had been formulated to protect citizens against the state, could also be applied to



relations between private individuals. It is evident that individual rights in this domain are frequently violated or neglected. The initial stage of the evolving interaction between fundamental rights and private law, particularly contract law, can be observed in the rulings of German federal courts. The Federal Labor Court, responsible for adjudicating labor law cases, recognized the impact of certain constitutional fundamental rights on employment contracts as early as the 1950s. Shortly thereafter, the Federal Constitutional Court of Germany committed itself to the theory of the indirect effect of fundamental rights through the general provisions of private law. Meanwhile, in Italy, the first instances of the influence of fundamental rights on employment contracts emerged in a customary law case before the Supreme Court of Cassation. Specifically, Germany and Italy were the first countries where the expansion of fundamental rights led to an ongoing debate among legal scholars. This debate, which continues to this day, revolves around the utility and necessity of these influences, as well as their appropriate forms and frameworks.

In European countries whose constitutions underwent minimal changes after the war, this discourse commenced at a second stage, primarily influenced by German customary law and the expanding body of related academic literature. For instance, in the Netherlands, the impact of fundamental rights on contract law and marriage laws became more prominent from the 1970s onward, sparking simultaneous academic discussions that continued to evolve.

The second stage merged into a third stage, where the role of fundamental rights in Europe was further elaborated without substantial alterations to its theoretical framework. In Germany, the theory of indirect effect, as proposed by the Basic Law, was broadly accepted and implemented. In the Netherlands, the influence of fundamental rights on private law gained renewed attention following the 1983 constitutional amendment, while references to the Dutch Constitution and the European Convention on Human Rights and Fundamental Freedoms significantly increased in Dutch customary law during the same period. Similarly, the Italian Constitutional Court invoked fundamental rights to recognize the right to housing and the right to privacy in private contractual relationships.

The fourth stage of discussions on fundamental rights and private law, with an emphasis on contract law, began in the early 1990s, leading to multiple parallel movements in European countries as well as at the European Union level. In Germany, three groundbreaking and unconventional rulings by the Federal Constitutional Court intensified debates on the extent to which fundamental rights influence contractual relationships. It appeared that the weight given to fundamental rights by the Federal Constitutional Court effectively undermined the principle of party autonomy, a cornerstone of contract law. Meanwhile, in the United Kingdom, an active and progressive debate on the potential effects of fundamental rights on private relations emerged following the Human Rights Act 1998, which took effect on October 2, 2000. Dutch legal scholars followed a similar trajectory, partly due to legal developments in Germany and the United Kingdom and partly due to the increasing influence of fundamental rights on Dutch customary law. Additionally, in Italy, fundamental rights brought about significant changes in customary law, including the recognition of non-material damages, judicial scrutiny of contractual content, and judicial authority to mitigate excessive contractual penalties.

These advancements in national contract law coincided with two significant projects at the European level. Firstly, comparative studies on contract law gained prominence following the establishment of the European Single Market in 1993. In response to questions about the potential harmonization of European contract law, which could enhance the efficiency of the internal market, legal scholars began researching differences and similarities in contract law among European Union member states. Furthermore, some studies explored the possibility of a uniform contract law or model contract laws, as part of a European Civil Code or other mechanisms for harmonizing contract law in Europe.

Secondly, after entering the third millennium, the European Commission began initiatives in contract law alongside its economic policies, undertaking efforts to develop European contract law. The comparative law literature, legal opinions, and critiques of the European Commission's approach acknowledged the role of fundamental rights in shaping and developing both national contract law and uniform European contract law. More recently, this issue has gained additional

prominence in light of debates surrounding a treaty on reforming the European Union's institutional structure, which has, in turn, strengthened the legal status and binding force of the Charter of Fundamental Rights of the European Union (Nice Summit).

Given this historical background on fundamental rights and contract law, it appears that the issue remains as significant for Europe today as it was in the years following World War II. Although legal developments in different countries have led to shifting perspectives on the protection of fundamental rights in contractual relationships, the ongoing Europeanization of national contract laws and the academic discourse emphasizing a unified European contract law have fostered a comparative legal perspective. Notably, some longstanding questions must be reconsidered, while numerous new questions concerning the role of fundamental rights in contract law continue to emerge.

2. Constitution-Based Models for the Application of Human Rights in Private Law

2.1. Potential Models

Four main theoretical models can be established to determine the impact of constitutionally enshrined human rights on relationships between private parties. In the first model, constitution-based human rights, as defined in the constitutional text or fundamental laws, are directly applied in private law and have a direct effect on relationships within private law (direct application model). According to this model, human rights are protected not only against the state but also against private parties. A violation of one of these protected rights by a private party will likely lead to specific legal consequences that would not arise in the absence of the constitutional nature of the violated right. For instance, if Jack shouts and disrupts a meeting or operation, he violates John's right as a participant in that meeting or operation, and John has a claim against Jack. Similarly, if Jack intends to sell his product to John but refuses to sell it to Mary, he violates Mary's right to equal treatment, and Mary may file a lawsuit against him (Smits et al., 2018).

The second model posits that constitution-based human rights apply only to public law and are enforceable solely against the state (non-application model). Under this model, human rights enshrined in the constitution have

no direct or indirect applicability in private law. A typical court cannot apply them in private law disputes; they can only be invoked against the state and not against private parties. In private law, regulations continue to be enforced as they were before constitutional human rights were introduced. For example, if Jack disrupts a meeting, the state has a claim against him that may be pursued under criminal or administrative law. Additionally, the owner of the meeting venue may seek compensation for damages to their property (Elliott & Vernon, 2020). In another example, if Jack refuses to sell his product to Mary, he is free to do so because the right to equal treatment does not apply to him as an individual. If Jack enters into a contract with John, and the contract restricts Jack's freedom to engage in his profession, and Jack breaches the contract, John may seek compensation by arguing that the contract violates public policy. However, this remedy was already available before human rights were incorporated into the constitution, and if those rights were removed from the constitution, it would still be enforceable.

The third and fourth models fall between the two extreme models above.

According to the third model, human rights are applicable in private law, but their application is indirect (indirect application model). In this model, protected rights do not directly penetrate private law; rather, their influence is exerted through private law doctrines and principles. Existing private law doctrines may be used, or new legal principles may be developed to integrate public law concepts into private law. If Jack refuses to sell his products to Mary, he may be held liable for negotiating in bad faith during sales discussions (Jahanbin & Gorji Azandariani, 2019).

Under the fourth model, constitutionally enshrined human rights are protected solely against the state and do not have direct or indirect applicability in relations between private parties. However, the state in this context also includes courts and tribunals (judicial application model). According to this model, courts are prohibited from expanding customary law in general normative matters or issuing rulings for compensation in specific cases where constitutionally protected rights are violated. Based on this model, if Jack promises John that he will not sell his products to Mary but then breaches this promise, John cannot seek compensation. This is because if the court orders Jack to fulfill his commitment

to John, it would violate Mary's right to equal treatment, a right she can enforce against the state, and which would otherwise be violated by the court's ruling ([Annan, 1997](#)).

These four main models have been introduced, but in some instances, they may conflict with each other. The direct application model and the indirect application model may contradict the non-application model. Other models may coexist simultaneously. For example, the indirect application model may be applied first, and if it fails to provide an adequate solution, the direct application model may be utilized. Additionally, the first three models may be combined with the judicial application model, as courts may use the judicial model to complement other models.

It is evident that other models may also exist. However, this study focuses on these four models because they are present in comparative law and can be considered potential solutions in legal systems.

2.2. *Direct Application Model: Supporting and Opposing Arguments*

2.2.1. *Contextual Arguments in Favor of Direct Application*

The starting point of the direct application model is the wording of the relevant provision in the constitution. Most constitutions contain a clause on freedom of profession and trade, which grants every citizen or resident of a country the right to engage in any profession, trade, or business of their choosing. Another fundamental law, referred to as the Basic Law on Human Dignity and Freedom, states that harming an individual's property is prohibited and that every person has the right to defend their life, body, and dignity. These legal provisions and similar others are formulated in broad and general terms, making it impossible to infer, either explicitly or implicitly, that they apply exclusively to the state. There is a fundamental difference between the broad formulation of human rights in this manner and the specific formulation sometimes found in constitutional texts, where the state is explicitly designated as the sole addressee of these rights ([Katouzian, 2022](#)). Accordingly, from a contextual perspective, interpreting fundamental laws in a way that recognizes the direct application of human rights is justified.

Furthermore, the Basic Law on Human Dignity and Freedom states that its purpose is to protect human dignity and freedom and that its inclusion in fundamental laws is based on the recognition of these rights by free and democratic states. This objective is not limited to protecting human freedom and dignity against the state alone; rather, it is a general goal that includes protection against both state authorities and private parties in their interactions. The fundamental rights of individuals are based on the recognition of human value and the intrinsic worth of life and freedom. These principles justify the application of human rights in private law. There is always a risk that human dignity, the right to life, and personal choices, as manifestations of individual freedom, may be threatened not only by the state but also by private parties. The Basic Law on Freedom of Profession and Trade explicitly states that every public authority must respect the professional freedom of every citizen or resident ([Mohammadzadeh, 2015a, 2015b](#)). A similar legal provision exists in the Basic Law on Human Dignity and Freedom. However, these legal provisions should not be regarded as absolute assumptions from which it can be inferred that fundamental human rights apply exclusively in relations between individuals and the state. The purpose of these legal provisions is to establish a supralegal normative framework for human rights, affirming their existence not only as political rights but also as sources of judicial competence.

2.2.2. *Substantive Arguments in Favor of Direct Application*

The contextual arguments derived from the constitutional texts of different countries permit the application of constitution-based human rights in private legal relationships, but they do not mandate their application. To justify the mandatory application of these rights, several substantive arguments are presented.

The first and most important argument is that human rights are not only threatened by the state but can also be endangered by private entities and institutions. In fact, some claim that in democratic regimes, the risk of human rights violations by private parties may exceed the risk posed by the state. Consequently, the adequate protection of human rights in general requires mechanisms that monitor the actions of both public and private sectors.

The second substantive argument, which can be seen as a derivative and less significant aspect of the first argument, is that human rights are fundamentally freedoms rooted in individual autonomy, personal integrity, and human dignity. These rights can be restricted by both the state and private parties.

The third substantive argument, which is considered dogmatic and rigid, asserts that in a typical judicial system, distinguishing between different normative levels of human rights lacks coherence. The critical point here is preventing the enactment of laws that allow one private party to violate the human rights of another. At the same time, in the absence of restrictive legislation, the law should not permit a private party to infringe upon the fundamental rights of another private party (Chantal & Shami, 2022).

The fourth argument is pragmatic. The real alternative to the direct application model is the non-application model. If the direct application model is not deemed appropriate, the judicial system may resort to indirect application or judicial application models. However, using these alternative models may lead to difficult and undesirable legal outcomes. According to this argument, it is preferable to adopt a clear and transparent approach, and if the non-application model fails, all available legal approaches should be examined, ultimately leading to the selection of the direct application model as the preferred solution (Molaei, 2018).

2.2.3. Contextual Arguments Against Direct Application

The starting points of this argument are the provisions of fundamental human rights that designate the state as the primary and sole addressee of these rights.

First, some human rights provisions have been drafted in a way that makes it clear that only the state can violate them. For example, the Basic Law on Human Dignity and Freedom states that no right exists to limit or infringe upon an individual's freedom through imprisonment, arrest, extradition, or any other means. These legal provisions refer to acts that are exclusively governmental in nature.

Second, even when human rights are recognized in an open and unrestricted manner, fundamental laws specify limitations that may be imposed on these rights. Certain fundamental human rights contain limitation clauses. However, these limitation clauses do not apply to

relations between private individuals. This suggests that fundamental laws are designed only for the state, as it is not feasible to recognize human rights in private relations without considering how these rights may conflict with one another.

Third, if fundamental laws were to be applied in relations between private parties, this would mean that one private party holds a right against another, and at the same time, one private party would be required to enforce obligations toward another. In customary law, human rights cannot be violated or restricted unless explicitly authorized by the legislature. In the absence of a clear legal provision allowing the application of fundamental human rights in private legal relationships, fundamental laws cannot be applied in such cases.

Fourth, fundamental laws contain "respect clauses", which state that every public authority is obligated to respect the rights enumerated in fundamental laws. Based on these clauses, it can be inferred that the preservation of fundamental human rights is a responsibility of the state alone, not private parties (Gorji Azandariani, 2011).

2.2.4. Substantive Arguments Against Direct Application

The first substantive argument is that the primary addressee of constitutional obligations regarding human rights has always been the state. There is concern that the state, in its role as legislator and executive authority, may violate human rights, and the only way to prevent this is to assign human rights a supralegislative (or constitutional) normative status. In reality, human rights protections in private relationships do not require a constitutional status, as they can be safeguarded through ordinary legislation or customary law. The constitutional protection of human rights is, in essence, aimed at shielding individuals from state violations (Hashemi, 2015).

The second substantive argument asserts that fundamental laws seek to grant constitutional human rights to private parties. If we apply these constitutional provisions to private relationships, we will see that fundamental laws do not merely grant rights; they may also infringe upon them. Granting a right to one private party necessarily means imposing obligations on another. Therefore, constitutional human rights violations would occur at the constitutional level itself, which is an untenable conclusion.

The third substantive argument, which is related to the second, states that applying constitutional human rights in private relationships inherently requires balancing different rights. One person's right may conflict with another's. Since fundamental human rights do not contain limitation clauses that explicitly allow for balancing conflicting rights, judges would be forced to create such limitations, thereby acquiring excessive judicial authority without constitutional guidance (Gorji Azandariani, 2011).

2.3. *The Non-Application Model: Supporting and Opposing Arguments*

2.3.1. *Arguments in Defense of Non-Application*

The contextual arguments supporting the non-application model resemble those presented against the direct application model. This also applies to the substantive arguments involved. In essence, the non-application model stands in direct opposition to the direct application model. The direct application model is based on the assumption that the intent of the constitution regarding human rights is to protect individuals from the state and that there is no constitutional intent to extend this protection between private parties. Private law relations have traditionally been governed exclusively by private law (Ranjbar Imam Qisi, 1997).

Furthermore, the ultimate consequence of applying constitutional provisions on human rights in private relations is the violation of human rights. For instance, if the prohibition of discrimination is recognized as a human right applicable in private relations, does this mean that an individual cannot favor certain heirs in their will, or that a seller cannot distinguish between buyers? If constitutional provisions on human rights apply to private relations, what happens to individual autonomy and, more specifically, freedom of contract? If the solution lies in balancing different human rights, how should this balance be achieved? Constitutional law provides a formula for balancing the rights of individuals against the state, but no formula exists for balancing rights between private parties. Should the same balancing formula used for state-individual relations be applied to private relations? Should every act that the state is prohibited from committing also be forbidden for private individuals? Answering these questions is highly

complex. Many actions that private individuals are legally allowed to take (such as differentiating among heirs) are prohibited for the state (such as enacting discriminatory legislation) (Mohammadzadeh, 2015a). If we argue that the balancing formula differs in private disputes, what is the nature of this difference? Advocates of the non-application model should not suggest that courts should determine this balancing formula, as the final outcome of such judicial intervention would be a violation of human rights.

Accordingly, in all matters related to private relations, reference should be made exclusively to private law and its existing principles, without considering the effects or influence of constitutional provisions. It is self-evident that constitutional matters should remain within the realm of public law. Of course, the boundary between private and public law is neither absolute nor impermeable, and interactions between these two legal spheres have always existed. In integrating private law doctrines with customary law, judges may consider public law principles. However, this integration merely reflects the need to analyze the broader structure of society, its legal framework, and prevailing social beliefs, rather than the direct or indirect application of constitutional human rights in private law (Amin & Thrift, 1996).

Justice McIntyre of the Supreme Court of Canada, in a Canadian case, emphasized that the provisions of the Canadian Charter of Human Rights and Fundamental Freedoms do not apply in private law:

"This is entirely different from answering the question of whether the judiciary should apply and develop common law principles in a manner that aligns with constitutional values. The answer to this question must be affirmative. However, the Charter remains distant from private claims that should be resolved under common law. When a private party has a constitutional duty towards another, the situation changes. A constitutional duty may serve as the basis for applying the Charter or invoking its defenses." (Yathrabi & Aryan, 2011)

Under this approach, if a court grants compensation to a private party for harm caused by another private party, this decision cannot be assessed based on constitutional standards. The state's obligation to respect the rights of private individuals does not require courts to recognize the same rights between private parties. Courts decide private disputes and issue rulings, and that is their sole

function—nothing more. Consequently, a court may decide that a contract violating human rights (e.g., infringing on freedom of profession and trade) is contrary to public policy and therefore void. However, the court would make this determination in the same manner as before, without considering constitutionally based human rights in its reasoning (Babaei & Torabi, 2021).

2.3.2. *Arguments Against the Non-Application Model*

The arguments supporting direct application closely resemble the arguments against the non-application model. Threats to human rights arise not only from the state but also from private parties, particularly powerful and influential entities such as certain private corporations. If a small town is prohibited from discriminating against its residents because it is a governmental entity, why should a large private corporation be allowed to discriminate against its employees?

Moreover, if constitutional human rights are directed only at the state, what about laws that establish rights and obligations through contract law, warranty law, and agency law? Should the legislature have unrestricted authority to enact these laws without constitutional limitations? The logical response is that legislation is a governmental act, and therefore, constitutional constraints must apply, even if the content of the law only pertains to private relations.

If this is the case, why shouldn't the same principle apply to judicial decisions in common law disputes involving private parties? Should "judicial legislation" (delegated lawmaking) not be directly subject to constitutional limitations? If constitutional human rights apply to courts and restrict the development of common law regarding state-private party relations, why should they not similarly restrict the development of private-private party relations? If we believe that constitutional human rights do not bind courts, then how can courts be permitted to develop common law doctrines for private disputes without considering constitutional limitations? In reality, the state's judicial function inherently requires it to comply with constitutional constraints, confirming that the non-application model is untenable, even if it seeks to prevent constitutional human rights from infiltrating private law through direct application. Ultimately, constitutional provisions will be enforced by

courts as state institutions, and if so, it is preferable to achieve proper results through direct application rather than judicial application (Yathrabi & Aryan, 2011).

If the non-application model is upheld against judicial application, the result will be problematic and undesirable. What the state does not do directly (through legislation) will instead be achieved indirectly through judicial rulings. Consequently, private individuals' rights may not be adequately protected. Moreover, if constitutional human rights do not apply to private relations, what law should govern the state when it acts in a private capacity? In such cases, is the state still bound by constitutional human rights? The non-application model provides contradictory answers, leading to unfavorable outcomes.

One possible response is that constitutional provisions are intended solely for the state, and when the state operates in a private law capacity, it should be treated as a private party rather than a government entity. However, critics argue that this response is unsatisfactory. It is illogical for the state to be allowed to discriminate, restrict free speech, or violate other human rights simply because it is acting in a private capacity (Hajipour, 2011). The identity of the state remains unchanged, and it is appropriate for constitutional limitations to continue applying. The state's obligations toward private parties are legal duties, and the state must uphold them in all its actions.

The non-application model thus faces an inherent contradiction: constitutional human rights apply even when the state acts within private law. This raises further questions: How should the state be defined in such cases? Should a state-owned company be treated as the state itself under the constitution? How can constitutional human rights be reconciled with state actions in private law, given the arguments against their application in private relations?

Applying human rights in private law could arguably infringe on individual autonomy by imposing obligations on individuals. However, when constitutional human rights apply to the state in private law, they do more than impose obligations—they also grant rights (Amin & Thrift, 1996). If the state has the power to impose obligations on private parties, how can the non-application model justify rejecting this outcome while acknowledging its necessity?

2.4. *The Indirect Application Model: Supporting and Opposing Arguments*

2.4.1. *Arguments in Favor of Indirect Application*

Like the direct application model, the indirect application model recognizes constitutionally enshrined human rights in private law relationships. Most of the arguments supporting the direct application model also serve as justifications for the indirect application model (Chantal & Shami, 2022). According to advocates, the primary advantage of this model is that it addresses some of the criticisms raised against the direct application model.

The starting point of the indirect application model is the premise that private law, which governs relations between private parties, has always considered human rights. At the core of private law principles lie fundamental human rights values, such as individuality, self-perception, and human dignity. Specific private law rules, such as protection of reputation and property rights, reflect the rights of private parties (not only against the state but also against other private parties). Values such as good faith, reasonableness, and fairness serve as mechanisms for balancing conflicting human rights (Jahanbin & Gorji Azandariani, 2019). However, the right of one party to act freely may at times conflict with another party's right to physical integrity.

This balancing mechanism is evident in various private law institutions, such as fair dealing. Another key private law doctrine that serves as a channel for incorporating human rights is the constitutional concept of public policy. Advocates of the indirect application model argue that public policy reflects the role of constitutional human rights in private law. The freedom to contract and the freedom of profession and trade are both constitutional freedoms. When Jack enters into a contract with John that restricts John's professional freedom, different fundamental freedoms come into conflict. Such conflicts have historically existed and have been resolved through the principle of public policy. The assessment of competing rights based on their constitutional significance has been the guiding principle in such cases. In essence, public policy serves as the mechanism through which constitutional values penetrate private law (Smits et al., 2018).

When human rights were introduced into private law, a separate system for their application was not

established. In other words, two distinct systems—one for applying human rights in private law and another in public law—were never created. Instead, a single system for human rights has always existed. Historically, human rights were implicitly embedded in customary law, which was never codified in any single legal text. Today, human rights exist in a supralegisative framework. Similarly, in the past, customary human rights norms were incorporated into private law through value-based legal doctrines. Today, constitutionally enshrined human rights enter private law through these same mechanisms. However, their elevated status in the constitution has led to different legal outcomes.

For instance, consider a private employer who terminates an employee for expressing a political opinion. Such an action is clearly unlawful. When freedom of expression is not constitutionally enshrined, such unlawful actions are typically addressed through compensation or similar remedies, rather than requiring the employer to take a specific action (Elliott & Vernon, 2020). Conversely, if freedom of expression holds a supralegisative status in the constitution, the employer is more likely to be legally required to take corrective action. Recognizing the normative status of freedom of expression strengthens its position in private law, enabling courts to compel specific actions rather than merely awarding monetary compensation. This approach has no historical precedent.

Consider another example: a restaurant owner refuses to serve a customer for discriminatory reasons. If the right to equality exists only in customary law, the restaurant owner would simply be required to act in good faith during negotiations leading to a transaction, meaning they must explain their refusal. However, the right to equality would not be strong enough to override the restaurant owner's contractual freedom. In contrast, if the right to equality is explicitly enshrined in the constitution, the restaurant owner could be accused of acting in bad faith in commercial negotiations.

The advantage of the indirect application model over the direct application model is that the indirect model employs private law mechanisms. These mechanisms are either pre-existing legal tools with newly assigned meanings or entirely new tools developed within private law to incorporate constitutional human rights while preserving private law principles.

2.4.2. Arguments Against Indirect Application

The arguments opposing the indirect application model largely mirror those against the direct application model. If constitutional human rights are protected solely against the state, then they cannot be applied—either directly or indirectly—in private legal relationships.

The indirect application model attempts to facilitate the integration of public law principles into private law. However, this integration is misleading, as it lacks a solid legal foundation (Annan, 1997). If human dignity, freedom, and property rights are constitutional rights meant to protect individuals from the state, how can they shape public policy in private law? Why should the principle of freedom of profession, which applies only against the state, not bind private parties in a contract that restricts professional freedom in violation of public policy?

Additionally, critics argue that the indirect application model blurs the distinction between private and public law. By allowing constitutional human rights to influence contractual relationships, the traditional autonomy of private law is undermined. Moreover, if human rights protections are meant to shield individuals from state interference, it is inconsistent to argue that they should also govern the interactions between private individuals. Furthermore, opponents contend that indirect application creates legal uncertainty. The public policy doctrine has historically functioned as a flexible legal standard, allowing courts to invalidate contracts contrary to fundamental societal values. However, when constitutional human rights are introduced into public policy considerations, courts are granted excessive discretion in defining the limits of private autonomy. This leads to unpredictable judicial outcomes and inconsistent interpretations.

Finally, some critics argue that the indirect application model serves as a backdoor mechanism for implementing the direct application model without explicitly acknowledging it. By reinterpreting private law principles through a constitutional lens, the indirect application model effectively achieves the same result as direct application—but in a less transparent manner. This raises concerns about judicial overreach and the gradual erosion of private law autonomy in favor of constitutional supremacy.

In summary, while the indirect application model seeks to reconcile private and public law, critics argue that it artificially imposes constitutional human rights onto private relationships, disrupts legal predictability, and fundamentally alters the nature of private autonomy in a way that exceeds the intended scope of constitutional protections.

2.5. The Judicial Application Model

As previously mentioned, the fourth model explaining the relationship between constitutional human rights and private legal relations holds that only the state is bound by constitutional human rights. However, courts are state institutions, meaning constitutional provisions must also apply to them. This approach has been recognized and implemented in the United States. The Bill of Rights in the U.S. Constitution is drafted in a manner that imposes limitations and obligations on the government. With the exception of the 13th Amendment, which explicitly prohibits slavery, all other amendments are written such that, according to judicial interpretation, only the state is subject to these legal provisions.

A key question arising from this interpretation is: What constitutes the state, and when do its actions violate a private party's rights? Extensive research has been conducted on this issue. At the core of these studies is the recognition that courts are arms of the state. When a court acts, the state acts. Therefore, human rights must be protected not only against the legislature and the executive branch but also against the judiciary. This perspective leads to two key legal interpretations:

First, some state actions contribute to the creation and development of common law (Katouzian, 2022). In this context, the *New York Times Co. v. Sullivan* case required common law defamation rules to be reconciled with the First Amendment's protection of free speech. Although this was a civil lawsuit between private parties, the case raised constitutional issues because the First Amendment applies to the government. Justice Brennan stated:

"The mode of protection afforded in this case does not apply. Although this is a civil dispute between private parties, the Alabama courts have enforced a state law that, according to the plaintiffs, imposes unjustified restrictions on freedom of speech and press. It does not matter whether this law is applied in a civil case or is merely a common law

provision. It does not matter in what form or shape state power is exercised; what matters is whether such power has indeed been exercised." (Babaei & Torabi, 2021)

The second interpretation by the court was that compensatory judgments in private law cases might place courts in a position where granting damages contradicts constitutional human rights. This issue arose in the landmark case of *Shelley v. Kraemer*, commonly known as the Shelley Rule.

For instance, suppose Jack and John enter into a contract in which Jack agrees not to sell land to Black individuals. Later, Jack sells the land to a Black buyer named Louis. In response, John files a lawsuit against Jack, invoking the restrictive clause in their contract. John requests a court order to prevent Louis from entering the property. The U.S. Supreme Court rejected this claim, ruling that under the 14th Amendment, the right to equality is a fundamental right enforceable against the state but not applicable to private contractual relations between Jack, John, and Louis. Therefore, Louis's constitutional rights were not violated. However, John's request for judicial intervention constituted state action, and issuing such an order would have violated Louis's constitutional right to equality (Mohammadzadeh, 2015, p. 108).

In this context, actions taken by state courts and judicial officials while performing their duties are considered state actions under the 14th Amendment. This principle has long been established in U.S. jurisprudence, holding that any government action violating the 14th Amendment is unconstitutional, whether enacted through legislation or judicial rulings in the absence of explicit legislative authorization.

The court further reasoned that without active judicial intervention, Louis would be free to enter the property he purchased. The court's intervention, however, would effectively bar Louis from his property solely because he was Black, thus violating his constitutional right to equality (Molaei, 2018).

The scope and limitations of the Shelley Rule remain unclear and have been the subject of intense criticism. If interpreted in its broadest sense, this principle would mean that all constitutional rights addressed to the state would effectively become rights enforceable against private parties through judicial decisions. U.S. courts have generally refrained from broadly applying the Shelley Rule, and common law jurisprudence has limited its scope.

For example, in one case, a court ordered trespassers to be prosecuted for unlawfully entering private property without the owner's consent, even though the trespassers were Black. In another case, a will containing discriminatory provisions against Black individuals was upheld by the court. These instances demonstrate the judiciary's cautious approach in limiting the direct enforcement of constitutional rights in private legal disputes while still recognizing the judiciary's role as a state actor.

3. Reasons for the Influence of Human Rights on Private Law in the Iranian Legal System

3.1. *The Normative and Binding Nature of Iran's Constitution*

Legal norms within a legal system are hierarchical and follow a vertical structure, where the constitution holds supremacy over all other legal norms. In other words, specific legal rules derive their authority from general constitutional principles, and the hierarchical structure of norms is an inherent feature of a legal order (Jahanbin & Gorji Azandariani, 2019).

Historically, constitutions were perceived primarily as procedural or programmatic laws, outlining the general framework, principles, and policy directions of a legal system (Gorji Azandariani, 2011). However, in the second half of the 20th century, legal scholars gradually recognized the constitution as a normative legal source, meaning it plays a determining role in establishing legal obligations and prohibitions. The normative and binding nature of constitutional law was first articulated by Austrian jurist Hans Kelsen, who argued that constitutional law occupies the highest position in the legal hierarchy, and that the validity of all other legal rules derives from the constitution. This theory, which emphasizes respect for and the supremacy of constitutional law, has influenced Iranian legal thought as well.

In Kelsen's foundational theory, all legal rules are based on a single fundamental norm, which serves as the foundation of the legal system. In most countries, this fundamental norm is codified as the constitution, representing the national covenant (Katouzian, 2022).

Similar to the legal systems of most countries, the Constitution of the Islamic Republic of Iran primarily establishes general principles and foundations rather

than addressing specific legal issues in detail. Consequently, the Iranian legal system lacks explicit constitutional provisions concerning the application of constitutional and fundamental human rights in private law. However, since constitutional rights—which encompass most fundamental human rights—are normative and binding, and occupy the highest position in the legal hierarchy, they must be respected throughout the legal system, including in contract law. This principle is explicitly stated in Article 72 of the Iranian Constitution (Hajipour, 2011).

A brief review of the Iranian Constitution reveals that the Constituent Assembly was fully aware of the hierarchical structure of legal norms and the need for their enforcement. The hierarchical structure of legal norms is evident in the constitution in two key respects:

1. Through the institutions responsible for creating legal norms
2. Through enforcement mechanisms established to ensure the stability of different levels of legal norms

Some legal scholars argue that Iranian courts lack the authority to directly apply constitutional principles, meaning courts cannot invalidate ordinary laws by claiming they contradict the constitution. According to this view, constitutional provisions only establish general frameworks and policy directions, while the determination of specific legal parameters and enforcement mechanisms falls within the jurisdiction of ordinary legislators.

For example, judges cannot declare a contract void based on Article 40 of the Iranian Constitution, which prohibits transactions aimed at evading debt obligations. The specific applications of Article 40 must be determined by ordinary legislation, such as Article 132 of the Iranian Civil Code, which represents one codified application of this constitutional provision. If Article 40 of the Constitution were recognized as a direct source for judicial rulings, there would have been no need to codify such provisions in the Civil Code. This demonstrates that the limitations and enforcement of constitutional prohibitions are determined by ordinary legislators, rather than being directly implemented by courts.

3.2. Interpretation of Article 10 of the Civil Code

Legal scholars classify legal rules into mandatory and supplementary provisions based on their degree of

enforceability. Article 10 of the Civil Code states: “*Private contracts are binding on those who have entered into them, provided they are not in explicit violation of the law.*” A thorough understanding of this provision and the legislator’s true intent can only be achieved by analyzing its opposing implication. Thus, private contracts are not binding if they explicitly violate the law.

The term “law” in Article 10 refers to mandatory laws. This means that not all agreements that contradict legal provisions are necessarily invalid; rather, only agreements that explicitly contradict mandatory laws are considered void (Yathrabi & Aryan, 2011). Consequently, since fundamental rights are also mandatory legal norms, agreements that contravene them are impermissible and void.

These rights, as manifestations of constitutional principles, restrict the principle of contractual freedom and influence private contracts. Therefore, under Article 10 of the Civil Code, fundamental rights may limit contractual freedom, but the reverse is not true—that is, contractual freedom cannot be invoked to negate fundamental rights.

3.3. Use of Legal Interpretation Methods

One of the most effective methods of legal interpretation is to interpret legal texts in relation to other relevant enacted laws. In the hierarchical structure of legal norms, laws that contain fundamental rights hold a superior status over other laws and therefore take precedence in legal interpretation. Consequently, in this method of interpretation, the legislative process alone is not decisive, nor is the legislative method the primary concern; rather, the substance and essence of the law must be considered.

Two laws may be enacted by the same legislative body (e.g., Parliament), yet differ in nature—one may contain fundamental human rights, while the other may not. However, such a categorization of laws is not widely recognized in the Iranian legal system and still needs to find its place in legal doctrine. One solution to this issue is to establish criteria for distinguishing between fundamental and non-fundamental rights, and consequently, between fundamental and non-fundamental legal provisions (Mohammadzadeh, 2015b).

One approach to addressing this issue is to adopt the French legal system’s classification of laws into

fundamental and non-fundamental categories. In French law, organic laws occupy an intermediary position between the constitution and ordinary laws and are considered fundamental. They provide detailed explanations of constitutional provisions but are not part of the constitution itself. These laws can only be enacted if the constitution explicitly allows for them.

Articles 46 and 61 of the French Constitution establish specific procedures for the enactment of organic laws. These laws, which incorporate fundamental human rights, require constitutional authorization before enactment. Once passed, they must be submitted to the Constitutional Council for review to ensure their compatibility with the constitution (Elliott & Vernon, 2020).

In the last half-century, the constitutionalization of private law has been a prominent issue in modern legal systems, particularly in European countries. The constitutionalization of private law is closely linked to the growing importance of human rights and fundamental freedoms. In fact, the constitutionalization of private rights can be seen as a direct consequence of the supremacy of fundamental rights over the entire legal system. Legal systems that have embraced constitutionalized private law categorically reject any infringement of fundamental rights (Hajipour, 2011).

4. Recognition and Protection of Fundamental Human Rights in Private Relations in Iranian Courts

Judicial precedents in Iran also reflect consideration for human dignity and human rights in private law. Some recent court rulings demonstrate a willingness to incorporate fundamental human rights into contract law. For example, in a notable and well-reasoned decision, a court refused to enforce a contract that was contrary to human dignity, affirming that fundamental human rights may influence private contractual relations (Qint, 1989).

In a case involving a second marriage, the husband imposed a contractual condition on his second wife, stating: *"As part of a separate binding agreement, the wife accepts the condition that she shall take care of the husband's first wife, perform household duties, and provide for her until her death."* After the husband's death, the first wife (the beneficiary of the condition)

filed a lawsuit against the second wife, seeking to enforce the contract.

The trial court (Branch 1 of Arsanjan Court) ruled in favor of the first wife, issuing a judgment for specific performance (Ruling No. 9609977192900858). However, the Court of Appeal overturned this ruling (Branch 24 of the Fars Court of Appeal, Ruling No. 9609977122401559).

The appellate court held that while the disputed clause was included in the contract under the principle of contractual freedom, its validity and enforceability were highly questionable. The court reasoned that:

1. Contractual freedom is not absolute and does not automatically validate all contractual terms.
2. The contested clause infringed on the social and economic autonomy of the contracting party, thereby violating her human dignity.
3. Prohibiting inhumane practices such as forced labor is a principle recognized in international human rights instruments. In modern legal systems, adherence to fundamental human rights principles in private law is considered essential, and contractual terms that deprive individuals of their freedom and impose excessively burdensome obligations are deemed unconscionable and void.
4. The Iranian Constitution (Article 2, Clause 6) explicitly upholds human dignity, prioritizing fundamental rights over private contractual agreements.
5. Ethical and social values require that contractual terms do not deprive individuals of their freedom or disrupt their livelihoods. Contracts compelling a person to perform unpaid labor indefinitely jeopardize their well-being and dignity (Hashemi, 2015).

The court concluded that a contractual condition requiring lifetime caregiving was a deprivation of freedom and contrary to public morality and public order. Under Articles 960 and 975 of the Civil Code, such conditions are null and void.

Additionally, in contracts relating to personal obligations—such as employment contracts or agreements requiring personal services—Shi'a jurisprudence holds that a definite term must be specified to protect human dignity and prevent uncertainty (gharar). The court invalidated the disputed

contractual term, finding it an unenforceable and unconscionable condition.

Iranian courts have also demonstrated a tendency to protect fundamental human rights through contractual interpretation. For instance, when penalty clauses impose excessive financial burdens, courts have invoked fundamental rights principles to limit the enforcement of such clauses (Gorji Azandariani, 2011).

In a case involving a penalty for late delivery, where the contractual liquidated damages clause imposed an exorbitant penalty, the court ruled:

"Although Article 230 of the Civil Code specifies the enforceability of liquidated damages clauses, considering Article 40 of the Constitution, which prohibits the abuse of rights to the detriment of others or the public interest, the legislature clearly does not support such clauses. Accordingly, the plaintiff's claim is dismissed, and the court rules in favor of the defendant."

In Ruling No. 9209970909100385 (March 17, 2014) from Branch 3 of the Supreme Court, a liquidated damages clause exceeding the contract price was found to violate public economic order and Article 975 of the Civil Code. The court declared such clauses unconscionable and void, ruling in favor of the defendant.

Similarly, in Ruling No. 38/168/80 (June 18, 2001) from Branch 38 of the Supreme Court, the court held that a stipulated penalty clause that led to an unjust outcome was unenforceable.

Additionally, in 2007, Branch 12 of the Mazandaran Court of Appeal, citing Article 16 of the Universal Declaration of Human Rights and international conventions, recognized the right to marriage as a fundamental human right and granted a woman permission to marry without paternal consent.

5. Conclusion

Following the end of World War II, the application of fundamental human rights standards in private legal relationships began. Over time, the belief strengthened that the enforcement of fundamental human rights was not limited to legal relations between individuals and the state. Consequently, the incorporation of these rights into private law, particularly in the field of contracts, was recognized in the legislation and judicial practice of European countries.

Gradually, states moved toward the constitutionalization of fundamental human rights, expanding their role beyond non-interference and respect for human rights to include active protection of citizens, even in their relations with other private parties. If fundamental rights serve as the direct basis for a claim or defense in a private dispute, thereby determining the outcome of the case, the direct horizontal effect is applied. Conversely, if general private law principles are interpreted in light of fundamental rights, the indirect horizontal effect is employed.

Thus, fundamental human rights have moved beyond their traditional vertical scope, which governed individual-state relations, and have become relevant in horizontal relationships between private parties. The two predominant methods for integrating fundamental human rights into contract law are direct application and indirect application.

Under the direct application model, human rights protections extend not only against the state but also against private individuals and legal entities. An example of this approach can be found in Article 40 of the Constitution of the Islamic Republic of Iran, which explicitly enables the direct application of fundamental rights.

In contrast, under the indirect application model, fundamental rights influence private relations without requiring the creation of new legal frameworks. Instead, existing legal principles and traditional legal mechanisms are interpreted in a manner consistent with fundamental human rights, achieving the desired legal outcomes without disrupting established legal structures.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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References

- Amin, A., & Thrift, M. (1996). *Globalization, Institutions And Regional Developments in Europe*. Oxford University Press. <https://doi.org/https://doi.org/10.1093/oso/9780198289166.001.0001>
- Annan, K. (1997). Strengthening UN action. *Harvard Human Rights Journal, Spring*, 215.
- Babaei, I., & Torabi, M. (2021). The position of the human rights principle of dignity and human status in contract law. *Judiciary Legal Journal*, 85(114).
- Chantal, M., & Shami, M. (2022). *Fundamental rights in European contract law: A comparative study of the impact of fundamental rights on contractual relationships in Germany, the Netherlands, Italy, and England*. Negah Bineh Publishing.
- Elliott, K., & Vernon, K. (2020). *The legal system of France*. Samt Publishing.
- Gorji Azandariani, A. K. (2011). Multiplicity and diversity of norms in the constitutional law of France. *Legal Research Journal, Shahid Beheshti University*(50).
- Hajipour, M. (2011). A comparative study of the application of fundamental human rights in private law. *Journal of Comparative Law Studies*, 9(2).
- Hashemi, S. M. (2015). *Human rights and fundamental freedoms*. Tehran: Mizan Publishing.
- Jahanbin, S. E., & Gorji Azandariani, A. K. (2019). A normative perspective on legal order and social order. *Quarterly Journal of Public Law Studies*, 49(3).
- Katouzian, N. (2022). *Foundations of public law*. Mizan Publishing.
- Mohammadzadeh, M. (2015a). *The impact of constitutional rights on private law* Doctoral dissertation, University of Tehran].
- Mohammadzadeh, M. (2015b). Is the human body noble in the essence of humanity? Insights into human dignity in private law. *Quarterly Journal of Private Law Studies*, 45(2).
- Molaei, Y. (2018). Theoretical foundations of the application of fundamental rights in contracts. *Journal of Comparative Law Studies*, 9(1).
- Quint, P. E. (1989). Free speech and private law in German constitutional theory. *Maryland Law Review*, 48(2), 248-249.
- Ranjbar Imam Qisi, J. S. (1997). *Deprivation of rights from oneself* Master's thesis, Qom University].
- Smits, J. M., Barkhuysen, T., & Lindenberg, S. (2018). Private Law and Fundamental Rights: A Sceptical View. In *Constitutionalisation of Private Law* (pp. 9-22). Leiden/Boston. <https://doi.org/https://doi.org/10.1163/ej.9789004148529.i-136.6>
- Yathrabi, M. A., & Aryan, M. (2011). Government intervention in private contracts based on the theory of the impact of fundamental rights in contracts. *Islamic Law Journal*, 18(68).