

GOOD FAITH AS THE COMMON CORE OF PRE-CONTRACTUAL INFORMATION DISCLOSURE IN THE IRANIAN LAW AND THE PRINCIPLES OF EUROPEAN CONTRACT LAW

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ABSTRACT

Even with the advancements in information technology at the present times, the challenges triggered by information non-disclosure or asymmetric information at some stage in the conclusion of contracts between two parties are still the crucial issue in contractual relations, in a way that the main reason for the invalidation or termination of contracts has been failure in pre-contractual information (PCI) disclosure. To manage this problem, jurists have advocated and developed the duty of disclosure using multiple legal bases. Exploring such bases accordingly reveals that the principle of good faith is the vital basis for the PCI disclosure. In the general sense, the duty of disclosure is connected with the principle of good faith and even regarded as its subset in the world of contractual relations. Thus, it is claimed that meeting the information required in contractual relations is one of the fundamental aspects of observing the principle of good faith. From this perspective, this study was an attempt to reflect on good faith as the main ground of the PCI disclosure, analyze it, and consider its adequacy in the Iranian law and the Principles of European Contract Law (PECL).

Keywords: good faith; duty of disclosure; asymmetric information; contract law; information disclosure.

A BOA FÉ COMO NÚCLEO COMUM DA DIVULGAÇÃO DE INFORMAÇÕES PRÉ-CONTRATUAIS NA LEI IRANIANA E OS PRINCÍPIOS DO DIREITO CONTRATUAL EUROPEU

RESUMO

Mesmo com os avanços da tecnologia da informação na atualidade, os desafios desencadeados pela não divulgação de informações ou pela assimetria de informações, em algum momento da celebração de contratos entre duas partes, ainda são a questão crucial nas relações contratuais, de forma que a principal razão para a invalidação ou extinção de contratos tem sido a falha na divulgação de informação pré-contratual (PCI). Para gerir esse problema, os juristas têm defendido e desenvolvido o dever de divulgação utilizando múltiplas bases jurídicas. A exploração de tais bases revela que o princípio da boa-fé é a base vital para a divulgação do PCI. No sentido geral, o dever de divulgação está ligado ao princípio da boa-fé e é mesmo considerado como o seu subconjunto no mundo das relações contratuais. Assim, afirma-se que o atendimento das informações exigidas nas relações contratuais é um dos aspectos fundamentais da observância do princípio da boa-fé. Nessa perspectiva, este estudo foi uma tentativa de refletir sobre a boa-fé como principal fundamento da divulgação do PCI, analisá-la e considerar sua adequação na legislação iraniana e nos Princípios do Direito Contratual Europeu (PECL).

Palavras-chave: boa fé; dever de divulgação; informação assimétrica; direito contratual; divulgação de informação.

1 INTRODUCTION

The focal philosophy of preliminary negotiations in the realm of contracts is to exchange information between the parties to support them make the right assessments using the existing information and come to a decision whether sign contracts and accept their terms and conditions. Simply put, the parties swap information about the terms and conditions of contracts, which seem essential to the intention of drafting, including their positions as well as the subjects of transactions. To conclude contracts based on actual intention and accomplish the desired contractual outcomes, the parties are required to share the necessary information with each other. Given the emerging diversity in contractual matters and the specializations arising in the field of goods and services, and after all the changes in contract matters and the way to conclude and implement them, asymmetric information between the parties in contractual relations has been acknowledged as a presupposition. In view of that, the parties assumed to be much more informed than the other ones in contracts re obliged to present ones' information regarding the subjects of the contracts to the uninformed parties. Investigating the basics and motivations for the exchange of information accordingly demonstrates that the principle of good faith is among the most obvious bases of pre-contractual duty of disclosure, that is, the obligation of good faith in the pre-contractual phase means informing the other parties about the terms and conditions as well as the duties along

with the disclosure of any information required for this purpose.

2 CONCEPT OF DUTY OF DISCLOSURE

The duty of disclosure has been documented among the legal concepts with a long history, which is being extensively reflected in today's consumer protection law. It was first introduced by the German scholar, Rudolf von Jhering, in an academic paper published in 1861 (Yildirim, 2017, p. 175). Ahead of the industrial revolution, crowds of people were merely the consumers of their own products, but the transition overwhelmed this situation and many turned out to be the consumers of goods produced by others. In this way, most consumers needed to obtain much more information (to help them in the optimal use of resources and forewarn them of their hazards and complications) in order to properly utilize the properties and goods purchased from others (Juneidi, 2002, p. 12). From this perspective, the duty of disclosure met with resistance because jurists believed that people had to search for information by themselves in a free society, without making others obliged to do so. This form of resistance gradually decreased as it failed to be quick to respond due to the significant difference in the amount of information hold by the parties. Given this change and imbalance, the principles of freedom of contract and independence of will lead to the violation of the rights of the weaker parties by the stronger ones, and the ever-increasing complexity of products and services fired it. For this reason, jurists had to agree to this obligation and impose it on manufacturers and suppliers, as the main goal and mission was to create balance and support the weak parties. According to Article 3:101 of the Draft Common Frame of Reference (DCFR), each party was required to offer relevant factual and legal information, which was reasonably expected (Yildirim, 2017, p. 178). In this line, the legal system needed to set some rules and regulations to enact such duties, which could shape the duty of disclosure (Renee; Davis, 1986, p. 758).

The duty of disclosure in contractual relations, conceived by some doctrines and assigned to experts by the French judges and finally legislators, is thus based on the impression of backing the non-expert who are in weaker positions due to insufficient knowledge regarding the subject of contracts and the related matters.

To ensure the freedom of contract, the idea of mandatory disclosure of information was accordingly suggested. In this respect, it was considered as a prerequisite for the freedom of contract, which was then given to the parties in a proper manner by providing the necessary

information (Kerber; Grundmann, 2005, p. 12). On the other hand, the right to receive information has been among the imperative contractual rights, especially in the field of consumer protection law. Consumers must thus have enough information to go for the goods and services offered in order to make the correct choices (Kerber; Grundmann, 2005, p. 12). Contrary to the right to receive information, there is an obligation, viz., the duty of disclosure.

The duty of disclosure and trust-building in relationships is stemmed from the obligations requiring honesty and trustworthiness, known as the principle of good faith in the realm of contracts. This principle encourages the parties to participate, cooperate, be honest, and share the necessary information with each other during the implementation, interpretation, and completion of contracts to the extent that if any party conceals a major defect on the subject of the purchases and sale contracts, which must be disclosed in keeping with the principle of good faith, then its reserve is deemed to be fraudulent (Lori, 2006, p. 733). In light of this, good faith not only prohibits any lie in contracts, but also any concealment about their subjects that are vital for the contracting parties to know in order to reach a conclusion (Ulloa; Tempel, 2013, p. 80). Accordingly, the main objective of law in lawsuits induced by information non-disclosure is that the duty of disclosure is mandatory whenever justice, fairness, and transactions based on good faith demand it. This is why the duty of disclosure is linked in the general sense with the principle of good faith.

Notably, information disclosure results in the optimal allocation of resources, so each party, having the necessary information, becomes aware of their personal values in relation to the sellers, and the contracts stemming from this assumption expand the allocation efficiency (that exists when the resources from someone with little value are transferred to those giving more value to it, so contracts are a means of the optimal allocation of resources from an economic viewpoint). If one party is in the wrong about one's personal value, the value they acquire not in favor of the other party is less than that they transfer. In spite of everything, it causes the improper allocation of resources.

Nowadays, the duty of disclosure has become independent, and it is in the stage of growing into a principle, justified with several rules. The disclosure of information in the pre-contractual phase can thus have unquestionable effects on the consistency and durability of contractual relations, so contracts concluded based on the information required for this purpose are endowed with high stability and security (Barikloo; Khazaei, 2011, p. 66). If the parties exchange all the basic information, contracts are signed with full satisfaction and with no deficiencies. When the parties find proper information, they identify their preferences in a

better manner and contracts are economically efficient. From this perspective, the duty of disclosure and its acceptance are completely comprehensible. Although no parties are generally expected to disclose the subjects of contracts and the related information, the holder of the information must unveil it in order to remove ambiguities if their suppression causes the other parties to be misinformed.

In the current competitive market, complete and free information is accessible to the parties, and they do not labor under information inequality. However, information in the real world is not so, and financial markets are established on risk and uncertainty with regard to the upcoming conditions (Rowan, 2017, p. 58). For that reason, information inequality and the resulting market failure have been attributed to asymmetric information (Weber, 2017, p. 2). The asymmetric information among the parties before concluding contracts not only complicates contractual relations, but also limits the principle of freedom of contract. Accordingly, contracts in which the interests of the parties are not respected in a balanced manner, or are concluded as a result of mistakes, deception, or reluctance, suffer from a weak spot from the legal standpoint, so the main objective of the duty of disclosure is to put an end to such cases.

3 CONCEPT OF GOOD FAITH

The principles governing contracts are a set of general principles recognized in different systems, of which the legal rules related to contracts are descended. One of the significant legal principles is the principle of good faith, which must be observed by the parties in concluding, interpreting, and implementing their obligations and not to make the most of the other parties' ignorance and harm their interests. Good faith is thus among the moral concepts that encourages people to do good deeds with good intentions and inhibits them to have bad intentions and commit evil actions.

Since this concept is closely linked with the cultural diversity of societies as the introduction of moral concepts to the law, its meaning has been significantly varied from the standpoint of different scholars. Some academics, such as Powers (XXX), defined good faith as "the expectation of each party in a contract that the other will honestly and fairly perform one's duties under it in a manner acceptable to the business community." In the Roman law, good faith or fairness has always been associated with trustworthiness, conscientiousness, and moral behavior (Fu, 2009). No legal system has thus far given a clear definition of good faith,

as it is free from the known definitions; in other words, good faith represents a concept within emotional and conscientiousness-related qualities and does not have a quantitative aspect. Despite that, jurists have to date provided some definitions, e.g., French writers defined good faith as a word or a compound noun to express a careful and honest behavior evaluated by moral standards (Ansari, 2012, p. 63). Good faith is also applied together with the expression of fair behavior. According to Black's Law Dictionary, it is "a mental state based on honesty in opinion or purpose, adherence to obligations and commitment to others, compliance with conventional business standards, and fair behavior in a certain trade or business or no intentions to cheat or gain advantage against one's conscience". Barikloo and Khazaei (2011) have further defined good faith as "honest, fair, and reasonable behaviors that are expected to be demonstrated during preliminary negotiations as well as the conclusion, execution, and interpretation of a contract, typically by both parties or even toward the related third parties" (p. 56). Some legal scholars have also considered the seller's health to be a manifestation of the supposed good faith of the parties (Katouzian, 2006, p. 53). With reference to the definition by Jafari Langroudi (2017), "a person who performs a legal or material act that is the source of a legal work or works and believes in the correctness of one's action has good faith" (Ansari, 2012, p. 66). Moreover, Shahidi (XXX) deemed good faith to be synonymous with customs and habits, but not in special cases. Given such definitions, good faith has been thus far illustrated in different ways in law (Bakhtiarvand, 2011, p. 27). In its broad meaning, good faith is widely exploited not only in the realm of transactions but also in other areas of law, whose generality and flexibility in solving legal problems make it a fundamental principle, which is the basis of several obligations, such as the duty of disclosure.

The principle of good faith is a central factor in moralizing law and the root of many legal rules. Although good faith is an ethical concept, considering its leading role in the formation of legal rules, it has gone beyond ethics and has assumed some legal criteria. Today, the value and validity of good faith in the realm of law is much higher as compared to ethics (Ansari, 2012, p. 90). This principle is part of human nature, significantly contributing to regulating personal and social relationships. With the growth of legal standards, the application of good faith has also developed, so good faith is among the deep-seated principles of the world society.

With regard to the ambiguous and multifaceted concepts of good faith, its scope in legal systems seems to be poles apart. Some systems, including the Principles of European Contract Law (PECL), have used good faith in a broad sense, but some, such as the legal

system of England, have fallen back on it within a very narrow framework. There is no doubt that good faith has been recognized in all legal systems with varying degrees and some rules have been then established (Ansari, 2012, p. 224).

Good faith contains many meanings in both affirmative (positive) and negative ways. From the affirmative (positive) aspect, it means the correct and desirable intention and belief, and from the negative aspect, it refers to refraining from deceptions, exceptions, concealment, and avoidance to acquire any unreasonable privileges from others (Rahimi; Rahimi Dehsouri, 2017, p. 263).

Considering the flexibility of the concept of good faith, judges have always dedicated much attention to both personal and general aspects in order to ensure compliance with good faith. In other words, the customs and habits governing contracts and the interests and circumstances of the individuals must be taken into consideration in order to ensure good faith. On the other hand, adopting a personal rule in the world of proof creates many problems and hinders the realization of the real goals. Legally, there has been much attempt to reflect on a specific rule. In the personal rule, one aspect is faith and promise, but in the general rule, much attention is devoted to the other part, i.e., goodness, which is called good faith in the general rule, as a filter to observe goodness and to be cautious about all elements of faith (Jafari Langroudi, 2017, p. 167).

The common ground of these definitions is reaching honesty and truthfulness in contracts as well as fulfilling contractual duties in an honest, fair, and reasonable manner.

4 GOOD FAITH AS THE MAIN BASIS OF PRE-CONTRACTUAL INFORMATION (PCI) DISCLOSURE

As already mentioned, good faith is a general legal principle. While it is the basis for the establishment of numerous rules in various branches of law, especially contracts, it is the factor making law more dynamic as the foundation for the establishment of countless obligations and duties, which play a leading role in its authenticity and validity at the stage of concluding contracts. According to the principle of good faith, the parties should exchange the necessary information with much seriousness and transparency during preliminary negotiations and treat each other fairly and honestly, apply understandable words and expressions in contracts, and even simplify any ambiguities. Since most rules governing in the pre-contractual phase are based on the principle of good faith, it is deemed as the center of

gravity of pre-contractual relations. In view of that, the parties must have good faith in concluding contracts. However, in some legal systems, good faith has not been explicitly accepted as a rule, but one of the legal principles recognized in many progressive legal systems, including the European legal systems, such as the French law, and has taken many provisions in the legal systems of some other nations.

From an economic viewpoint, good faith is a tool to augment the economic interests of the parties. In this regard, good faith has been assumed as a legal means to guarantee this, which then prevents opportunistic efforts before concluding contracts. Renunciation of opportunism in the form of conventional expectations of the parties at the time of signing contracts, the profits gained from contracts, and the expenditures incurred are also taken into account. The obligation to manage pre-contractual negotiations in good faith inherently contradicts the competitive positions of the parties. Each negotiating party also has the right to consider one's own interests, but they must simultaneously refuse any manipulations. Given their conflict of interests, the parties practically fail to negotiate with absolute good faith (Rahimi; Rahimi Dehsouri, 2017, p. 79).

In the laws of most countries, the general view is that all contracts are based on good faith, but the importance of good faith varies along with their provisions. For example, good faith is of utmost importance in insurance contracts, so any concealment by the insured at the time of concluding such contracts may result in their termination and the disclaimer of the insurers' liabilities. In insurance contracts, the good faith of the insured requires not making false statements, but providing the insurers with the necessary information related to the subjects of insurance. On the other hand, information disclosure in insurance contracts is among the basic conditions for its validation and one of the vital factors for the obligations of the contracting parties. The guarantee of its implementation, contrary to the general rules of contracts, is the nullity of the insurance contracts. The general rules of contracts entail that the cancellation of insurance contracts causes no effects, but the insurers are entitled to the insurance premium despite the fact that they have been released from liabilities, something that does not seem very logical (Barikloo; Khazaei, 2011, p. 60). On the other hand, legislators have supported the insured with good faith according to Article 13 of the Insurance Law. Therefore, insurance contracts are not invalidated if the non-disclosure of information or false statements by the insured is not due to bad faith, so only the insurers have the right to cancel or increase the insurance premium or pay for partial losses depending on the cases.

Good faith is sometimes a supporter of health and credibility by creating multiple

duties. The general duty of honesty and integrity is typically manifested by two categories of obligations, negative or affirmative (positive). Here, one should not deceive the other parties and abuse their positions in order to achieve a healthy and clear compromise, the necessary information should be thus provided.

The influence and application of the principle of good faith in the legal systems of different countries has not been the same. In some nations, the principle of good faith has been across-the-board and dominated all rights and duties. In some other cases, this principle has been utilized at the stages of interpretation and execution of contracts. Against this background, the place of this principle in the contracts based on the PECL and Iranian law was delineated in this study.

5 GOOD FAITH IN THE PECL

Like other legal systems, the PECL, explicitly give a positive response to the principle of freedom of contract in Article 1:102. To implement this principle, it is thus crucial to observe the principle of good faith and fair dealing. Therefore, the European legal system has given much validity to good faith as a principle and has accordingly established contractual provisions. Even in Article 1:201, it has been underlined to adhere to good faith and fair transactions, so concluding any contracts contrary to them have been prohibited. Given the intensity of the words applied for this purpose, this principle has a very broad meaning and function in the PECL, and its main objective is to use the common standards in contractual relations.

Although Article 1:201 has positively ruled the obligation to observe good faith, it has been stated in its second part that the parties cannot exclude or limit this requirement. As a result, observing good faith in the European legal system is one of the mandatory rules and signing any contracts in its contradiction has been assumed to be invalid.

In addition, Article 1:202 of the PECL highlights this duty and obliges the parties to pool resources in the full implementation of contracts. In order to guarantee the realization of this duty, Article 8:101 of the same principles has mentioned the methods of compensation in Chapter 9 of the PECL, in which the other parties are exempted from the execution of the contracts and even can terminate them and collect the damages. In Article 2:301 of the PECL, pre-contractual negotiations contrary to good faith have been further considered to be liable.

In general, the concept of good faith has taken at least three functions in the PECL:

Interpretative: As the contract terms and conditions often change significantly in practice and there are always some ambiguities, good faith is considered as a criterion of interpretation to protect the legitimate expectation of the parties. This is an efficient way to enforce the spirit of the deal and recognize the minimum principles of fairness and honesty.

Supplementary: Since the parties concluding contracts cannot declare all terms and conditions; good faith is an implied term to complete contracts by controlling the nature and scope of reasonable expectations.

Limiting: Good faith has a constraining function, for example, when a binding rule does not apply to the parties to a certain extent or is unacceptable to a reasonable person in certain circumstances; judges can apply this principle to limit the scopes.

Therefore, the concept of good faith can be linked to many provisions of the PECL, such as those that grant secondary duties and pre-/post-contractual liabilities. In this way, good faith, as the recognition of moral rights in law, acts as a comprehensive principle in the modern contract law. In the PECL, good faith and fair dealing are always combined in the same concept and often considered as the single law. Some scholars have also argued that the reason for this combination is the oversimplification of the relationships between the common law and the written law, as well as compliance with the legal principles of the common law in the PECL. The concept of fair dealing is partly related to the concept of fairness. Some scholars even maintain that the concept of fair dealing is a typical paraphrase of fairness from the Anglo-American world, and that fair dealing and equity are directly linked. In this study, they are respected as a single concept. The principle of fairness has further played a fundamental role in the EPCL convergence. Accordingly, the modern contract law has shifted from procedural fairness, which ensures no undue influence, to substantive fairness that is typically concerned with just outcomes. From the traditional viewpoint in which the main objective of contract law is to enforce contracts instead of ensuring their fairness has been thus criticized over recent years. Hence, the PECL recognizes the doctrine of fair dealing as one of the general rules required at all stages of the conclusion of contracts. This includes procedural and substantive fairness, described as follows.

Substantive fairness: According to the PECL, unfair terms and conditions that have not been individually negotiated are invalid. A condition that has not been independently agreed is thus unfair if it leads to a significant imbalance between the parties. This extends the application of the general clause of the EC Unfair Terms in Consumer Contracts Directive (1993). In accordance with the laws of most European Union member states, the doctrine of

change of terms and conditions is used to correct any unfairness resulting from information imbalance. The recognition of these doctrines thus reflects the shift from the classical to the modern concept of fairness.

Procedural fairness: In line with classical contract law, the PECL exploits the concept of fairness to scrutinize the bargaining process and ensure that contracts are the outcomes of procedural unfairness during negotiations through the doctrines of deception, misrepresentation, intimidation, and influence (Fu, 2009).

Analyzing the PECL, it is concluded that good faith has two general meanings and concepts, one is honesty, correctness, mutual cooperation, behavior free from deceit and fraud, avoiding lies, and the other is ignorance, whether to the subject or the sentence. In this regard, jurists, especially the French ones, have identified two general and independent meanings for good faith. The first meaning is correctness in legal actions and the second is misconceived and ignorable perception, which has been protected as a right. Based on these meanings, good faith has two independent functions. In the first sense, it governs as an enforceable rule in the conclusion, execution, and interpretation of contracts, and in the second sense, as a justifying legal basis, it supports the erring person and their ignorance (Deilami, 2010, p. 56).

In the PECL, good faith gives judges the authority to intervene in contracts and control them for the purpose of contractual justice, and sometimes directly allows them to complete the provisions of the contracts and create or remove some rights.

6 GOOD FAITH IN THE IRANIAN LAW

Despite the clarification of some principles governing contracts in the civil law, such as the principle of authenticity in Article 223 of the Civil Code and the principle of the necessity of contracts in Article 219, there is no ruling regarding the principle of good faith or the obligation to comply with it in the Iranian law. There is also no independent title in this regard even in jurisprudential sources, but there are some examples of behaviors contrary to good faith in contracts and preliminary negotiations, which cause liabilities. One example is najash, which means that a person starts transactions with another person without the intention of buying and increases the price, whether they have already coordinated with the seller or do so without any arrangement with the parties. According to Imamiyyah jurists, it is forbidden by the Islamic law in both cases. This prohibition is not only limited to sales, but

also applies to the revision of manat in all transaction contracts (Ansari, 1994, p. 355). For this reason, some believe that bad or good faith does not have determining effects on the validity of contracts in the Iranian law (Babaei, 2006, p. 2).

Nevertheless, the lack of a general text stating the observance of good faith cannot be considered as the cause of its complete denial and negation in the Iranian law. An overview of numerous laws proves this, including Article 33 of the Iranian E-Commerce Law, which stipulates that “goods sellers and service providers must supply consumers with information that is effective in making decisions to buy or accept conditions from an appropriate time before the contract” and Article 35 stating that “information must be provided based on the necessity of good faith in transactions”. In Article 50, it is affirmed that “suppliers should not commit acts or omissions that cause suspicion or deceive the audience in terms of quantity and quality in advertising their goods and services”. Other cases also show that the principle of good faith has been predicted but in a scattered manner in some rules and regulations. The main issue here is to examine its universality as a general rule. If good faith is accepted as a principle in the Iranian law, it can be extended to various aspects of contract law, such as the pre-contractual phases, or it should be limited to some stipulated cases if it is an exception (Shoarian; Torabi, 2010, p. 112).

Despite not specifying good faith as a principle in the Iranian law, all negotiations and legal relations are based on good faith, and this is the presupposition for contractual relations.

In many cases, disregarding honesty and good faith as well as committing deception and trickery in contracts face the guarantee of legal execution, including the right to terminate, as a clear example (Shoarian; Torabi, 2010, p. 82). There are also many other guarantees, mentioned as follows. For example, according to Article 218 of the Civil Code, transactions with the intention of escaping responsibility and just being formally declared are invalid considering that their conclusion must be done with honesty and correctness. According to Articles 11 and 12 of the Iranian Insurance Law approved in 1937, legislators assert the conclusion of contracts invalid due to the insurers’ bad faith. Although the need to observe good faith in concluding contracts is absolutely necessary, it is vitally important in insurance contracts in such a way that some legal scholars have considered good faith as one of the basic conditions for its validity (Ansari, 2012, p. 263). As stated by Article 549 of the Commercial Law, the invalidation of the arbitration agreement is considered by the judicial authority if there is fraud in the amount of assets or debts at the time of its conclusion. In Articles 426, 490, and 500 of the Commercial Law and Article 179 of the Maritime Law,

failure to keep to the guarantee of good faith invalidates the contracts. In Article 391 of the Commerce Law, compensation is also provided, and in Article 179 of the Maritime Law, the contracts are amended. Being deprived of civil rights in Article 40 of the Maritime Law and not being entitled to contractual wages have been also provided in Articles 349 and 370 of the Commerce Law (Shoarian; Torabi, 2010, p. 82).

7 CONCLUSION

Examining the role of good faith in legal systems, it was observed that good faith and fair dealing had been restated, and good faith had been accentuated in many provisions of the PECL. In other words, in the European law, the principle of good faith was a well-established rule as the main basis for the PCI disclosure. However, the principle of good faith had not been explicitly discussed in the Iranian law. Even in Islamic jurisprudence, as the basic source of the Iranian law, it was not possible to look for the exactly Western concept of good faith. Despite this, the pillars of good faith had been highlighted by Islamic jurists for *tadlis* (means to conceal defect, especially when the seller conceals the defect of one's goods from the buyer), to the extent that its variations, examples, and details could be seen everywhere in Islamic jurisprudence. Therefore, good faith had not been explicitly accepted as a general principle in the Iranian law, but had become the basis of many legal rules and regulations, indicating the acceptance of good faith in contractual relations. Although the implication of compliance (*viz.*, the implication of the word on the whole meaning of the subject) of the laws was not related to the principle of good faith, the implication of the obligation (namely, the implication of the word on the meaning) of the existence of such a concept was diverse and abundant. Liens, price delay option, and option for insolvency were the manifestations of good faith and the implication was based on the PCI disclosure. Even other rules such as the negation of distress and constriction and the necessity and validity of transactions could be thus justified on the basis of good faith. Therefore, the options of *tadlis*, loss, and deception according to which parties might cancel the transaction, were based on the spirit of good faith and justified. Thus, the flow of numerous examples of good faith in the Iranian law has turned it into a principle as the main basis of pre-contractual duty of disclosure.

From this perspective, good faith has been considered as a vital element in the modern contract law, as the PECL drafters have used it as part of the common core of the European contract law and the basic principle in the European legal system, out of which other rules,

including pre-contractual duty of disclosure have been derived. For example, the rule of non-prediction that causes the adjustment of the contracts is known as the product of the principle of good faith. On the other hand, in both legal systems, namely, the PECL and the Iranian Law, the PCI disclosure based on good faith has been validated in order to prepare the prelude to the conclusion of correct contracts with high efficiency and ensure their principle of freedom of contract and independence of will.

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