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A Closer Look at Discharge of Contractual Obligations in Iran

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Abstract: In 1928, the Iranian legal system was approached the Western and Roman-Germanic legal system formally, though it was coordinated with Islamic Law in content. There is no separate section under the title of contract law in Iranian Civil Code but most of the legal Articles related to the contract law are listed in contracts and obligations from the Article 183 onward. Articles 264 to 300 of Civil Code of Iran deal with the discharge of obligations. According to Article 264, obligations can be discharged in one of the ways including fulfillment of obligation, cancellation by mutual consent, release from the obligation, substitution of different obligation, set off and recoupment and acquisition of the debt. This paper aims to identify the legal system and discharge of contractual obligations in the civil law of Iran. This research study is of library type and uses descriptive methodology.

Key words: Discharge · Contract · Obligation · Legal System · Law · Iran

INTRODUCTION

Iran is a country located in the southwest of Asia and the Middle East, which after accepting Islam, Islamic Law has been used as a base for living. Since the early 19th century, due to the social developments in Europe and the Iranian government's weakness, a public movement against the governing autocratic political system was started and the Constitutional System was established in 1906 [1]. In 1928, the Iranian legal system was brought closer to the Western and Roman-Germanic legal systems, though this closeness was not carried out through denying the Islamic law. Besides, the sovereignty and free will principle was accepted in the Iranian Civil Code [2]. In Iranian Civil Code, there is no separate section under the title of contract law, but most of the legal Articles related to the contract law are listed in contracts and obligations from the Article 183 onward. Obligations are one of the most important issues that have found themselves a special status in private law, because, in their relationships, persons have certain rights and duties towards each other. Obligations that are created for people might be by their own consent or forced to them [3]. However, obligation must be ended at some point and the obligor must perform his duty and fulfill his obligation. This means that obligation is instable and it is hard to imagine that the debtor is indebt of the creditor forever. In fact, an obligation where someone takes its responsibility for another one's right will eventually end one day and this is more apparent in financial relations due to a contract.

This instability of the obligation has intended the Iranian legislators to dedicate the ending section of obligations in articles 264 thru 300 of the civil law to discharge of obligations. Obligations are created by different factors, but in what ways are they ended. Therefore, an obligation does not remain effective forever. This part of the Civil Code of Iran structurally follows the French Civil Code; however, attempts have been made to keep the contents in agreement with the laws of sharia. According to Article 264 Civil Code of Iran, an obligation can be discharged in one of the ways including fulfillment of obligation, cancellation of mutual consent, release from the obligation, substitution of a different obligation, set off and recoupment and acquisition of the debt. The Iranian legislator proposes six factors for the removal of obligations. This study is of library type and uses descriptive methodology to identify the legal system and discharge of contractual obligation in Iran.

Fulfillment of Obligation: Fulfillment means to carry out or satisfy a promise. This word was traditionally used at the time of Mohammad in relation to testament, pact, oath and condition [4]. Fulfillment of an obligation means to

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make good a pact for which phrases such as "payment of debt" and "execution of obligation" may be used [5]. Fulfillment of obligation is done by paying what has been promised. Therefore, if someone gives another some property that they have not done so gratuitously but that they are paying off their debt to the other party. Something without doing so as the payment of a debt, they may take the thing back [6]. Fulfillment of obligation is the most common way to remove the same, because both parties will get what they expected by entering into the contract and undertaking obligations in this way. If the obligation includes the transfer or submission of property doing an act, the obligation will be removed by such transfer or doing. It should be noted that in the discharge of obligations, there is no difference between the intentional and forced fulfillment of obligation [7].

Taking into account the above on fulfillment of obligation, it is necessary to clarify what its nature is; is it a contract subject to the general rules governing contracts? Or, is it a unilateral legal act with no need for the agreement of the other party? Or, is it of a nature other than contract or unilateral legal act? These questions make us try to determine the nature of fulfillment of obligation before anything. Although the importance of this is not deniable, no indication is made to it in the existing world laws and legal systems [8]. However, the results of the different definitions indicated is paying attention to the following points which will contribute to the understanding of the meaning of "fulfillment of obligation".

- Fulfillment of obligation entails liberation of obligor and discharge of obligation.
- It makes no difference whether the cause of obligation is a contract or something else.
- Fulfillment of obligation includes both the international and forceful execution of the obligation.
- The object of obligation in fulfillment of obligation is not necessarily the performance of an action; it could be the ceasing of an action.
- Fulfillment of obligation may include full performance of it or part of it. It also includes an unacceptable or erroneous execution of the obligation because, as believed by most Islamic legists, words are used for any type of meaning [8].

There needs to exist four main pillars for the realization of fulfillment of obligation. If all those four bases exist correctly, fulfillment of obligation will realized in a full, comprehensive way and the debtor will be freed.

Those pillars are:

- Fulfiller who has undertaken to pay the debt, also called the payer.
- The person to whom the obligation is paid, called the receiver.
- Object of payment, i.e. the right which the obligor is required to pay.
- Time, place and cost of payment.

Fulfillment of obligation or execution is the best normal way to discharge an obligation [9]. Discharge of obligation cannot be realized unless by observing the conditions set by civil code. The conditions may be related to the parties to the contract or the object of execution or quality of execution of obligation in any case the most important effect of fulfillment of obligation is its discharge and release of obligor.

Cancellation of Mutual Consent: Another way of discharge of obligation is by mutual consent [10]. Cancellation of contract by mutual agreement is in fact the opposite of contract. It is evident that the main element in mutual cancellation is the consent of both parties and that is why it is called mutual. Some Islamic jurisprudence experts have neglected this cancellation of contract by one of the parties upon request of the other [11]. But this cannot be a correct understanding of Ikala because a request alone does not make mutual consent but both parties have to express their consent equally. Evidently, the request of one party may precede the other's consent which is something natural in developing a legal effect without is being considered a priority for the party who offers the request [12]. Imagine that someone buys something at a stone and takes it house. Then, they change their mind and return the object. The seller accepts the return and gives back their money although they had no obligation to cancel the transaction. Here, mutual consent has led to discharge of contract and if one party has given the other some money, the money will be returned to the original owner [13]. Article 283 Civil Law of Iran states in this regard. There must certainly exist some essential elements for the realization of cancellation of contract by mutual consent. The most important pillars of mutual cancellation are "intention and consent of both parties", "parties capacity", "subject of cancellation" and "means of manifesting intention [7].

The comment by Islamic jurists and hadiths on cancellation of bargain and legal articles on that one may conclude that the principle is execution of cancellation of

bargain in all contracts and transactions unless a contract is excluded due to a good reason. It should be noted that most Islamic jurists have accepted this theory. Therefore, according to this principle, evidence must be sought that exclude certain contracts from this principle otherwise cancellation of bargain will definitely be effective on contracts on the same basis with no need for other reason. But if we say that effectiveness of cancellation in contracts is contrary to the principle, we will cannot prove with good reason for each and every type of contract so that cancellation of bargain will be realized in them and the mere absence of enough evidence is enough to say that cancellation of bargain is not effective in that contract [8]. Anyway, it seems that the opinion accepted in Islamic jurisprudence and consequently in Civil Law is the first theory because cancellation of bargain is challenged only in three types of contract namely marriage contract, charitable endowment and guarantee [7].

Release from Obligation: The term "release" means to set free. In Islamic jurisprudence, Ibra refers to termination of an obligation by intentional waiver of one's rights [7]. In legal terminology, Article 289 Civil Law of Iran has defined release from obligation in which release from an obligation takes place when a creditor voluntarily waives their claim. This definition is not clear-cut because waiving a right is not always release from obligation [10].

Release from contract is unilateral. Release from contract, like waiver, is a kind of unilateral legal act. Therefore, it does not require the debtor's will and is realized only through the creditor's intention [12]. Even the rejection of release from contract by debtor does not invalidate it. Even the rejection of release from contract by debtor does not invalidate it. For release from contract to be a unilateral legal act, it can be understandable from Article 289 Civil Law of Iran that the writers of Civil Law of Iran have followed the well known idea of Imamia jurists in this regard [14]. Some other Islamic jurists including Sheikh Tousi in Mabsut and Ibni Zuhra in Ghunya have considered release from obligation subject to a contract and acceptance by debtor because release from a contract includes a favor for the debtor without whose acceptance it cannot be realized. The nature of release from contract in Imamia jurisprudence is as the following:

No corpus is displaced in release from obligation; however, it entails some effects the first most important of which is freedom of debtor [15]. This discharge of a debt is only some with creditor's intention and makes legal act realize as unilateral legal act. Secondly, release from obligation is in fact a creditor's favor for the debtor; there is no payment made by debtor that is why release from obligation is called a discharge of unpaid debt. Thirdly, release from obligation may include part or the entire obligation and if it includes only a part, the debtor cannot reject it and ask for release from the whole debt. For example, if a wife releases a husband from half of her marriage portion, the husband cannot reject it or take this offer as release from the whole marriage portion. Release from obligation adequately discharges an obligation and frees the debtor against the creditor and after that, as opposed to the cases normal to gift contract, the creditor cannot revoke the release and ask for the payment of their due unless release from obligation is placed under a condition which with a presupposition of credit, in case of breach the creditor shall have the right to revoke.

Substitution of a Different Obligation: According to Article 183 Civil Law of Iran, what is meant by obligation is the legal relationship between two or more persons according to which one of them (debtor) against the other (creditor) is required to do something or not to do something [16]. The expression and equal structure of "substitution of obligation" is a Roman heritage that has remained in the laws of many countries. In the epoch, when obligation was understood as the legal relationship between two persons (creditor and debtor) and was not negotiable and whenever a need was felt for the change or transfer of obligation, both parties along with other beneficiaries had to terminate the obligation and place the obligation they sought in its stead. Then, according to [17] Gharachedaghi (2001), for any change in the existing state of obligation, two separate legal acts are required. They are (i) termination of existing obligation and (ii) development of a new obligation instead [18].

An obligation is a legal relationship between two persons according to which the oblige may force the obligor to pay an amount or transfer something or do or not to do something, the effect of obligation (even some) may mature at the same time as the contract as in sale contract (Article 338 Civil Law of Iran) which is manifested right upon the completion of offer and acceptance of ownership (which is a result of transfer obligation) (Paragraph 1 Article 362 Civil Law of Iran) and it might be manifested later like contractor's obligation to build a house according to a specified plan. Therefore, the transfer of property in contracts is impossible without an obligation (Article 1138 Civil Law of France). Substitution of obligation as can be understood by its name occurs when an obligation substitutes another and destroys the

first [11]. Therefore, substitution of obligation is a contract and just like any other bilateral legal possession the realization and effects thereof depend on the pronunciation of formula for offer and acceptance only as opposed to contracts such as sale and lease the parties are not always constant but in some cases it depends on the consent of three persons. When we analyze substitution of obligation, we find out that in it there are two legal acts the occurrence of each entails the other and neither one is not intended by the contract independently. One of the two includes the discharge of an obligation that existed before and the other includes the development of a new obligation instead of the first one [19]. A substitution of obligation realized with all its conditions for validity entails the two effects (i) discharge of the old obligation and institution of the new one and (ii) discharge of old debt's guarantees and consequence [4].

Set off and Recoupment: Civil Law of Iran mentions "set off and recoupment" as one of the ways to discharge an obligation and says in Article 294 that "when two parties are indebted to one another, a set off may be effected regarding their mutual debts in the ways explained in the following articles. Set off consists of the discharge of two debts or two groups of debts that two persons have one against the other to the least amount of those two [7].

The term set off and recoupment enumerated as a cause for discharge of obligation in Article 264 Civil Law of Iran equals the worالمقاصهd in Arab countries laws and compensation in the French law. The term set off and recoupment has also been used in Islamic jurisprudence alongside the wordتقاص both of which are Arabic [8]. In Persian, the term set off and recoupment has been used with the following meanings: "unrightfully claim one against another"; "claims of two persons against each other where both are unrightfully"; "transaction in kind countries"; "trade in kind"; "barter" [4].

The most important effect of set off and recoupment is preventing unwanted repetition in fulfillment because if no set off and recoupment occurs, it will be necessary for each party to provide, if applicable, court, weigh, etc the debt and deliver it to the other party which itself requires spending time and money. Additionally, in some cases, "set off and recoupment" makes the creditor sure of the collection of dues because in this case neither party may refrain from paying their debt after receiving their dues. In Article 190 Civil Law of Iran, they may ask for its non-coverage or non-occurrence before it is realized. Another effect of set off and recoupment is that upon its occurrence, the parties status changes because their debts are removed and they are freed for which no claim will remain and neither party may act to collect. Moreover, the guarantees of both debts will be removed because with set off and recoupment, discharge of debts which are principal to the guarantees will be removed as well and there will be no place for the peripherals [10].

In legal texts, "set off and recoupment" has been divided into three types namely automatic (or legal), contractual and judicial [11]. As we pointed out, barter exchange is in principle automatic and an agreement of the parties or judge's decision only pave the way for automatic set off rather than being different categories. Therefore, whenever "set off and recoupment" is mentioned absolutely, it means automatic because the writers of legal books normally divide "set off and recoupment" into three following types [7].

Automatic (Legal) Set off and Recoupment: The origin of this type of barter exchange is the rule of law. The parties' consent or its absence does not lead to or prevent set off and recoupment.

Contractual (Optional) Set off and Recoupment: On civil laws of different countries, only automatic set off and recoupment has been dealt with discussing barter exchange without mentioning the judicial set off and recoupment.

However, in Islamic jurisprudence texts, there has been more or less the mention of the parties consent as a prerequisite for set off and recoupment. A contractual barter exchange is when two debts do not have the conditions for set off and recoupment completely and the differences are discharge through the intention of one or both parties to the obligation and preparation are made for set off and recoupment to be realized.

Judicial Set off and Recoupment: Whenever a lessee or other claimant fails to pay the debt of the other party by filing a suit and the court establishes the debt of the creditor by processing the case, it may order for set off and recoupment for the smaller amount [8].

Acquisition of Debt: The acquisition of a debt occurs when someone is both debtor and creditor on the same object, that is one can be referred to as both debtor and creditor. In such a presumption, it is impossible to fulfill the obligation because one owes and is creditor as well to them and it would be meaningless for them to ask

themselves for their dues. In this case, it is said that the debt has expired due to acquisition of the debt. Paragraph 6 of the Article 264 Civil Law of Iran and Paragraph 5 of the Article 1234 Civil Code of France have both mentioned “acquisition of the debt” as one of the factors for discharge of obligation of debt that occurs when a child owes their father and the latter passes away [20]. Naturally, the child becomes, as heir to their father the owner of the estate including the debt that their father has to them. I.e. the child is debtor to their father on the one hand and his representative to pay his debt to themselves on the other hand. Thus, the child has become the owner of a debt that binds them. The automatic result of this interaction is freedom of the child from the debt they had [8].

The origin of acquisition of debt could be either automatic or international. Death is an automatic cause for acquisition of debt and, as a result, the discharge of obligation existing between the testator and heir. An automatic acquisition of debt usually constitutes this cause of termination of obligation. The international origin of acquisition of debt is a contract concluded by and between the debtor and the creditor and causes a transfer of debt from creditor to debtor like gift of debt to debtor (Article 806 Civil Code of Iran; [7].

Acquisition of debt is actually limited without much importance because when someone is simultaneously debtor and creditor over the same object, this means that they just pay there debt as obligor and receive it as obligee. Acquisition of debt happens less frequently than other causes of discharge of obligation and can be realized only through one of three ways (i) by inheritance, (ii) by testament and (iii) by contract and agreement.

The most important factor leading to acquisition of debt is death of testator which can be imagined in one of the two ways: (a) both the testator is creditor and heir debtor or (b) the testator is debtor and heir. Just as acquisition of debt occurs by death of testator, it can also be realized through will and testament. In this case, the involved party has the same situation as that of heir, i.e. the obligor’s obligation is removed in the basement. Acquisition of debt through mutual agreement and contract of debtor and creditor rarely occurs [10].

CONCLUSION

Since the early 19th century, due to the social developments in Europe and the Iranian government’s weaknesses, a public movement against the governing autocratic political system was started and the Constitutional System was established in 1906. In 1928, the Iranian legal system was brought closer to the Western and Roman-Germanic legal system, though this closeness was not carried out through denying the Islamic law. The Iranian Civil Code drafters regulated the chapter of contracts and obligations by derivation from the French Civil Code and the Roman-Germanic law and simultaneously taking into consideration the Islamic law. Thus, in terms of form, the contract law is close to the Roman-Germanic (French) law, while in terms of content, it is coordinated with the Islamic law.

The aim of legal rules and regulations is regulating social relations and contract has a very important role in attaining this aim. No one can consider oneself needless of contracts. According to Article 183 Civil Code of Iran, contract consists of one or more persons taking on something against one or more other persons accepted by them. Contract is the result of two or more wills and the result of an agreement is obligation. Obligations can be considered the central article of Civil Code of Iran. According to Article 264 Civil Code of Iran, obligations can be discharged in one of the ways including fulfillment of obligation, cancellation of mutual consent, release from the obligation, substitution of a different obligation, set off and recoupment and acquisition of the debt.

Article 264 Civil Code of Iran has been adopted from Article 1234 Civil Code of France with some changes to compromise the foreign gift with the Iranian legal system. No definition has been given for obligation in the Iranian law, but in the laws of countries following common law, the execution of obligations has been dealt with under the title performance. Fulfillment of obligation is the easiest and the most natural way an obligor may use to free themselves of their obligations. That is, is fact, by fulfilling their obligations, the parties to a contract finishing it at where they expected to finish it in the beginning. All legal schools emphasize fulfillment of obligation in contracts and transactions. An obligation to be fulfilled by a person is sometimes the result of a contract and sometimes other than contract. Paragraph 1 of Article 264 Civil Code of Iran considers fulfillment of obligation as one of the causes for discharge of obligations meaning when an obligor fulfills their obligation, the obligation will be removed. There must exist four main conditions for the realization of fulfillment of obligation namely (i) fulfiller, (ii) receiver, (iii) object of payment and (iv) place, time and cost of payment.

Some have considered fulfillment of obligation equivalent to payment of debt. Paragraph 2 of Article 264 Civil Law enumerates cancellation of bargain by mutual

consent as a way to discharge of obligations. Islamic jurists have different ideas about the nature of cancellation of bargain. The main part of cancellation of bargain is consent of the parties to cancellation. Another characteristic is that it is an irrevocable contract. In a revocable contract, each party may cancel the contract without good reason, but in an irrevocable contract, it is necessary for both parties to consent. Cancellation by mutual consent can be done in any contract unless specified contract does not follow suit for good reason. All Islamic jurists believe that marriage contract does not follow cancellation of mutual consent. The third cause for discharge of obligations is release from contract where the creditor relinquishes their dues by their own will. The freedom of debtor is the main natural effect of release from contrary entailing of other effects.

Articles 264 and 290 Civil Code of Iran clearly refer to these effects. Iranian legal system considers release from contract a unilateral legal act saying that the creditor's intention is enough for its realization without giving a part to debtor's consent since Article 289 Civil Law says that release from contract occurs through the intention of creditor to waive alone. The fourth cause for discharge of contract is substitution of obligation that no definition for which has been offered by Iranian law. It removes an old debt by substituting a new one. In fact, substitution of obligation is a combination of two legal acts namely discharge and development of contract.

Another cause mentioned in the Iranian Civil Code for discharge of contracts is "set off and recoupment". It is both a means to fulfill an obligation and a type of guarantee making creditor sure of the collection of their dues. In Iranian legal system set off and recoupment occurs when the subject of the two debts is the same in terms of material, kind and attribute. Any difference in one of these three will prevent set off and recoupment from happening. Acquisition of debt is the last cause for discharge of obligation and is realized when someone is both debtor and creditor over the same debt. Paragraph 6 of Article 264 Civil Code of Iran mentions acquisition of debt as the last cause for discharge of obligations. The most frequent case f acquisition of debt is when a child owes to their father and the latter dies naturally and the child who is the only heir will be owner of his estate including the debt his father had. Acquisition of debt occurs less frequently than other cases of discharge of obligation and happens only in one of three ways including (i) by inheritance, (ii) by testament and (3) by contract and agreement. Article 300 of Civil Code of Iran deals with the acquisition of debt.

In summary, discharge of obligation constitutes an important legal issue dealt with articles 264 to 300 Civil Code of Iran. The theory of discharge of obligation as offered in Civil Code can be criticized in different aspects because the way they are argued in Article 264 are defective of discharge of obligations, that is, if we are supposed to indicate all direct and indirect causes, we have to accept that Civil Code has neglected many causes. For example, if a unilateral legal act causes an obligation to be terminated, why cannot cancellation of contract, impossibility to fulfill the obligation, perish of object of contract, death of either party? Ambiguities, incorrect combination of law and Islamic sharia and inappropriate classification are some of the defects in the theory of discharge of obligations in Civil Code of Iran.

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