The Social Sciences 8 (5): 412-420, 2013
ISSN: 1818-5800

Discharge of Contractual Obligations in Civil Code of Iran

[1]Mehdi Pirhaji, [1]Sakina Shaik Ahmad Yusoff, [1]Suzanna Mohamed Isa and [2]Mahmoud Jalali
[1]Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia
[2]Department of Law, University of Isfahan, Isfahan, Iran

Abstract: Discharge of contractual obligations is one of the most important legal subjects and Articles 264-300 of Iranian Civil Code are devoted to this issue. Discharge of obligation is termination of commitment as a result of legal means. These means are classified in Article 264 Civil Code of Iran as the following namely; by fulfilment of obligation, by cancellation of bargain, by release from obligation, by substitution of obligation, by offset and recoupment and by acquisition of debt. Legislators of Iranian Civil Code have extracted this article from Article 1234 French Civil Code with some changes. Iranian law was dramatically under the influence of two legal Islamic and Roman-German systems. This matter led to approaching the form of Iranian Civil Code to the French Civil Code and its content to the Islamic law. In legislating Iranian Civil rights, two movements of Islamism and modernism were combined with each other but this extraction and structural imitation with all of its features contains many problems and ambiguities. In this study, the data gathered is of the library type and the research method is analytical. This study can be of benefit for law students, attorneys and judges aiming to help them better understand the discharge of contract law in Iran.

Key words: Contract, discharge, agreement, obligation, legal system, Iran

RESEARCH BACKGROUND

Iran, literally means the land of Aryans, is a country in Southwest of Asia and located in the Middle East which after accepting Islam has used Islamic law as a criterion for living (Zarini and Hazhirian, 2009). Since 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 West as well as the Roman-Germanic legal system, though this closeness was not accompanied with denying Islamic law. The Iranian Civil Code writers regulated contracts and obligation chapters through deriving from the French Civil Code and the Roman-Germanic law while considering the Islamic jurisprudence and law.

Therefore, Iranian Civil Code is close to Roman Germanic (French) law in terms of formation while it is coordinated with Islamic law in terms of content. According to Article 183 of Iranian Civil Code, a contract is made when one or more persons make a mutual agreement with one or more persons, on a certain thing which they consent to (Bonakdar, 2005). An obligation is a legal relationship which results in transferring property (merchandise or money), performing or refusing an act or voiding an action. The person who accepts to perform an act or to refuse an act for another is called the obligor and the obligation's beneficiary is called the obligee and the obligation matter (act or refuse an act) is called the object of obligation (Al-Sanhori, 2009).

In the Iranian law, agreement or mutual consent is occasionally used as a synonymous concept with contract. Contract by definition is a kind of agreement because for creating any contract, the agreement implied of two or more persons is needed but it is noteworthy that all agreements are not considered as a contract. For example, if one of the lawsuit parties admits to creating a right in the past and the other party confirms his statement, this agreement should not be considered as a contract. Besides, transaction and agreement are synonymous and are mostly used instead of contract in the Iranian Civil Code. Transactions are divided into two categories of financial and non-financial. Now-a-days in the Iranian legal literature, financial contracts are called transaction and non-financial contracts are called agreement or contract (Ghasemzadeh, 2009).

According to Iranian Civil Code, discharge of non-contractual obligations is defined as obligations that are discharged without contract and independently by some factors including usurpation, deliberate destruction, indirect destruction and taking advantage. Discharge of contractual obligations is considered for obligations that

Corresponding Author: Sakina Shaik Ahmad Yusoff, Faculty of Law, University Kebangsaan Malaysia, Bangi, Selangor, Malaysia

are discharged based on the contract including the factors which are mentioned in Article 264 of Civil Code of Iran. Willingly or unwillingly, obligations must end at some point; the obligor must perform his duties and release him from undertaking. This means that an obligation is non-eternal and it cannot be imagined that the debtor is indebt of the creditor forever. In other words, the principle of clearance of an obligation and indebtedness is an essential matter that will not be permanent. Here, the main question is "how an obligation ends". Before answering this question, two issues are propounded:

- What is Islamic Law?
- What is Roman-Germanic Law?

Researchers discuss these two topics and their relevance to the main issue. In this study, the data gathered is of the library type and the research method is analytical. This study can be of benefit for students, attorneys and judges aiming to help better understanding discharge of contract law in Iran.

ISLAMIC LAW

Islam is essentially a religion of law. According to Berg Schtraser, Islamic law is the essence of real spirit of Islam, the most definite representative of the Islamic ideology and the primary core of Islam (David, 1999). It is well known that Islam is not only a metaphysical belief but it offers a system and scheme of life which has logical unity (Abdulhakim, 1993). Unlike the American legal system which is secular, the Islamic legal system is of a religious nature. Islam is both a religion and a social order. As such, it comprises rules concerning devotional obligations as well as rules regulating civil and commercial relations. According to Islamic beliefs, these two types of rules are of a divine origin (Mattar, 2011). Any country in the world has its own particular law or even several different laws executed simultaneously and this is a point that should be considered when studying the legal systems.

This religion on one hand, consists of public instructions that determine the religion's principles and what a Muslim must believe in and on the other hand, it entails a part called Shar'e (divine law) which determines what a Muslim should and should not do, Shar'e or Sharia, literally meaning a path that should be followed, is what we call Islamic law (Akgunduz, 2010). In the Islamic law, since some legal and mandatory rules are usually sought, one primarily attempts to explore the divine will which is the primary basis. Every Muslim must directly or indirectly attempt to explore such a will (Daneshpajouh, 2010).

The Quran is the most important resource for Islamic law. The second main resource is Sunnah, reason and consensus of opinions are two other resources of Islamic law and they are used where there are no explanations in sharia. The importance of Islamic law is completely obvious in the Iranian legal system (Vogel, 2000).

Discharge of obligations is one of the most important legal issues which do not have any definite title. The problems of discharge of obligations can be extracted through different jurisprudent topics such as marriage, fulfilment of the obligation, cancellation of the bargain, death, loss of obligation subject and changing them to the modern and current forms of today.

Islamic law in Iran: After the establishment of constitutional government and the creation of legislative assembly in Iran, theoretically law and Islam became two separate systems. In other words, law commanded and Islam supervised but in action, these boundaries were not stable. On the one hand, along with accustomed courts that had general jurisdiction for handling claims based on law and custom, in some cases especially family affairs (marriage and divorce), the Islamic court was also qualified to handle such cases and started to completely execute the Islamic jurisprudence. On the other hand, the Islamic jurists' supervision over legislation did not last very long and it was never completely established and the assembly's obedience of the Islamic orders was dependent upon the political and social conditions. In this era, one of the sources for Islamic law was the legal writers' and law experts' opinions who sought the fundamental principles of Civil Code in Islam. By a glance at the Civil Code books, it is clearly revealed how the traditionalists tried to incorporate Islam in their books and to use it as a primary section in the legal system.

Currently, the Islamic law is one of the official resources for law in Iran which according to the constitution, it rules other regulations as well (Ghazi, 2011). At the present, the skeleton of the constitution's divisions such as public law, trade law and private and public international law is the result of Western ideology because the order of these divisions has risen from the new civilization and they are the life demands in the current international society so that it cannot be expected that they stay completely Islamic and unaffected.

The Iranian judicial procedures' role in creating association between law and Islam has also been dramatic. In incomplete series provided from the Supreme Court orders, many orders inspired by Islam can be seen and the trial's tendency towards an interpretation that makes law closer to Islam is obvious. In the Iranian legal system, the two waves of Islamism and modernity are sometimes interlaced and sometimes afar. The 1978 revolution of Iran chose the victorious power. The Islamic Republic of Iran's constitution officially brought the Islamic law to life and used other legal institutions at the service of this goal. The fourth principle of the constitution explicitly states that all civil, criminal, financial, economic, administrative, cultural, military and political rules and regulations and all others, must be based on the Islamic standards.

ROMAN-GERMANIC LAW

The written law is one of the most important large legal systems which has dominated a large part of Europe, Central America, South America and some parts of Asia and Africa (Collins, 2008). The written legal system, often called the Roman-Germanic or civil system, is rooted in Roman law which consists of a set of Justinian civil rules that was developed in Europe and then influenced many other countries in the world (Shiravi, 2010). Particularly, the Roman laws were modelled on the ground breaking French Civil Code from 1804 (Code Napoleon) which conquered Europe's realm of ideas as the Napoleonic armies conquered the countries.

According to the Roman-Germanic law, the obligation will discharge through following factors namely; fulfillment of payment, substitution of different obligation, release from the obligation, set off and recoupment, acquisition of the debt, perishing of object of contract, annulment or cancellation of contract, realization of contract and lapse of time.

The Iranian legislation considers cancellation of bargain a factor for termination of du obligation whereas no such factor is included in Civil Code of France. Iranian law has then arbitrarily chosen 5 out of 9 factors in Article 1234 of Civil Code of France (Shahidi, 2009). Scientifically speaking, the age of Roman-Germanic legal system is the 13th century, before which surely there existed elements for establishing a legal system; however they could not be considered as a system or even law. The first period in the 13th century was started with reconsideration of Roman law in universities; this is a fundamental phenomenon whose scope and concept must be determined. During 5 centuries, law doctrine governed the system and mostly influenced over law execution and helped to its development in different countries. Innate rights provided the conditions for developing the next period which we are still living in; a period in which law rules the system (David, 1999).

The significant position of judicial procedure in the Roman-Germanic legal system is one of the distinctive features that it has versus the common law. Emphasis on the exclusive role of law has caused for the judicial procedure to be avoided as the primary source of law; consequently, judicial procedure is only formed in relation to law and lawyers always refer to the text of law. Reseachers should note that although judicial procedure has also some role in the family of Roman-Germanic system, yet it is never considered equal to law. In this system, the major role of law is codifying general regulations for people's future performance or conduct. The ideology of Roman-Germanic law is summed up as follow:

- Legal system unity; according to which law has unity across the country
- Law origin unity; according to which the law is aroused from the legislative or public representatives
- The evolved feature of law; according to which the legislator expects all social and even familial relations to be under the rule of law

Among the countries adopting the Roman-Germanic law, France is considered a typical one because it has had a deep influence on changing the written legal system, developing it throughout a large section of the world (Shiravi, 2010). The Iranian legal system's tendency towards Roman-Germanic law and the fact that it has derived its law from countries such as France, Belgium and Switzerland are undoubted realities. However, what should be noted is that this legal closeness is due to the fact that the structure of the Roman-Germanic legal rules is close to that of Islamic law, although there is a difference between the Islamic legal system and the Roman-Germanic legal system. Iran is a country which has adopted the Islamic law and Islamic law principles based on divine revelation (Quran).

On the other hand, the Roman-Germanic law is codified and written and in this matter it is close to Islamic law which is codified and written as well, although they are different in nature. In the Roman-Germanic law, rules are the primary reference for courts while judicial procedure, custom and doctrine are placed as secondary resources. In the same way in Islamic law, Quran and Sunnah are the primary resources and other resources; such as consensus of opinions, reason and judgment (in Shiite jurisprudence) are regarded secondary in terms of importance.

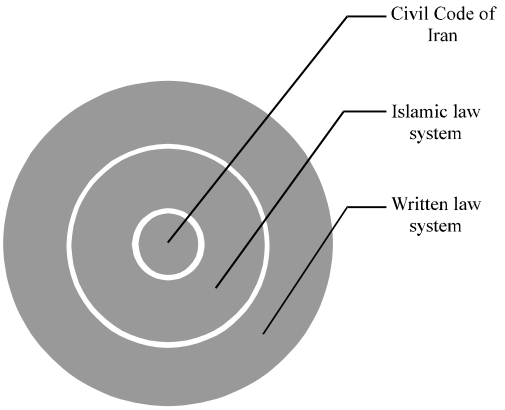

Fig. 1: Civil Code of Iran, Islamic and written law system

Figure 1 reveals that Civil Code of Iran is a combination of Islamic law and written law. Civil Code of Iran in form is according to Roman-Germanic law and in content is compatible with Islamic law (Fig. 1).

AMBIGUITIES ARISING FROM DISCHARGE OF CONTRACT LAW IN IRAN

Articles 264-300 of Iranian Civil Code are concerned with discharge of obligations. This section of Iranian Civil Code structurally follows French Civil Code. However, attempts have been made to keep the contents in accordance with the Sharia rules (Islamic law). Since long time ago, Islamic law has been one of the most significant resources of legal arrangements in Iran (Javan-Arasteh, 2009). According to fourth principle of constitutional law of Iran, all regulations and rules should be compatible with Islamic law. On the other hand, the principle of 160 of Iranian constitutional law also introduces that as category of official and complementary resources of regulations in Iran. The legislator of Iranian Civil Code has made his attempt to propose rules and regulations that have no contradiction to Islamic Sharia. Illustratively, the Articles 264-300 of Iranian Civil Code are allocated to the topic of discharge of obligations and the effect of Islamic jurisprudence in its adjustment is undeniable. For instance, the factor of cancellation of bargain is exactly originated from Islamic jurisprudence and it has been added as second clause of Article 264 of Iranian Civil Code (Safaei, 2008).

According to Article 264 Civil Code of Iran, obligations are discharged in one of the six ways namely:

- By fulfillment of obligation
- By cancellation of bargain
- By release from obligation
- By substitution of a different obligation
- By offset and recoupment
- By acquisition of the debt (Mirzaee, 2009a, b)

The Iranian legislator has proposed 6 factors for discharge of obligations whereas Article 1234 of French Civil Code lists 9 factors leading to discharge of obligations. These factors include:

- Fulfilment of the payment
- Substitution of the obligation
- Release from the obligation
- Set off and recoupment
- Acquisition of the debt
- Loss of the contract subject
- Annulment or cancellation of the contract
- Fulfilment of the contract
- Lapse of time

The Iranian legislator considers cancellation of bargain as a factor for discharge of obligations whereas; such factor is not included in French Civil Code. The Iranian law has then specifically chosen 5 out of 9 factors from Article 1234 of the French Civil Code (Shahidi, 2011). Here, the factors for contractual discharge of obligations in Iranian Civil Code will be analysed in different aspects. The following problems can be considered in regards to the contractual discharge of obligations in Iran.

The problem of definition and classification: In regulating Article 264 of Iranian Civil Code, the Iranian legislator has not offered definitions for some factors of discharge of obligations such as:

- Fulfilment of obligation
- Substitution of the obligation
- Set off and recoupment

Moreover, the Iranian legislator has not even mentioned on what basis it has obtained such categorization for these 6 factors of discharge of obligations. Later on, this led to some ambiguities in understanding the Article 264 of the Iranian Civil Code in regards to discharge of obligations.

Lack of definition: In written law, presenting an accurate and obvious definition for what legislator means is a significant issue because legal problems will be clarified through legal articles and in courts the issue of all judicial verdicts is based on these definitions. For this reason, from a long time ago, proposing exact description of legal articles have been considered as an important matter.

When a legislator approves and presents a new article, he should convey his meaning and purpose by an appropriate statement. However, since these definitions have not been presented in basic order and have some ambiguities, they cause some legal disputes and diversity of opinions in issuance of verdicts in the courts (Bahrami and Ahmadi, 2007).

Therefore in presenting legal articles, the legislator, in the first step should state his objectives by clear definitions. Article 264 of Iranian Civil Code which is about discharge of obligations lacks this kind of description then it results in different interpretations and diverse verdicts in the courts of Iran. The 6 clauses of the Article 264 of Iranian Civil Code include fulfilment of obligation, cancellation of bargain, release from obligation, substitution of obligation, offset and recoupment and acquisition of debt. In this article, the Iranian legislator has just explained offset and the other clauses are ambiguous and unclear. This ambiguity led Iranian courts to have different interpretations and issue various verdicts because they have indefinite impressions form the meanings of legal Articles. The Articles 265-300 of Iranian Civil Code include contradictive verdicts which are resulted from lack of mentioned definitions.

For instance, the ambiguity that has occurred in Article 265 of Iranian Civil Code is as follows. According to the mentioned article, if anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another while he is under no obligation to do so, he can ask for the return of such property.

The first sentence of this article is a common expression which includes both the payment of debt and the submission of property of another one. In this case, due to the lack of definition from the legislator, there are some disagreements because in this article, it is not clear that which one should adduce evidence in the court. The defendant of claim should adduce that is not debtor or the plaintiff should present that is creditor or he has granted the property to another mistakenly or due to every reason. This discrepancy even caused the issuance of different verdicts in Supreme Court of Iran. For example, the verdict 723 issued in the 3rd office of Supreme Court in the date 26/January/1993 presented that plaintiff should adduce an evidence and on the contrary the verdict 348 which has been issued in the18th office of Supreme Court in the date 25/August/1994 presented that defendant should adduce an evidence.

Among the greatest law thinkers of Iran, Katouzian (2006) agrees with the former verdict and on the contrary, Shahidi (2011) does agree with the latter one.

Inappropriate classification: One of the characteristics of an acceptable classification is its high application. It should be adjusted in a manner that contains all the factors and details of considered law inclusively. The Article 264 of Iranian Civil Code basically has some shortcomings in this case because it lacks a perfect and comprehensive classification. When we mention the discharge of obligations, we have applied a general expression meaning that when an obligation discharges, sometimes there is no consequence, sometimes the previous obligation will be substituted and sometimes, it will not be performed then it will be discharged. By this definition, researchers can present a general classification that includes all types of available discharge of obligations and removes all the ambiguities and incomprehensible matters.

The classification of causes of obligation discharge is criticized from different aspects because all the causes of discharge of obligations which are accepted in other articles by Iranian legislator are not included in Article 264 of Iranian Civil Code. For example cancelation, termination of contract condition, destruction of obligated property, impossibility of the obligation act, divorce and lapse of time are the factors of discharge of obligations which are not mentioned in this article (Shahidi, 2009).

The Articles 387 in sale contract, 496 in rent contract, 649 in debt contract, 757 in peace contract, 798 in donation contract and 556 in profit-sharing contract are about discharge of obligation resulted from destruction of property and the Articles 239 and 240 of Iranian Civil Code have accepted the impossibility of act as a factor of discharge of obligation. The option of cancellation is a legal act and essentially, it is a kind of unilateral legal act. It will be created by law, contract and mutual consent and will be performed unilaterally. The right of cancellation has been accepted in Articles 355, 384 and 385 of Iranian Civil Code. Considering the dissolution of contract conditions, the Article 458 of Iranian Civil Code has explicitly legalized the right of cancellation for one of the parties of a contract (Bonakdar, 2005).

The Article 264 of Iranian Civil Code is derived from the Article 1234 of French Civil Code with a little alteration. The Article 1234 of French Civil Code states that the obligations will be discharged in one of the following ways:

- Fulfilment of obligation
- Modification of obligation
- Release from the obligation
- Set off and recoupment
- Acquisition of the debt
- Loss of the contract matter

- Contract cancellation or revocation
- Contract dissolution accomplishment
- Lapse of time

The Iranian legislator by omitting 4 factors from the Article of 1234 of French Civil Code and by adding cancellation of contract by mutual consent has presented the Article 264 of Iranian Civil Code. The above mentioned classification dramatically has some shortcomings and this thesis tends to present a new classification by criticizing factors of discharge of obligations in order to remove ambiguities and strengthen the Iranian law system.

Inappropriate combination of Islamic law and French Civil Code and ambiguities in Article 264 of Iranian Civil Code: The Iranian legislation has structurally adopted rules for contractual obligations discharge from the French Civil Code; however these rules are in accordance with Sharia law. This has resulted in some problems because two groups of Iranian scholars that is, those graduated from France and those educated in religious institutions have considered more factors for obligations discharge than the six ones indicated in Article 264 of the Iranian Civil Code. For example in his book, Aliabadi (2009) mentions 13 factors for discharge of obligations in Islamic jurisprudence by adding the following factors namely; loss of property, impossibility of act, lapse of time, cancellation, divorce, waiver, expiration of duration and damages to the 6 factors mentioned in Article 264 of the Iranian Civil Code.

Consequently, Article 264 of the Iranian Civil Code has been analysed in terms of both structure and content. It has been reasoned that this article cannot fully fulfil the legal requirements needed for contractual obligations discharge so that this combination is not appropriate to respond to the legal requirements based on sharia law. Law is a social system intending to regulate the relationships between members of a society. In so doing, some rules are required to constitute both rights and obligations which will have to be respected by people. However an obligation undertaken by an individual with respect to others' rights is not eternal; it will eventually end someday. At the end of the obligations chapter, the Iranian Civil Code enumerates 6 factors for discharge of obligations in Article 264 as follows: Fulfilment of obligation, release from obligation, cancellation of the bargain, substitution of the obligation, set off and recoupment and acquisition of debt (Hamiti-Vaghef, 2009).

The Iranian legislator of Civil Code has adopted 5 causes of the above-mentioned causes from Article 1234 of the French Civil Code and added 'cancellation of the bargain' to them. The nine causes for obligations discharge in Article 1234 of the French Civil Code include fulfilment of obligation, modification of obligation, release from the obligation, set off and recoupment, acquisition of the debt, loss of the contract matter, contract cancellation or revocation, contract dissolution accomplishment and lapse of time (Katouzian, 2008).

Cancellation of the bargain as one of the causes of discharge of obligations in Iranian Civil Code has been adopted from the sharia law but it is not one of the 9 factors for obligations discharge in French law. The Iranian legislator did not approve to include the four items namely; loss of the contract matter, contract cancelation or revocation, contract dissolution accomplishment and lapse of time in Article 264 of the Iranian Civil Code. Consequently, the manner in which the Iranian legislator has adopted the obligations discharge causes from Article 1234 of French Civil Code has led to ambiguities in Iranian Civil Code because this combination has failed to completely observe all legal aspects.

Due to the ambiguity in Articles 292 and 293 of the Iranian Civil Code, the Iranian Civil Code texts have different responses in some cases. This study thus attempts to create new legal understandings by resolving such ambiguities. The first ambiguity that has occurred in Article 265 of Iranian Civil Code is concerning fulfillment of obligation. According to the mentioned article, if anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another while he is under no obligation to do so, he can ask for the return of such property.

The first sentence of this Article is a common expression which includes both the payment of debt and the submission of property of another one. In this case, due to the lack of definition from the legislator, there are some disagreements because in this article, it is not clear which one should adduce evidence in the court. The defendant of claim should adduce that is not debtor or the plaintiff should present that is creditor or he has granted the property to another mistakenly or due to every reason. This discrepancy even caused the issuance of different verdicts in Supreme Court of Iran.

The second ambiguity is substitution of the obligation that consists of replacing one obligation with another. The Iranian Civil Code discusses the regulations for substitution of the obligation in Articles 292, 293 and the French Civil Code has devoted Articles 1271-1281to this issue, yet no definition is offered by the Iranian contract law and this has led to misunderstandings. In addition, adopting two articles from the ten articles of French Civil Code on substitution of the obligation has

led to ambiguities; therefore attempts have been made in the comparative law to lessen such ambiguities. These ambiguities include 'is the substitution of the obligation a formal one or a basic act? is the substitution of the obligation a contract or not? does the change of location or the time interfere by substitution of the obligation? when an obligation is substituted, what does happen to guarantees? Because of the existence of different ambiguities in this article, these questions have different answers.

The third ambiguity is concerning the cancellation by mutual consent. The Iranian Civil Code has discussed this matter in Articles 283-288. In Islamic jurisprudence, it is only used in financial Islamic contracts, not in non-financial contracts such as marriage because according to Article 1120 of Iranian Civil Code, marriage dissolution is only affected by divorce or waiver of term. Therefore, cancellation of the bargain may be applied in some financial contracts but may not be applied in non-financial contracts. Even in a contract like pious endowment which is one of the most important Islamic contracts, there is no place for cancellation of the bargain. In fact, the agreement of both parties will be required, although a piously endowed property does not have a specific owner.

Therefore, there will be an ambiguity: Why does the Iranian legislator consider cancellation of the bargain as one of the causes of obligations discharge in the first place? It seems that there has been confusion in the two concepts of contract and obligation while there is an obvious difference between contract and obligation. An obligation is a binding responsibility due to a contract, not the contract itself. That is why cancellation of the bargain has not been discussed in the Egyptian, French and Swedish obligations law, although they have legal systems similar to the Iranian legal system (Bagheri, 2003). In studying the common law system and the written law obligations discharge factors can be new steps for new legal interpretation and resolving ambiguities.

CONCLUSION

In 1928, late Davar completely transformed the Iranian judiciary organization and in terms of form drew it closer to the French, Roman-Germanic and the Western law. The written law is one of the most important large legal systems, dominating a large part of Europe, Central America, South America and a part of Asia and Africa. The Islamic law and Roman-Germanic law have influenced the Iranian legal system. One of the reasons for inclination towards the Roman-Germanic legal system in the Islamic countries, including Iran is the attachment and familiarity of these societies with the Islamic law. Just like the Roman-Germanic law, the Islamic law is codified and written and despite the structural difference in nature, especially in terms of law resources, Iranian Civil Code is close to Roman Germanic (French) law in terms of formation while it is coordinated with Islamic law in terms of content.

Discharge of contractual obligations is one of the most important legal subjects and Articles 264-300 of Iranian Civil Code are devoted to this issue. Discharge of obligation is termination of commitment as a result of legal means; these means are classified in Article 264 Civil Code of Iran as follows:

- By fulfilment of obligation
- By cancellation of bargain
- By release from obligation
- By substitution of obligation
- By offset and recoupment
- By acquisition of debt

Legislators of Iranian Civil Code have extracted this article from Article 1234 French Civil Code with some changes. Iranian law was dramatically under the influence of two legal Islamic and Roman-German systems. This matter led to approaching the form of Iranian Civil Code to the French Civil Code and its content to the Islamic law. In legislating Iranian Civil rights, two movements of Islamism and modernism were combined with each other but this extraction and structural imitation with all of its features contains many problems and ambiguities.

The Iranian legislator considers cancellation of bargain as a factor for discharge of obligations whereas no such factor is included in French Civil Code. The Iranian law has then specifically chosen 5 out of 9 factors from Article 1234 of the French Civil Code. Here, the factors for contractual discharge of obligations in Iranian Civil Code will be analysed in different aspects. The following problems can be considered in regards to the contractual discharge of obligations in Iran. They include lack of definition, inappropriate classification, inappropriate combination of Islamic Law and French Civil Code and ambiguities in Article 264 of Iranian Civil Code. In regulating Article 264 of Iranian Civil Code, the Iranian legislator has not offered definitions for some factors of discharge of obligations such as:

- Fulfilment of obligation
- Substitution of the obligation
- Set off and recoupment

Moreover, the Iranian legislator has not even mentioned on what basis it has obtained such categorization for these 6 factors of discharge of obligations. Later on, this led to some ambiguities in understanding the Article 264 of the Iranian Civil Code in regards to discharge of obligations.

One of the characteristics of an acceptable classification is its high application. It should be adjusted in a manner that contains all the factors and details of considered law inclusively. The Article 264 of Iranian Civil Code basically has some shortcomings in this case because it lacks a perfect and comprehensive classification. When we mention the discharge of obligations, we have applied a general expression meaning that when an obligation discharges, sometimes there is no consequence, sometimes the previous obligation will be substituted and sometimes, it will not be performed then will be discharged. By this definition, we can present a general classification that includes all types of available discharge of obligations and removes all the ambiguities and incomprehensible matters. The classification of causes of obligation discharge is criticized from different aspects because all the causes of discharge of obligations which are accepted in other articles by Iranian legislator are not included in Article 264 of Iranian Civil Code. For example, cancelation, termination of contract condition, destruction of obligated property, impossibility of the obligation act, divorce and lapse of time are the factors of discharge of obligations which are not mentioned in this article.

The Iranian legislation has structurally adopted rules for contractual obligations discharge from the French Civil Code; however these rules are in accordance with sharia law. This has resulted in some problems because two groups of Iranian scholars that is, those graduated from France and those educated from religious institutions have considered more factors for obligations discharge than the six ones indicated in Article 264 of the Iranian Civil Code. For example in his book, Aliabadi mentions 13 factors for discharge of obligations in Islamic jurisprudence, by adding the following factors including loss of property, impossibility of act, lapse of time, cancellation, divorce, waiver, expiration of duration and damages, to the 6 factors mentioned in Article 264 of the Iranian Civil Code.

The Article 264 of the Iranian Civil Code has been analysed in terms of both structure and content so that it has been concluded that this article is not fully responsive to legal requirements needed for contractual obligations discharge and that this combination is not appropriate in order to respond to the legal requirements based on Sharia law.

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